

**SECTION 7**

**CONTRACT PROCEDURE RULES**

## Summary of the main controls and procedures shown in these Contract Procedure Rules (“CPRs”)

### THESE CONTRACT PROCEDURE RULES MUST BE READ IN ACCORDANCE WITH THE COUNCIL’S CURRENT PROCUREMENT PLAN

- **Do the rules apply?** Check the guidance on the Council’s Intranet and in the event of any doubt you can contact the **Procurement Service about whether these CPRs apply to a specific contract. If there is any doubt then the Monitoring Officer should be contacted as they are responsible for making the final decision in ensuring the proposed route is in line with the constitution and law.**
- **Responsibility** - Individual Heads of Service will be responsible for governing the procurement process, **deciding whether we should buy anything** and if so ensuring that there is budget for the proposed purchase. **If the rules are breached it is potentially a matter for disciplinary action** (see Rule C11).
- **Joint Procurement** – Heads of Service must look at options for joint procurement and use of Framework agreements (See Rule C11 and Section F).
- **Compliance with other policies including equality, health and safety-** When buying anything for us, you have to consider the importance and effect of our other policies, for example, the relevant Health and Safety Policy and the Council’s Equality Statement (See Rules B3 and D3).
- **Conflicts** - If you are involved in the procurement process or manage any contracts, you must declare any possible conflict of interest to your manager and the Monitoring Officer. **If in doubt then it should be declared (See Rules C2 - C4).**
- **Contract Value** - The contract value does not just mean its yearly value but all payments over the length of the contract (including any extensions – even if those extensions are never activated) – special rules apply if there is no set length for the contract (see Rules C7-8 and H1-3).
- **Record Retention** - You must keep all tender-related documents in line with our policies on keeping documents and to satisfy audit requirements. You must also place **all contracts over £5,000 on the Contract Register (see Rule N1-N3).**
- **Publicising the Contract** – All invitations to tender for contracts with a value of £25,000 and over, that are to be advertised must also be placed on the Government’s Contract Finder website. In addition, all awarded contracts valued at £5,000 or over must be entered on to the Council’s contract register and all awarded contracts with a value of £25,000 and over must also be placed on the Government’s Contract Finder website. (See Rules N4, F10 and F13).
- **Delegations** - Staff involved in the procurement process must act in line with the Scheme of Delegation. Heads of Service and Members of Leadership Team have authority to sign contracts up to £75,000. Contracts of £75,000 and above must have the authority of a Member of Leadership team and a member of Cabinet (see rule F10).

- **Follow the process carefully** - You must follow the correct tendering process – this will depend on the value of the contract and the extent to which a framework agreement is already in place.
- **Higher Value Contracts** - For all contracts over £75,000, you must consult the **Procurement Service before buying what is needed** (See Rule F9 - 10).
- **Electronic Procurement** - Electronic procurement (including e-tendering) is a developing area and one the Council is keen to encourage. However it is important that you discuss this with the **Procurement Service** to ensure compliance with the Council's rules (See Rules F16 and 17).
- **Tender Evaluation** - When you evaluate a tender using MEAT (most economically advantageous tender), you must use the tender evaluation methodology referred to in these CPRs (See Rules M1 and M2).
- **Financial Appraisal** - You cannot accept a tender or appoint a provider for a contract worth over £25,000 which meet certain criteria, unless you have carried out a financial check in line with the supplier financial appraisal strategy (see Rule F10 and Annex 2).
- **Waivers from the Rules – Only applicable to non EU procurement contracts** - In certain situations, we allow an exception to below EU threshold contracts under these CPRs as long as you fill in a waiver form and this is authorised (See Rule U1).
- **Monitoring the Contract** – Once the contract is awarded the work does not stop; the Head of Service must ensure that compliance with the contract including with any policies such as Health and Safety and Equality is monitored (See Section V).

## Options available for the tendering process

Low-value transactions	Up to £,999	<ul style="list-style-type: none"> <li>• No obligation to obtain more than one quote.</li> <li>• For one-off transactions a corporate credit card should be used wherever possible.</li> </ul>
Moderate-value transactions	£1,000 and up to £24,999	<ul style="list-style-type: none"> <li>• A framework agreement if it exists and if it meets the requirements of the service.</li> <li>• A minimum of two written quotations invited</li> <li>• If no framework option – decide whether a bespoke contract is needed or whether the Council’s standard terms and conditions will suffice.</li> <li>• Contracts above £5,000 must be added to the Contract Register</li> </ul>
Intermediate-value transactions	£25,000 and up to £74,999	<ul style="list-style-type: none"> <li>• A framework agreement if it exists and if it meets the requirements of the service.</li> <li>• A minimum of three written quotations invited</li> <li>• If no framework option – decide whether a bespoke contract is needed or whether the Council’s standard terms and conditions will suffice.</li> <li>• If the opportunity is to be publicised then it must also be placed on the Government’s Contract Finder</li> <li>• Awarded contracts must be added to the Contract Register and must also be placed on the Government’s Contract Finder.</li> <li>•</li> </ul>
High-value transactions	£75,000 and up to EU transactions limit	<ul style="list-style-type: none"> <li>• A framework agreement if it exists and if it meets the requirements of the service.</li> <li>• Publicised on the Government’s Contract Finder.</li> <li>• A minimum of three written tenders</li> </ul>

		<p>invitedIf no framework option – decide whether a bespoke contract is needed or whether the Council’s standard terms and conditions will suffice</p> <ul style="list-style-type: none"> <li>• If the opportunity is to be publicised then it must also be placed on the Government’s Contract Finder</li> <li>• Awarded contracts must be added to the Contract Register and must also be placed on the Government’s Contract Finder.</li> </ul>
EU transactions	<p>Goods and Services over £181,302</p> <p>Works over £4,551,413</p>	<ul style="list-style-type: none"> <li>• Special rules apply – see guidance from the Procurement Service.</li> </ul>

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## **A Introduction**

- A1 These CPRs are part of our Constitution and are our procedural regulations for buying items for us. They do not apply to buying items or services from within the Council. In addition the Council's procurement plan and any relevant financial regulations must also be met.
- A2 We explain the difference between goods, work and services in the glossary of terms at the end of these CPRs.
- A3 The CPRs apply to any contract that results in us making a payment and contracts where a service is being provided for us which results in some income being generated for us.
- A4 The CPRs also apply if we are acting as the lead organisation in partnership or other joint arrangement or if we appoint a subcontractor in connection with any contract.
- A5 The CPRs do not cover grants which we may receive or make (unless the grant is part of a contract for services).

### **KEY DIFFERENCES BETWEEN GRANTS & CONTRACTS**

1) Contracts – the essential elements of a contract are that there is a mutual bargain with consideration paid. A contract contains reciprocal obligations and the payment may be subject to VAT, depending on the service being supplied. Generally all contracts are subject to EU Procurement Rules to some degree whereas a grant is not.

2) Grants - the grant funder is subsidising a service it considers necessary, but which the grant recipient does not otherwise have the resources to deliver on a self-sustaining basis.

The essential elements of a grant are that the funds must be freely given and the donor receives nothing in return. Unless the grant agreement is a Deed, there is no obligation to pay and a grant is also outside the scope of VAT.

3) The “grey area” between Grants and Contracts - restricted grants and contracts for services can sometimes operate in a similar way.

For example, a local authority could give a grant to a childcare organisation to enable it to provide a certain number of subsidised places. Alternatively, the local authority could contract with the childcare organisation to purchase a certain number of childcare places on behalf of service users. To avoid any doubt it is important to make it clear whether the arrangement is a grant or a contract and that the drafting does not include any ambiguous language.



4) Appropriate Agreement - once it has been decided whether the payment is a grant or for contracted services, careful drafting of the Agreement is important.

For example, invoices are raised under a contract, but a grant is usually 'claimed' or 'drawn down'. "Clawback" provisions are used in the drafting of a Grant Agreement to enable funders to reclaim funding if the terms of a grant are not complied with.

With a contract, there should be no mention of clawback as the funder's remedy for any breach is to sue for damages. If in any doubt seek the guidance of the **Monitoring Officer** who will provide you with an appropriate Agreement for your intended use.

A6 The CPRs do not apply to:

- contracts of employment;
- contracts relating to interest in land (also known as property);
- contracts placed by the Chief Finance Officer for treasury management purposes "or in the course of Treasury management activities"
- contracts relating to selling or otherwise disposing of our assets.
- Instructions to Counsel

A7 If you are in any doubt about whether the CPRs apply, you must always check with the guidance issued by the **Procurement Service**.

A8 Our 'best value duty' is very important. It means that we must always consider how each procurement meets our duty to secure continuous improvement in what we do after taking account of economy, efficiency, effectiveness and outcomes. **As a result, we need to question whether we should be buying anything at all and, if we do, whether we can buy it best ourselves or jointly, or if we should rely on someone else to get better value.**

A9 Government and EU public procurement regulations require that we must allow, and be seen to be allowing, freedom of opportunity to trade and to be open and clear about how we do things.

A10 If we fail in this duty, a provider could make a complaint against us which could result in them claiming damages and even suspension of the contract.

A11 The most important principles are being clear, open and providing fair competition. Whenever we are buying goods and services for the council, we

must always act to promote competition and to achieve value for money. However we must also ensure that we try and be innovative in the ways in which we procure services. This is critical for us to achieve our ambition. If you think that any part of the rules are stifling this then you should contact the Procurement Service so that they can consider a suitable amendment to the rules and raise this with the Monitoring Officer.

A12 The CPRs have three main aims. These are to:

- keep to the obligations that govern spending public money, such as the EU procurement directives (reflected in the Public Contracts Regulations 2015);
- get best value in the way we spend money, so that we may in turn offer better and more cost-effective services to the public; and
- protect people who follow the CPRs.

A13 The CPRs:

- are written in plain English; and
- help decisions to be made by the right people at the right level in the council.

A14 With regard to below EU threshold contracts these CPRs may be suspended if the Chief Executive decides that it is appropriate to do so, see heading U6, for details.

A15 The rules are **automatically complied with** if we are entering into a framework agreement negotiated by another public organisation or you are buying something jointly with one or more public organisations and you are following their procurement processes or any of the other situations covered in U7;

A16 These CPRs apply to all contracts for goods, or for work, services or utilities for us or which we provide (other than those stated above) or you have a valid waiver under the section headed 'Exceptions from the CPRs'.

A17 **These rules must be followed and breach of them is potentially a matter for disciplinary action.**

## **B Context**

B1 The European Union sets down (through a treaty) what obligations are placed on us when we are buying. The main principle is to make sure that everyone in the marketplace who could provide the goods, work or services to us has the opportunity to do so.

- B2 We all now need to think about the way we arrange this, for example, e-auctions, e-tendering, or setting up a framework or placing a supply contract. More and more, councils are working collaboratively through joint procurements (in other words, buying the goods and services you need with another service area or another council or councils and sometimes other public organisations).
- B3 When you are buying anything for us, you **must** consider the importance and effect of our other policies on what you are buying. For example, this could include the Strategic Plan, the Corporate Equality Statement, the Council's Health and Safety Policies, the Council's Safeguarding Children and Vulnerable Adults Policy and economic aspirations.
- B4 If you are buying larger or expensive goods, work or services, remember that the Public Contracts Regulations 2015 for higher value orders and contracts are stricter than for those of lower value. This is so that the benefits of a more thorough, complicated process are not outweighed by the price compared to the value of the Goods, Services or Works in question.
- B5 At the highest end of the value scale, we **must** follow full EU public procurement directives, which say that we must keep to certain other procedures. In these cases, you **must** consult the Procurement Service.

## **C Before we start**

### **Making sure we keep to law and policies**

- C1 When making or proposing a contract on our behalf, the Head of Service will:
- keep to all relevant legal requirements including EU procurement regulations, relevant health and safety, environmental and equalities and discrimination law;
  - comply with these CPRs; and
  - keep to our financial regulations.

### **Honesty and conflicts of interest**

- C2 Every officer who takes any decision or has any influence about a contract must keep to our local code of conduct for employees.
- C3 Every officer who has a financial interest in a contract must contact the Monitoring Officer who will make a record in a book we will keep for the purpose, under Section 117 of the Local Government Act 1972.
- C4 You **must** tell the Monitoring Officer if you are dealing with a contract for the council and have been offered a gift or hospitality. You can get more advice and guidance on the Council's Intranet in relation to Gifts and hospitality.

## The competitive process

- C5 EU directives, UK law and Government policy says that we **must** always make sure that we are offering the opportunity to provide goods, work or services to the whole market to make sure there is fair competition.
- C6 If your contract is a high you **must** follow the section on high-value procurements.
- C7 The value of a contract means the estimated total value over the length of time it will apply, including any extension options (**not the yearly value**), before VAT.
- If the contract is for buying a single item, which is not related to buying other items, the contract is worth the price, or estimated price, referred to in that contract.
  - If the contract is for buying a related group of items, the contract is worth the total price, or estimated total price, of the group.
- C8 If there is no set length of time for the contract, **this is the estimated value of the contract over a period of four years**. You should not split contracts to avoid the values, either by item or length.

## Who can buy goods and services?

- C9 Heads of Service should make sure that any buying is carried out by an authorised person who can prove they have the skills and knowledge appropriate for buying the goods, work and services. These people should already have authority under our scheme of delegation for procurement. If not, they need to be granted authority from the relevant person or organisation.
- C10 Each Head of Service **must** make sure that we do not go over the limits in the scheme of delegation.
- C11 Before starting a procurement process, you need to make sure that you have carefully identified the need and fully assessed the options for meeting it.

Before you start, you **must** consider the following.

- **Do we need to spend the money?** Is there a clear business need, supported by appropriate evidence and a budget in place?
- **What is important to the council in this procurement?** Do you just need the goods, work or services? Or are there other things you want to bring about (for example, improved environmental performance, new jobs) or added social value. It is important that we consider whether we can obtain social value through the contract that is improving the social, environmental or

economic wellbeing of our area (by virtue of the Public Services (Social Value) Act 2012. This allows commissioners to achieve broader aims but you **must** consider the guidance issued by the **Procurement Service**.

- **Can you buy what you need with another council or public authority?** If you think you could save us money or achieve other advantages if you bought what you need with someone else, consider whether there is an existing framework arrangement or contract you can use. This framework or contract could be one already set up by another council or joint-purchasing organisation or run centrally by the Government (such as the Government Procurement Service).
- **Can we use a purchasing consortium?** Is there some kind of recognised purchasing group in place (often referred to as a buying consortium) where members can use the purchasing arrangements to buy goods or services? If there is a group in place, you do not have to keep to these regulations. However, you can only buy the goods or services that are covered by the group arrangements. If the goods or services are outside the scope of the group arrangements, you must use some other method of procurement in line with these regulations.

#### **Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)**

- C12 Entering into new contractual arrangements or changing existing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications (for example, when a contract with another supplier comes to an end and is to be put out to tender again). So, **if in any doubt, you must get the** advice of HR to make sure that any relevant TUPE arrangements are in place.
- C13 Where it has been decided that goods, work or services should be bought from an external source, you **must** consider the effects this may have on the existing in-house team and the possibility of staff transferring to the new provider under TUPE.
- C14 These contracts **must** contain conditions to make sure appropriate workforce (and other) information will be made available in enough time when that contract is due to end to make sure that we can fulfil TUPE obligations.
- C15 TUPE situations will almost always give rise to pensions issues. You can get advice on this from the County Council's Pensions Section – this will be arranged by HR. You will need an actuarial statement on pension information for any proposed TUPE transfers. It is the responsibility of the person managing the tender process to get this. Sometimes, we may need a pension admissions agreement.

C16 You can get more information on TUPE from [www.acas.org.uk](http://www.acas.org.uk).

### **The main contracts**

C17 For high value contracts a Director must get further relevant approval from the relevant Cabinet Member before a contract is to be awarded.

C18 The Director **must** consider if members should be involved in decisions during the tender process on High Value Contracts, for example by deciding on the conditions for awarding the contract.

### **Other**

C19 A Director or Head of Service will not, without approval from the Chief Finance Officer enter into a contract for supplying goods or services under any operating lease, hire, rental or any other credit arrangements.

C20 Heads of Service and Directors must make sure all contracts and related records are kept, so they can be inspected, for a period of 10 years. This includes decisions to suspend these regulations and using any delegated powers.

C21 The Monitoring Officer may make arrangements under these CPRs about keeping records for certain types of contracts.

C22 Any interim contractor or consultant who is responsible to us for preparing or supervising a contract on our behalf must do the following. They must:

- keep to these regulations as though they were a Director, though the procedure may be modified so that inviting, opening and accepting tenders can be approved beforehand by the Director concerned;
- if the Chief Finance Officer or any officer we have authorised asks, produce all the records they keep in relation to the contract; and
- at the end of a contract, send all records, documents and so on relating to the contract to the Director concerned.

### **D Defining the need**

D1 At the least, you **must** clearly and carefully specify the goods, work or services to be supplied, the agreed programme for delivery and the terms for payment together with all other terms and conditions. You also need to make sure that you will have the funds in the budget to pay for them.

D2 This means you **must** decide before beginning the procurement process the size, scope, and specification of the goods, work or services needed. If you are buying with someone else, you **must** decide this scope with your partners first.

- D3 You **must** keep to any other council policies which could apply to what you want to buy including the Council equality statement and the Council's Health and Safety Policy and Safeguarding Policy.
- D4 When identifying and defining the need, you should make sure you have involved a wider range of organisations relevant to the goods, work or services to be supplied. By knowing the market and encouraging a wider supply base, you have more chance to find the right providers and achieve the right services at the right price.

## **E Contract strategy**

- E1 Once you have decided on the need, you **must** decide on your strategy for buying the goods, work or services. This means taking a step back from the traditional procurement process and assessing the purchasing options particularly when purchasing services.
- E2 You **must** consider options for delivering goods, work or services. The options for goods, works or services are:
- not buying the goods, having the work done or providing the services at all;
  - providing the goods, work or services ourselves (for example, by taking spare goods from another directorate or using their staff);
  - getting someone else to provide the ongoing goods, work or service (using the 'voluntary sector' or another local authority or public organisation); or
  - providing the goods, work or services with someone else (the private or 'third' sector or another local authority or public organisation).

## **F How we buy the goods and services we need**

### **Framework agreements (including the Crown Commercial Services (CCS), ESPO, WMS)**

- F1 You **must** use framework agreements for goods, work and services (including approved lists) for contracts with a value of £1,000 **if they exist and if they meet your requirements.**
- F2 Framework agreements are arrangements with providers for providing goods, work or services on agreed terms for a set period for estimated quantities against which orders may be placed if and when needed during the contract period. They offer benefits of pre-negotiated terms, bulk-buying, improved

services and reduced administration costs over the period of the arrangement.

- F3 A framework agreement may also have the option for you to hold a mini-competition with all the capable providers on the framework when you come to buy for us. Care must be taken to follow the rules set out in the framework agreement.
- F4 You **must** investigate whether call-off contracts or frameworks are relevant in your own case. You could get better value for us by using an existing framework agreement (and if relevant the central government agreements). **You also need to check if legally you can use them.**
- F5 Countywide arrangements for routine goods and services and directorate-specific contracts, for example, maintaining premises (such as gas servicing) and terms of tenders for highways maintenance would fall into the definition of a framework.

#### **Full tender procedures (over the EU thresholds)**

- F7 If you are inviting tenders for contracts over EU procurement thresholds, you **must** decide on the procedure to follow before you advertise and it **must** be one of the following.
- **Open procedure** (Regulation 27) - all interested providers send us a tender in response to an advertisement.
  - **Restricted procedure** (Regulation 28) - expressions of interest from interested providers in response to an advertisement, with us inviting a selection of those providers to send us a tender.
  - **Competitive procedure with negotiation** (Regulation 29) – a procurement procedure under which contracting authorities may award a contract following evaluation of the bidders' initial tenders. However, they may also conduct the procedure in successive stages and carry out negotiations on the initial and any subsequent tenders. Only use this procedure if it is agreed by the Corporate Director Governance.
  - **Competitive Dialogue procedure** (Regulation 30) - where the purpose of the procurement is known but not the solution. Only use this procedure if it is agreed by the Corporate Director Governance.
  - **Innovation Partnership** (Regulation 31) – this new procedure is aimed at encouraging the development of innovative products, services or works, which are not already available on the market. A problem for companies which want to provide such new approaches is the cost of investing in the development of innovative products or services, without any likelihood that these could be taken through to final production or delivery unless there



were further procurement processes after an initial R&D services contract.

- F8 For all transactions valued above the EU threshold, and for all transactions over £75,000 (not including VAT), you **must contact the Procurement Service and follow the process and advice they provide.**

#### **Full tender procedures for high-value transactions**

- F9 For transactions valued at over £75,000 (not including VAT) but below the EU thresholds, you must carry out a formal tender process in line with the following principles.

- Openness
- Transparency
- Visibility
- Value for money
- In the best interests of the council
- Competition

- F10 It is a requirement of these CPRs that any contract at £75,000 or over which is to be advertised must also then be advertised on the Government's Contracts Finder website to comply with the Public Contracts Regulations 2015. High Value Contracts require approval from the relevant Cabinet member before they can formally be awarded. In addition a financial appraisal must be carried out if it is appropriate in accordance with the financial appraisal strategy at Annex 2.

The award of contracts with a value of £75,000 or over, must also be recorded on the Government's Contracts Finder website and added to our contract register

#### **Intermediate-value transaction**

- F11 For transactions valued over £25,000 but at or below £75,000 (not including VAT), you **must** seek three written quotations before you issue a purchase order or contract. This must set out prices, our terms and conditions of contract and terms of payment, unless a framework already exists and this must show value for money. If there is a framework, you **must** follow the procedure as set out in the framework.
- F12 Your order must contain our standard terms and conditions of contract between us and the provider. A quotation and a purchase order will create a legally binding contract. We use the purchase order to formalise the terms of the contract. The award of contracts over £25,000 must also be recorded on the Government's Contracts Finder website **and added to our contract register.**

It is a requirement of these CPRs that any contract value of £25,000 or over which is to be advertised, must also then be advertised on the Government's Contracts Finder website.

The award of contracts with a value of £25,000 or over, must also be recorded on the Government's Contracts Finder website and added to our contract register.

### **Moderate Value Transactions**

F13 For transactions valued over £1,000 but below £25,000 you **must** seek a minimum of two written quotations before you issue a purchase order or contract. This must set out prices, our terms and conditions of contract and terms of payment, unless a framework already exists and this must show value for money. If there is a framework, you **must** follow the procedure as set out in the framework. Annex 3 should be referred to.

F14 Your purchase order **must** contain our standard terms and conditions of contract between us and the provider. A quotation and a purchase order will create a legally binding contract. We use the purchase order to formalise the terms of the contract. The award of contracts over £5,000 must be added to our contract register.

The award of contracts valued at £5,000 and over must be added to our contract register.

### **Low-value transactions**

F154 For transactions valued up to £1,000 (not including VAT), there is no obligation to obtain more than one quote before you can purchase the goods, services or works. However you must issue a formal purchase order (unless using a corporate credit card) specifying the goods, work or services and setting out prices and terms of payment. For one-off purchases, a corporate credit card or other electronic payment should be used wherever possible.

F16 Your purchase order **must** contain our standard terms and conditions of contract between us and the provider. A quotation and a purchase order will create a legally binding contract. We use the purchase order to formalise the terms of the contract.

### **Electronic procurement and emailed quotations**

F17 You should always aim to use electronic procurement (or e-procurement) systems rather than paper systems. If you are going to use e-tendering provided by another organisation, this must be agreed by the **Procurement Service**. Using e-tendering may disadvantage some smaller

providers. You should make it clear that paper systems can still be used, so that we attract the widest range of providers.

F18 If you accept electronic quotations, these **must** be:

- sent to a specific email address;
- opened at a set time;
- opened in the presence of a duly authorised officer;
- logged under the price given; and
- kept on the relevant file.

## **G The EU directives**

### **Extra requirements for transactions valued over EU limits**

G1 Below are the contract values above which you must follow procedures governed by the EU directives.

For goods and services (including goods and consultancy services)	£181,302
For work	£4,551,413 (from January 2018)

These limits are changed in January every two years. You **must** check the latest limits before you go ahead.

## **H Adding contracts together**

H1 You **must never** deliberately split down the value of contracts.

H2 Wherever possible, we should make our purchases in the form of a single large contract rather than a series of smaller contracts. However, there will be circumstances where using lots of (smaller) contracts, is appropriate.

H3 You **must** add together the value of the separate contracts of the same type over a short period so you can decide whether the value of the contract falls within the limits.

## **I Procedures governed by the EU directives**

I1 If your contract has a value over the current EU threshold for Goods, Services or Works, you **must** comply with the UK Public Contracts Regulations 2015. **EU treaty**

**rules (reflected in the Public Contracts Regulations 2015) only apply in full to non-Schedule 3 services.**

Schedule 3 services are described in Annex 4 and where their contract value is above the current Schedule 3 'light touch regime' threshold of **£589,148** you must:

- Post in the OJEU a contract notice - or a Prior Information Notice - making known the intention to award a contract for any Schedule 3 service **above** the 'light touch regime' threshold (Annex 4) – thereby, by definition, inviting expressions of interest.
- Thereafter, by definition, hold some sort of (competitive) award process following this.
- Ensure that their award procedures are at least sufficient to ensure compliance with the principles of equal treatment and transparency.
- Run the process in conformity with the information in the call for competition (but may depart from it in certain circumstances which would not result in breach equal treatment and transparency).
- Allow reasonable and proportionate time and time-limits for the whole process.
- Publish a contract award notice (once awarded – these can be grouped for publication quarterly).

An OJEU call for competition (Contract Notice or PIN) can be dispensed with only where:

- The contract is below-threshold.
- The “negotiated procedure without notice” can be used – ie, where a procurer can legitimately approach one provider direct.
- There is some other reason why the EU rules don't require a competition (perhaps because what might otherwise have been a procurement is instead an in-house arrangement, or a public-to-public co-operation).

12 The Public Procurement Regulations 2015 contain conditions relating to providing notices and other documents electronically.

13 You **must** tender the contract under one of the procurement options listed at F1 above (for particularly complicated contracts). This Council would only consider the use of the Competitive Procedure with Negotiation in exceptional circumstances.

14 EU directives and the Public Procurement Regulations 2015 are very detailed and we can only give details of the main ones here. If in doubt, you should get the guidelines and advice from a procurement advisor.

- 15 For each contract, unless we say differently below, you must publish a contract notice in the Supplement to the Official Journal of the European Union (OJEU). **Great care must be taken in filling out the information in the OJEU notice to make sure that the information is accurate.** Advertisements you publish as well as this **must not**:
- appear in any form before we have sent a contract notice to OJEU; and
  - contain any information on top of that in the contract notice in OJEU.
- 16 You **must** always follow the minimum timescales relating to tender procedures governed by the EU directives. The timescales given for completing and returning tenders are only the minimum, so there is flexibility to extend timescales to encourage bids from smaller providers or consortiums. If procurement falls under Schedule 3 services or is under the EU procurement limits, there is no formal time limit. Similarly, when faced with short timescales within which to use the funds, you should still make sure the process used is fair, clear and accessible to all.
- 17 If you have sent a prior information notice (PIN) announcing a forthcoming contract notice to OJEU between 52 and 365 days before you have sent the contract notice, reduced timescales may apply.
- 18 You must also, now under the Public Services (Social Value) Act 2012 consider:
- How what is proposed to be procured could seek to improve the economic, social and environmental well-being of the area.
  - How the Council may through the contracting process seek to secure improvement in the economic, social and environmental well-being in conducting the process of procurement.
  - Whether any consultation with the local community is necessary to establish how the contract being procured may improve the economic, social and environmental well-being of the area.

## **J Tender documents**

- J1 Every above EU threshold invitation to tender using a Pre-Qualification Questionnaire (PQQ) should include:
- the nature and purpose and, if it applies, the proposed length of the contract;
  - an outline of the goods, work or services to be supplied or carried out;
  - a statement on our procedures for getting tenders;

- a requirement for the applicant to provide information about their technical, commercial and financial standing if we do not already have the information;
- a closing date for receiving applications;
- the evaluation criteria (with weightings) to include in any tender process (see regulation 13);
- an outline process and timetable;
- a statement that we do not have to accept the lowest or any tender; and
- a named Individual to deal with from the Council (or its agent).

J2 Unless we change it every **invitation to tender should** include:

- the nature, purpose, start date and period of the contract;
- the detailed specification and quantities of goods, work or services to be supplied or carried out;
- the times at, or within which, and the places at which the goods, work or services are to be supplied or performed;
- a copy of the conditions of contract which the successful contractors will have to keep to;
- information on TUPE;
- the evaluation criteria (with weightings) for awarding the contract
- a statement that we do not have to accept the lowest or any tender;
- the closing time and date, and address for receiving tenders;

**NOTE: Pre-Qualification Questionnaires are no longer allowed in below EU threshold procurement**

## **K Getting tenders**

K1 The Head of Service must send to every person who wants to give us a tender any documents which the Council considers are necessary to fully inform their proposed tender. This includes a returnable tender form or other document which tells each company wanting to tender to:

- include their offer price (or prices) for the goods, work, services or utilities;
- include their signature or seal;
- return the filled-in tender form to the Manager concerned at the address given by a certain date and time;
- where returning by post send the filled-in tender in an envelope with the word 'TENDER' addressed to the relevant Director at the Council followed by the subject the tender relates to and the closing date and time for receiving tenders;
- be told that, depending on procurement regulations relating to e-tendering arrangements, we will not consider tenders sent in only by fax or email.

## **L Receiving and opening tenders and PQQs (pre-qualification questionnaires)**

**L1** Every response to a PQQ or an invitation to tender should be delivered:

- no later than the time given for sending us the tender in the invitation to tender (and addressed to the relevant Director at the place shown in the invitation to tender (or e-mail address)); or
- on a read-only CD-ROM clearly labelled with the tenderer's name and contract reference, or via email (or provided in hard copy as a last resort);

There should be no other labelling or markings on the packet that identifies who is providing the tender.

**L2** The Head of Service **must** keep the tenders secure until the time we have given for their opening. These are to be kept in the safe held by Land Charges. We will not open tenders before the closing date and time. Two officers **must** open all tenders at the same time. They **must** not be involved in the tender evaluation and award.

**L3** We **must** list the opened tenders on a list of tenders. Tenders must be signed and dated by the people opening them. Pages with prices in them do not need to be signed, only the total price page.

**L4** Email tenders **must** be stored in a specific address which is secure and which meets our audit requirements.

**L5** We will not open a tender if it is received late and after we have opened other tenders for that contract.

**L6** If the circumstances mean it is appropriate, the Director or the Monitoring Officer may postpone, for a reasonable period, the closing time and date for receiving

tenders. This applies as long as we have let everyone know, in the same way, who we have asked for tenders from and that tenders have not been opened.

## **M Evaluating tenders and quotations**

**M1** If we have asked for written quotations for contracts valued at or below £75,000 (not including VAT), unless otherwise decided by the Director or Head of Service the contract shall be awarded based on identifying the most economically advantageous tender (MEAT).

**M2** For contracts valued over £75,000 (not including VAT) and for all contracts governed by EU directives, the contract shall be awarded based on identifying the most economically advantageous tender (MEAT). However, there are some situations where using MEAT will not be an appropriate method of evaluation. This is usually if the only obvious difference between products or solutions will be that of price (for example, if you are buying stationery or other standard items). It is unlikely that you could choose providers for services or work on price alone as these will often need wider evaluation techniques. When deciding on how we evaluate tenders, we need to be careful that using a lowest-price method of evaluation rather than MEAT is appropriate for the procurement.

**M3** This evaluation involves scoring tenders fairly by an officer or panel of officers or independent experts using criteria which **must**:

- be already set out in the invitation to tender documents in order of importance;
- be strictly kept to at all times throughout the tender process;
- reflect the principles of best value;
- include price;
- consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance and so on should be taken into account;
- be able to be assessed independently;
- be weighted according to importance;
- show wider social value if this has been included in the specification; and
- avoid discrimination on the basis of nationality, or other cause which goes against any of our policies.

**M4** If you use this evaluation method, you must award the contract to the company which sends us the most economically advantageous tender. (In other words, the tender that achieves the highest score in the independent assessment.)



## **N     Awarding contracts and audit trails**

- N1     You **must** record in writing the results of the tender-evaluation process and the decision to award a contract.
- N2     You **must** only award a contract if you are authorised to do so. You **must** make sure that the appropriate budget holder has the funds in place before you make the award.
- N3     Heads of Service and Directors should make sure that proper records of all procurement activity are kept in electronic or hard-copy format as appropriate. This is in line with our policy on keeping documents.
- N4     All contracts awarded with a value over **£5,000 or over** must be recorded on the Council's contract register (via the Intranet) unless the Monitoring Officer agrees otherwise. This is critical to allow for the Council to carefully monitor its spend and to allow the public to view the way in which the Council spends its resources. **In addition, the award of contracts with a value of £25,000 or over must also be recorded on the Government's Contracts Finder website.**
- N5     We cannot accept any tender which breaks EU procurement regulations.
- N6     We cannot accept any tender unless, where required, we have carried out a financial check in line with our supplier financial appraisal strategy (Annex 2).

## **O     Standstill period (for EU tenders only)**

- O1     For all contracts tendered under EU directives, we **must** have a 'standstill period' between the decision to award and the actual award of the contract. The minimum standstill period is calculated depending on the means of communication used to transmit the standstill notice:
- At least 10 calendar days, when the notice is communicated using electronic means (e.g fax, email); or
- When using non-electronic means, there is a choice between either 15 days from date of sending or 10 days from date of receipt.
- Once we have made the decision to award a contract, we must write to each company that provided a tender with the outcome of the tender process. This notice **must** include:
- details of the criteria for awarding the contract;

- if possible, the score or ranking the company achieved against those criteria;
- if possible, the score or ranking the winning company achieved; and
- the name of the winning company

O2 There **must** be at least 10 calendar days between sending this notice and the end of the contract. Special rules apply if a company asks us for a debrief on the tender process. Even if a company asks for a debrief outside of the standstill period, we **must** still provide this. In this instance, you must get advice from the appointed procurement advisor as soon as possible. The appointed procurement advisor will be a person with legal or procurement qualifications.

**P Contract award notice (EU contracts only)**

P1 We **must** announce all contracts awarded under the EU directive using a contract award notice in OJEU which must be sent no later than 48 calendar days after the date we award the contract.

P2 Awards of all contracts for £25,000 and over must be recorded on the Government's Contract Finder Website.

**Q Conditions of contract**

Q1 There must be written evidence of every contract and all contracts must be in a form agreed with the Monitoring Officer.

Q2 All transactions **must** use an appropriate model form of contract approved by the Monitoring Officer (or a form decided by the Director after consulting the Monitoring Officer).

Q3 For all contracts for services estimated at a value over £75,000 (not including VAT), if the model conditions of contract are not suitable, you **must** consult the Monitoring Officer to produce a suitable set of conditions of contract (with other advisors if necessary) before inviting tenders.

Q4 The Monitoring Officer **must**:

- keep a record or list of all model sets of conditions of contract that gives details of when the conditions were last updated, who is responsible for updating them, any changes and contact references;
- keep all current model conditions of contract under review;
- monitor and review conditions of contract issued by other organisations; and

make sure that information is sent to directorates and access is given to available framework agreements and contracts, local or joint framework agreements and call-off contracts.

## **R Insurance**

- R1 Insurance conditions will be contained in the conditions of contract. In terms of insurance, we will normally need the successful contractor to have the following types and minimum limits of cover. These figures can be varied by agreement of the Council's Section 151 Officer (the Officer with responsibility for finance matters)

	<b>Works Contracts</b>	<b>Goods and services Contracts</b>
Public Liability	£25 million	£5 million
Employers Liability	£5 million	£5 million
Professional Indemnity	£2 million	£2 million

- R2 The above limits relate to each claim. For public liability and employers' liability, the cover must be in place throughout the period covered by the contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the contract but also for another six years after the end of the contract (or 12 years if the contract is executed as a Deed). For certain types of services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect us in case anyone gives inappropriate advice.
- R3 When providing goods and services, the above limits may not be appropriate for small and medium enterprises (SMTs) and sole suppliers. In these instances, we can reduce these limits after carrying out a risk assessment and filling in the relevant sections of the waiver form (Annex 1) after consulting the Chief Finance Officer.

## **S Transferring contracts**

- S1 In appropriate circumstances we may agree to transfer a contract, by novation or assignment. You must ask for advice on how to transfer a contract from the Monitoring Officer, **before** any contract is transferred.
- S2 The Monitoring Officer **must** take this decision and it must be notified to the Cabinet.

## **T Changing and extending contracts**

- T1 Depending on any legal restrictions and the need to keep to these CPRs, a Director may authorise the following extensions and changes to an existing contract.

- An extension for a particular period under the terms and conditions of the contract (but depending on the satisfactory performance when monitoring the contract).
- A single extension of the contract by up to half the contract term as long as this would not place the contract over the EU limit or break any law.
- Any other change, and if relevant a resulting change in price, decided in line with the contract terms.

T2 Any extension to the contract period cannot be longer than the original length of the original contract. Any extension or change to the contract must be notified to the Cabinet and approved by the relevant Cabinet member if over the key decision limit.

T3 You **cannot** extend or change contracts arranged under the EU regulations without consulting the procurement service.

## **U Exceptions from the regulations**

U1 An exception to these CPRs means we give permission to agree a below EU threshold contract without keeping to one or more of these CPRs. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation.

U2 **An exemption will automatically apply where we decide to use a framework agreement or to jointly contract with another public authority acting as the lead authority (see Rule A15).**

U3 The Chief Executive may grant an exception to these CPRs as detailed below. If you want an exception (other than those automatically covered which are listed below at paragraph U7 or at A14), you must apply in writing using the request for waiver form (Annex 1 of these CPRs) and send it to the Monitoring Officer. Please include the exception you want and your reasons for it.

U4 The Monitoring Officer will keep a register of all exceptions to these CPRs.

U5 We will not agree an application for an exception unless you have a good reason. We do not consider a lack of time caused by poor forward planning as a good reason and so will not allow it.

**Exceptions which involve the request for waiver form (Annex 1 of these regulations)**

**Note: the Council cannot give an exception for above EU threshold value contracts that are covered by the Public Contracts Regulations 2015.**

General contracts

U6 We may grant an exception in the following circumstances.

- If there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure.
- If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified.
- If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the relevant EU threshold. However, this does not apply if the existing contract provides for an extension.
- If we can achieve value for money by buying used vehicles, equipment or materials.
- To develop our aims to develop the economy, whilst complying with the Public Contracts Regulations 2015.

U7 You will, as detailed in A14 and A15, not need separate authorisation in the following circumstances:

- If you place an order with a single provider under an existing corporate contract or framework agreement.
- If you place an order through a buying consortium of which we are a member.
- As part of a partnering contract that involves a series of contracts with one provider.
- you are buying something jointly with one or more public organisations and you are following their procurement processes
- If any law says we must contract differently from these standing orders.
- If you place an order under an arrangement, of which we are a member that has gone through a competitive process which meets EU conditions, for example, Crown Commercial Services.
- For goods, work or services which must be provided by a public utility or a local authority other than us under their legal powers.

**V        Monitoring the Contract**

- V1        Once the contract has been awarded and recorded it is important that we do not simply ignore the contract until it comes round to retender. The contract must be properly monitored and checked to ensure that the contract is being properly performed and that the Council continues to obtain best value. It is the Heads of Service responsibility to ensure that this happens.

**Request for 'Waiver' (exception)  
From Contract Procedure Rules**

**LICHFIELD DISTRICT COUNCIL**

NOTES:

- Please see the Contract Procedure Rules, regarding requests for waivers
- Waivers cannot be approved that would place the Council in breach of national legislation or EU procurement law
- Requests may be made by email. Requests for waivers must be made **prior to commencement of any procurement activity**
- This form is to be completed and passed to the relevant officer authorised under the constitution to sign/seal the Contract/Framework Agreement, prior to entering into any Contract/Framework Agreement

Compliance with certain EU Regulations (reflected in the Public Contracts Regulations 2015) is still required even if a waiver is granted. Please seek the advice of a Procurement Advisor for the following procurements:-

Schedule 3 services and single supplier procurements that are over the EU threshold are not exempt from EU procurement law but are merely partially exempt

- A copy of the completed waiver form duly signed by all parties indicated should be placed on the contract file and a copy must be sent to the Monitoring Officer for filing on the council's waiver database – send to:  
[monitoringofficer@lichfielddc.gov.uk](mailto:monitoringofficer@lichfielddc.gov.uk)
- This waiver request must not be completed or signed by any individual who has a direct or indirect interest in the request.

		INFORMATION TO BE INSERTED
1	<b>TITLE of Contract/Framework Agreement</b>	
2	<b>Description of Goods/Works/Services</b>	
3	<b>NAME of proposed provider, if known</b>	
4	<b><u>Duration and Value of Contract</u></b>	
4.1	Duration of Contract/Framework Agreement (include initial term and any options to extend)  <u>Note</u>  Framework Agreement should not generally be for more than four years	..... years
4.2	If Contract/Framework Agreement duration is in excess of 4 years provide justification for extended period	
4.3	If proposed Contract has been renewed or extended previously with the same provider/group of companies please indicate (this may affect the aggregated value of the Contract).	
4.4	Have there been any previous waivers in respect of this contract?	<div> <input type="checkbox"/> YES           <input type="checkbox"/> NO         </div> If <input type="checkbox"/> YES please provide details of <div>             (i) date and value of Contract               (ii) date(s) and values of any previous waivers and any limitations attached to previous waivers               (iii) value of this waiver request           </div>



		INFORMATION TO BE INSERTED
4.5	<p>Total <b>VALUE</b> (excluding VAT) of proposed Contract/Framework Agreement <b>include any amounts specified at 4.4 TOTAL VALUE should be value over entire duration including any extension period</b></p> <p><u>Note</u></p> <p>Include <u>all</u> anticipated ancillary matters such as maintenance support, licences, training, expenses etc.</p>	
4.6	If unable to determine value, please provide brief explanation	
5	<b><u>Budget</u></b>	
5.1	Is there a budget available for the total value of Contract?	<input type="checkbox"/> YES <input type="checkbox"/> NO
5.2	If reply to 5.1 is <input type="checkbox"/> NO how is funding to be sourced?	
5.3	Is funding conditional?	<input type="checkbox"/> YES <input type="checkbox"/> NO  If <input type="checkbox"/> YES include brief summary of funding conditions
6	<p><b><u>Evidence of Value for Money</u></b></p> <p><u>Note</u></p> <p>If a formal tendering process is not to be undertaken value for money must be evidenced (without exception)</p>	Details of value for money:
7	<p><b><u>EU Thresholds</u></b></p> <p>Is Contract over EU Thresholds?</p> <p><b>EU Thresholds as at January 2018:</b></p> <ul style="list-style-type: none"> <li>works £4,551,413 +</li> </ul>	<input type="checkbox"/> YES <input type="checkbox"/> NO  <input type="checkbox"/> YES complete Point 13

		INFORMATION TO BE INSERTED
	<ul style="list-style-type: none"> <li>goods &amp; services £181,302</li> </ul>	

		INFORMATION TO BE INSERTED
8	<p><b><u>Procurement Route</u></b></p> <p>If the Contract is over £75K (excluding VAT) Monitoring Officer to sign confirmation that there is not a more suitable alternative procurement route</p>	<p>Signature .....</p> <p>Monitoring Officer</p>
9	<p><b><u>Reason for Request</u></b></p> <p>Brief description why waiver is being requested</p> <p><u>Note</u></p> <p>There is a general presumption that all Contracts/Framework Agreements will be formally tendered. If this is not the case, the reasons must be explained along with the actual procurement route to be taken.</p>	
10	<p><b><u>Risks</u></b></p> <p>10.1 Details of any material risks e.g.</p> <ul style="list-style-type: none"> <li>• Variation to standard contract clauses (Legal)</li> <li>• DBS Disclosures (HR)</li> <li>• Non-standard Insurance limits (Public Liability/Employers Liability/Professional Indemnity Insurances)</li> <li>• Financial vetting revealing significant risk</li> <li>• Other (please specify)</li> </ul>	
10.2	Why is the council assuming any material risks?	
11	<p><b><u>Other Information</u></b></p> <p>Other relevant information (if applicable)</p>	
12	<p><b><u>Exit Plan</u></b></p> <p>What are the plans for the provision of goods/works/services upon the expiry of the Contract e.g. re-tender/one-off project?</p>	

CONTRACTS OVER THE EU THRESHOLD		
13	Does the request for waiver fall within one of the following categories?  Contract for:	<div>YES</div> <div>NO</div> <p><u>Note</u></p> <p>If <div>NO</div> the request for waiver is likely to be refused if over the EU Threshold</p>
13.1	Acquisition or development of material for broadcasting	
13.2	Arbitration or conciliation services	
13.3	Financial services in connection with the issue, purchase, sale or transfer of securities	
13.4	Central bank services	
13.5	Employment and other contracts of service	
13.6	Research and development services, unless solely for the benefit of the council and paid for by the council	
		INFORMATION TO BE INSERTED
13.7	Services, where the council has the <u>exclusive</u> right to provide the service	
13.8	EU Services under Schedule 3 or EU directive 14 exemption	
SUBMISSION BY REQUESTING OFFICER		
14	For completion by requesting officer only	

	<p><b>I confirm that the information set out above is correct.</b></p> <p>Contract Officer's signature:</p> <p>Name.....</p> <p>Post .....</p> <p>Tel No.....</p> <p>Date.....</p> <p><i>(either type name or use signature)</i></p>	
<p><b>WAIVER AUTHORISATION</b></p> <p><b>NOTE: FOR ALL CONTRACTS EXEMPTION CAN ONLY BE GIVEN BY THE CHIEF EXECUTIVE</b></p>		
<b>15</b>	<div>APPROVED</div> <div>REFUSED</div>	
<b>16</b>	Comments and Restrictions/Limitations to approval/reasons for refusal (if any)	
<b>17</b>	<p>Name/signed .....</p> <p>Chief Executive .....</p> <p>Date .....</p>	

## Supplier financial appraisal strategy

### Aim

The aim of the supplier financial appraisal strategy is to reduce as far as possible the effect of a business failure on the most vulnerable in the community.

### Principles

The strategy is based on:

- the need to help the Council make the right decision for all main critical contracts;
- promoting competition when buying goods, work, services and utilities;
- choosing the most suitable suppliers of goods, work, services and utilities based on a set of financial and market measures;
- the need to take account of the level of risk associated with the supply, service or supplier; and
- the ongoing assessment of the supplier's financial strength.

### The main responsibilities

While the final decision to reject an applicant for financial reasons rests with the Chief Finance Officer the emphasis will be based on a partnership approach.

Internal Audit will monitor how we follow this strategy through their planned procurement audit assignments carried out each year.

### Method

The following method applies for all contracts awarded using a tendering procedure or waiver.

For contracts with a value of **less than £75,000** you do not need to carry out a financial appraisal before awarding a contract.

For contracts with a value over **£75,000 but less than £1 million** the Head of Service, the relevant Director and the Chief Finance Officer will decide whether a financial appraisal is needed, before the contract is awarded.

The basic assessment involves four questions as shown below.

- Is the type of supply or service being bought 'routinely' rather than as a one-off purchase?
- Is the supply or service readily available from a number of other suppliers?
- Can the supply or service be easily substituted?
- Are contract payments only made once we have received the supply or service?

If you answer no to any of the four questions, you will normally carry out a financial appraisal using the same process and a choice of those factors (1 to 8) shown below.

The procurement officer, lead commissioning manager and a representative from the relevant joint finance unit will decide on the need to carry out a financial appraisal for each year of the contract.

We will carry out detailed financial appraisals:

- for all tendering exercises **over £1 million**;

### **Pre-contract award**

Factors to be discussed

- 1 We will take account of output from financial checks carried out using the financial assessors N2Check, Dunn & Bradstreet and Experian (based on those accounts lodged with Companies House).
- 2 We will analyse the latest set of accounts (if not lodged with Companies House).
- 3 We will carry out financial checks on the parent company (if there is one).
- 4 We will analyse the contract value when compared to:
  - the recommended total yearly contract value as defined by Dunn & Bradstreet;
  - the market standard of no more than 25% of turnover; and
  - the current total spending with the tender applicant.
- 5 In terms of the nature of the contract, we will look at:

- the type of supply or service (for example, regular or one-off);
  - the extent of competition within the market (for example, how easy to source the contract); and
  - the payment terms (for example, payment in advance or payment once the goods or services are received).
- 6 We will also look at information from suppliers gathered through current arrangements for managing services or from other sources.
  - 7 We will check the movement in share prices (if this applies).
  - 8 For sole traders and partnerships, we need to change certain factors. For example, we will replace factors 1 and 2 with the requirement for tender applicants to fill in a financial assessment in a format set by the Chief Finance Officer. This will show certain information on trading accounts for the last three years. The assessment will automatically work out the average liquidity score.

Following on from the above, we will assess whether to reject the tender for financial reasons. Before we reject it, we will consider the need to get (where appropriate) a banker's reference or parent company guarantee. We will record and keep the result of this assessment (including the reasons behind it).

### **Post-contract award**

In assessing the ongoing financial strength of suppliers, we will repeat the above process for each year of the contract within one month of the anniversary of the contract award date. This will help us manage contracts effectively.



## Glossary of terms

**Approved contractors list** is a list of suitably accredited and qualified providers from which we ask for quotations or tenders without the need to advertise the procurement.

**Crown Commercial Services** is an executive agency and trading fund of the Cabinet Office of the UK Government. The CCS is responsible for improving government commercial and procurement activity and bringing together policy, advice and direct buying; providing commercial services to the public sector and saving money for the taxpayer

**Competitive dialogue procedure** is used when we cannot provide a precise specification and where there is scope to negotiate about what services companies can provide. The purpose of this procedure is to negotiate on the specification of the project and not on the price.

**Consortium** means an association of several business organisations who are legally bound together to work towards a commonly held aim. .

**Contract** means any agreement where we agree to carry out or to buy or sell any goods, work, services or utilities for payment or otherwise.

**Electronic procurement** means procurement using the internet, including online e-auctions and buying portals on the internet. You can take advantage of reduced minimum time periods when you arrange your contracts under the EU procurement regime and send your documents electronically. You can get advice and guidance on this from a procurement advisor.

**EU procurement regulations** means the Public Contract Regulations 2015 together with relevant EU directives, case law and guidance issued.

**Framework agreement** means an agreement or other arrangement which sets the terms (in particular the price and, where appropriate, quality) under which the provider will enter into one or more contracts or a series of contracts with us. This may also be referred to as a continuous contract or a standing offer.

**‘Lowest tender in price terms’** for accepting a tender means either the lowest cost or, if the evaluation is not just based on price, the most economically advantageous tender score after an evaluation.

**Open procedure** This means an advert will be placed in OJEU and relevant press and trade journals. The tender will be open to anyone who shows an interest.

**Public organisation** includes any organisation which may award a public contract under the Public Contract Regulations 2015.

**Public services contract** is one under which we employ a person to provide services.

**Public works contract** is a contract to buy goods (not land or the product of an activity); or hire goods, whether or not we install them. Public works contract is a contract for carrying out work under which we employ a person to do the work.

**Restricted procedure** means an advert will be placed in OJEU, and the relevant press and trade journals. Organisations which express an interest will have to fill in a pre-qualification questionnaire (PQQ). We will evaluate the PQQs and produce a shortlist of suitable organisations which we will then invite to tender.

**‘Signing’** a contract includes arrangements for formally accepting a tender, if this is covered in the procurement regulations.

**Standstill period** is the period of time between giving notice of our plan to award the contract and the confirmation of the award of the contract which is needed under the EU procurement regulations (reflected in the Public Contracts Regulations 2015). This gives unsuccessful companies the chance to ask for a debriefing and to challenge an award of a contract.

**‘Supply’** includes buying, leasing, hiring or renting goods or services or arranging any form of credit for them (this can also include when we do not pay anything for those goods or services).

**‘Tendering’** means a formal procedure for getting written offers (tenders) for supply.

**‘Third sector’** means non-governmental organisations that are driven by value and which mainly reinvest any profit to further social, environmental or cultural aims. The sector includes voluntary and community organisations, charities, social enterprises, faith groups, housing associations and co-operatives and mutuals.

**‘Value for money’** is not the lowest price but the best combination of whole-life costs and quality to meet users’ needs. You should always assess value for money over the whole life of the contract and you should take into account all costs and benefits to society as a whole including the environmental and social benefits and costs, not just those directly relevant to us. (OGC 2008).

**Works** are defined as including:

- building and civil engineering work;
- installing, for example, heating and electrical equipment or ICT equipment;
- carrying out work such as tiling and papering; and
- maintaining buildings.

We may also treat the following activities as a contract for **work**.

- A contract where we employ a provider to act as our agent when letting contracts.
- An agreement where a developer constructs a building on their own land (according to our needs) and then transfers the land and structure to us at a later date.

### SCHEDULE 3 SERVICES

**NOTE:** Under the Public Contract Regulations 2015 ('PCR'), the distinction between Part A and Part B Services has been removed and replaced by what has become known as the "Light Touch Regime" ('LTR'). Details of this regime are at Regulation 74 onwards of the PCR.

A services contract will fall within the scope of the LTR if it is for the certain types of health, social and other services listed at Schedule 3 of the PCR (see H3 and Annex 4). For these LTR contracts, a higher threshold than that for ordinary service contracts will apply, before the LTR is applicable. This threshold is currently set at **£589,148**

Bear in mind that the services listed at Schedule 3 of the PCR do not exactly mirror what used to be categorised as Part B Services under the PCR 2006; if a service is not listed at Schedule 3 of the PCR it will be subject to the full EU procurement regime rather than only the LTR.

While the LTR is not prescriptive as to how contracting authorities design their procurement process for LTR services contracts, it does for the first time require that services contracts that fall within the LTR are advertised.

The services listed below are found at Schedule 3 to the PCR. These include the following services:

Health, social and related services	Administrative social, educational, healthcare and cultural services
Compulsory social security services	Benefit services
Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services	Religious services  Hotel and restaurant services
Legal services, to the extent not excluded by regulation 10(1)(d)	Other administrative services and government services
Provision of services to the community	Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
Investigation and security services	International services
Postal services	Miscellaneous services