

LONDON BOROUGH OF BROMLEY
35. CONTRACT PROCEDURE RULES

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CONTENTS

INTRODUCTION..... 4

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES..... 6

1. BASIC PRINCIPLES 6

2. OFFICER RESPONSIBILITIES 8

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS ... 9

4. RELEVANT CONTRACTS 12

SECTION 2: COMMON REQUIREMENTS..... 13

5. STEPS PRIOR TO PURCHASE 13

6. RECORDS 14

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS 16

SECTION 3: CONDUCTING A PURCHASE or DISPOSAL 20

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS 20

9. PRELIMINARY MARKET CONSULTATION..... 23

10. TECHNICAL SPECIFICATIONS, STANDARDS, LABELS, SELECTION, SUITABILITY AND AWARD CRITERIA 23

11. INVITATIONS TO TENDER/QUOTATIONS 24

12. SHORTLISTING..... 26

13. EXEMPTIONS TO THE NEED FOR COMPETITIVE TENDER..... 26

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS 27

15. CLARIFICATION PROCEDURES AND ANY PERMISSIBLE POST-TENDER NEGOTIATION..... 28

16.	EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES.....	29
SECTION 4: CONTRACT AND OTHER FORMALITIES		32
17.	CONTRACT DOCUMENTS	32
18.	BONDS AND PARENT COMPANY GUARANTEES	34
19.	PREVENTION OF CORRUPTION	34
20.	DECLARATION OF INTERESTS	35
SECTION 5: CONTRACT MANAGEMENT		35
21.	MANAGING CONTRACTS	35
22.	RISK ASSESSMENT AND CONTINGENCY PLANNING.....	36
23.	CONTRACT MONITORING, EVALUATION AND REVIEW.....	36
DEFINITIONS APPENDIX.....		39
ANNEX A.....		49
	PROCUREMENT GUIDANCE AND PRACTICE NOTES	49
ANNEX B.....		50
	OFFICER SCHEME OF DELEGATION, KEY DECISIONS ..	Error! Bookmark not defined.

All costs stated in these contract procedure rules are exclusive of VAT, staff costs and fees – except for the published PCR 2015 thresholds (and where publication in Contracts Finder is applicable) which are inclusive of VAT where it is applicable.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice on the interpretation of these requirements can be obtained from the following;

Director of Corporate Services

Director of Finance

Assistant Director Governance & Contracts

Head of Procurement

To aid use of these Contract Procedure Rules the following Colour Coding has been used for those associated with various actions and requirements:

Council/Executive	
Portfolio Holder	
Audit Sub Committee	
Chief Executive	
Director of Corporate Services	
Director of Finance/Head of Finance	
Assistant Director Governance & Contracts	
Chief Officer	
Heads of Service	
Head of Procurement	
Contract Owner	
Line Manager	
Officer/Initiating Officer	
Values/Amounts	£

<u>Current PCR 2015 Limits (from 1st January 2022)</u>	£
Refer to latest legislation for latest thresholds – see UK Thresholds 2021 for latest version All opportunities are to be published through Find A Tender – see PPN 08/20 Please note the thresholds below are inclusive of any applicable VAT except where indicated *	
For Works	5,336,937
For Supplies and Services (other than “Light Touch”)	213,477
For the Specific Services Covered by the “Light Touch” Regime – as identified in Schedule 3 of the Public Contracts Regulations	663,540
<u>Current UK Limits</u>	
Additional UK Limits – Publication in Contract Finder where tender advertised and all Awards (see PPN 01/23)	30,000 – 213,477
Permissible LBB CPR Set aside Limit *	100,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Procurement Information *	5,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Expenditure Information *	500

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

INTRODUCTION

These Contract Procedure Rules (CPR) (issued in accordance with Section 135 of the 1972 Local Government Act), which form part of the Council's Standing Orders, are intended to promote good *Procurement* practice, establish Value For Money, enhance public accountability and deter corruption.

Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and protects the Council from challenge on the arrangements used for its contracting activity.

They reflect the requirements of the *Public Contracts Regulations 2015 (PCR 2015)*, which set out the statutory requirements for Public Sector Procurement with a value of **£30,000** and above, and the Local Government Transparency Code 2015. Further descriptions of these requirements, together with associated Policy, Guidance and Practice Notes can be found on the Council's Intranet Site on the Procurement homepage.

Value For Money/Best Value

All **Officers** responsible for *Procurement* activity or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements only; a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include email and fax transmissions as well as hard copy documents or information issued via a Council eProcurement System.

- Follow the rules if you purchase goods or services or order construction work of any type.
- Take all necessary legal, financial, procurement and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct a *Best Value Service* review to establish Value for Money to inform the *Procurement* need.
- Check whether there is an existing *Corporate Contract* or *appropriate framework* you can make use of before undergoing a competitive process.
- Normally allow at least 30 days for submission (more as required, if above *PCR 2015* Threshold) of bids (unless there are good reasons not to).
- Keep bids confidential.
- Complete a written *Contract* and/or Council *Purchase Order* (using its eProcurement Systems where possible) before the supply, service or works begin (unless otherwise agreed by the **Director of Corporate Services**).

- Identify a **Contract Owner** with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with all *Tenderers* and *Contractors*.
- Assess each contract afterwards to see how well it met and continues to meet the *Procurement* need and *VFM* requirements.

In accordance with the *Constitution*, the **Assistant Director Governance & Contracts** in agreement with **Director of Corporate Services** and the **Director of Finance** shall have the power to make amendments from time to time to these Contract Procedure Rules *subject to a report being made to the Council within 3 months of any amendment being made*. The **Chief Executive** in agreement with the **Director of Corporate Services**, and the **Director of Finance** shall have the power to amend the titles of the responsible **Officers** identified within these Contract Procedure Rules where these result from changes in organisational structure and/or other amendments to roles and responsibilities of the *Officer* concerned.

The **Assistant Director Governance & Contracts** will make the latest version of these Contract Procedure Rules and its associated Guidance Notes available to all officers and members as necessary and be responsible for its circulation and communication.

Various Best Practice Guidance Notes and associated processes can be found on the Council's Intranet Site on the Procurement Team homepage. These complement these Contract Procedure Rules and have been prepared to assist those involved in the *Procurement* process to identify and use best practice. The practices identified should be used by those involved in contracting processes and arrangements unless an alternative course of action has been agreed by the **Head of Procurement** in consultation with the **Assistant Director Governance & Contracts** and **Director of Corporate Services** as necessary. In any case the requirements set out in these Contract Procedure Rules must be followed unless a general or specific derogation has been agreed by the Council.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All *Procurement* and disposal procedures must:

- Achieve *Best Value* for public money spent.
- Enable a Value For Money *Procurement* decision based on *Whole Life Costing* and the consideration of *Sustainable Procurement* practice and any associated *Life Cycle Costings*.
- Support Local Business to the maximum extent permitted by law and the duty to demonstrate Value For Money.
- Be consistent with the highest standards of integrity.;
- Ensure fairness in allocating public contracts.
- Comply with all legal requirements.
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*.
- Support the Council's Corporate and Departmental Aims and Policies.
- Comply with the Council's Corporate Procurement Strategy.

1.2 In determining the estimated cost (or value) identified in these Rules the following shall apply:

- **Officers** shall not sub-divide work that could reasonably be treated as a single contract.
- The total estimated value of orders for a given type of goods, services or work should wherever practicable be amalgamated for the purpose of determining *Procurement*. In any case, due regard should be given to the "Method for Calculating the Estimated Value of Procurement" identified in Regulation 6 of the *PCR 2015*. This will also apply to *Framework Agreements* or *Draw Down Facilities*.
- If a contract/arrangement is for a period greater than one year then the estimated value of orders to be placed over the full period (including any identified extensions) should be used to determine the appropriate procedure, inclusive of any allowance for inflation.
- Where leasing arrangements are used, the total amount payable over the life of the lease shall determine the appropriate procedure.
- Where contracts entail both revenue and capital costs (e.g. acquisitions and support for IT systems) the value of the contract shall be calculated by the aggregation of the total estimated capital cost and the estimated revenue costs calculated as identified above.
- If the lowest quote/tender obtained exceeds the upper limit applicable to the procedure selected, the **Chief Officer** should consider (and record the reason) whether the procedures for the higher category should be applied.

1.3 Formal advice should be sought from the Corporate Procurement Team, Legal Services (Contracts) and your relevant Head of Finance for any procurement with a value of £5k or over. Advice should also be sought from Human Resources,

Information Technology and Strategic Property as necessary. In addition, the formal advice of the Assistant Director Governance & Contracts, the Director of Corporate Services¹ and the Director of Finance (or their nominees) must be sought for the following contracts:

- Where the *Total Value* exceeds **£100,000**.
- Those involving leasing arrangements.*
- Where it is proposed to use a supplier's own terms.*
- Those involving the purchase of application software with a *Total Value* of more than **£50,000**.*
- Involve the placement of a *Contract* with another *Public Sector Organisation*, other than through a *Framework Agreement*, authorised as required in these Contract Procedure Rules.*
- Arrangements which require the provision of a formal *Gateway Review* to be made to Members during any stage of the contracting process.
- Those that are complex in any other way.*

1.4 The *PCR 2015* provide for five (5) main processes under which *Works, Services and Supplies*, that fall within their provisions can be placed. These are identified as being the

- (1) *Open Procedure*,
- (2) *Restricted Procedure*,
- (3) *Competitive Dialogue Procedure*,
- (4) *Competitive Procedure with Negotiation*, and
- (5) *Innovation Partnership Procedure*.
- (6) In addition, but only in very limited circumstances, a *Negotiated Procedure without Prior Publication* may be used.

1.5 However, unless the formal Advice of the *Head of Procurement* has been obtained, and the Agreement of the Assistant Director Governance & Contracts, Director of Corporate Services* and the Director of Finance given, only the first two of these options may otherwise be used.

1.6 Provision is also made within the *Regulations* for the placement of those activities identified in Schedule 3 – “*Social and Other Specific Services*” – to which a “*Light Touch*” Procurement Regime may be applied. This differs from those for other *Works Services and Supplies*, and provides for differing arrangements above and below a threshold of **£552,950**, as identified in Section 7 of the *PCR 2015*, which must be followed in the placement of requirements under this provision.

1.7 For all activities, UK specific requirements as set out in Part 4 of the *PCR 2015* apply to any arrangements made with a value greater of **£30,000** and above.

1.8 Further detailed *Procurement Guidance* on the requirements around the differing contracting arrangements for contracts valued at: **£30,000; £50,000; £100,000;**

¹ The Director of Corporate Services title is marked with an asterisk * where the requirement has been delegated to the Assistant Director of Legal Services

£213,477; £500,000; £663,540; and £1,000,000 are provided in the *Best Practice Guidance Notes* which can be found on the Procurement Homepage.

- 1.9 The Corporate Procurement team must be consulted on all procurement with a whole life value of £5k or above. Where the estimated value of any intended *Contract*, either singly or in aggregate, or as otherwise identified in the *PCR 2015*, identifies the *Contract* as being subject to its requirements, the formal advice of the *Head of Procurement* must be obtained, Any required Notice or details issued under these *Regulations* or other guidance must be agreed with and issued, as required, by the Corporate Procurement Team and/or the *Head of Procurement*.
 - 1.10 The Council must ensure that it treats all economic operators equally and without discrimination and must act in a transparent and proportionate manner in its contracting arrangements.
 - 1.11 Unless agreed by the *Assistant Director Governance & Contracts*, following *Consultation* with the *Head of Procurement*, the Council's Standard Contract and Tender Process Forms (which are embedded in its eProcurement System and/or included within the *Procurement Toolkit*), together with the identified methodologies for their assessment and evaluation, must be used.
 - 1.12 The authorisation of matters that have implications for the Council's Pension Fund, which result from any *Contracting Decision*, must be authorised by GP&L Committee (or the Council), acting on recommendations made by the Pensions Sub-Committee.
-

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 *Officers* responsible for *Procurement* or disposal must comply with these Contract Procedure Rules, *Financial Regulations*, the Officers' Code of Conduct and with all UK and Public Contract binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply with these requirements.

2.1.2 *Officers* must:

- Have regard to the *Best Practice Guidance* identified above.
- Check whether a suitable *Corporate Contract* exists before seeking to let another contract; where a suitable *Corporate Contract* exists, this must be used unless there is a justified and auditable reason not to.
- Keep the records required by Rule 6.
- Take all necessary legal, financial, pensions, procurement and other professional advice.
- Estimate the cost (or value) of the *Supply, Service or Work* required in accordance with Rule 1.2 above.

- 2.1.3 No *Order* or *Contract* shall be raised or placed unless there is uncommitted budgetary provision (revenue estimate and/or Capital Programme) to meet the estimated cost (or value) unless it relates to matters undertaken (and reported as required) for reasons of *Extreme Urgency*.
- 2.1.4 The *Estimate Cost (or Value)* calculated as provided for above will be used to determine the arrangements to be followed in seeking and agreeing quotations and tenders for the Council.
- 2.1.5 When any employee either of the Authority or of a service provider may be affected by any transfer arrangement, **Officers** must ensure that the Transfer of Undertaking (Protection of Employment) (*TUPE*) issues and any Pensions matters are considered and obtain legal and financial advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Chief Officers

2.2.1 The **Assistant Director Governance & Contracts** will make available a Register of all Contracts (via the Contracts Database) for all contracts above £50,000, reporting to Executive, Resources and Contracts PDS on all contracts with a value of **£200,000** and above. A similar report will be prepared for Chief Officers to report to their relevant PDS Committee for all contracts with a value of £50,000 or above. Directorates must use the Contracts Database to record contracts with an estimated value of **£50,000** and above and store key contract documents (such as the contract and any variations, relevant authorisations relating to the contract and other key documentation). Officers are recommended to use the Contracts Database to record all contracts with an estimated value of £5,000 or above.

2.2.2 **Chief Officers** must:

- Ensure that their staff comply with Rule 2.1.
- Ensure the timely consideration of Contracts and associated actions identified and recorded in the Contract Register.
- Keep registers of:
 - Contracts completed by signature, rather than by the Council's Seal (see Rule 17.3) and arrange their safekeeping on Council premises;
 - Exemptions recorded under Rule 3.2.

3. EXEMPTIONS, WAIVERS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The Council and its **Executive** have power to *Waive* any requirements within these Contract Procedure Rules for specific projects, and any such decision may be a *Key Decision*.

3.2 Where a *Waiver* or an *Exemption* from the requirement from Competitive Bids (also referred to as *Direct Award* or *Negotiated Procedure without Prior Publication*) is proposed, then Rule 13.1 applies. In addition, and specifically in these circumstances, where there is the need for an *Exemption* for the requirements for Competitive *Bids* pursuant to Rule 13.1 or a *Waiver* of any other provision of these Contract Procurement Rules because of an unforeseeable emergency involving immediate risk to persons or property or serious disruption to Council services or significant damage or potential damage to the image or reputation of the Council (including circumstances which require a *Head of Service* to invoke a *Business Continuity Plan*), a *Chief Officer* may *Approve* such *Exemption* or *Waiver* subject to the following:

- (i) Where the value of a relevant contract (or proposed contract) exceeds **£50,000** the *Agreement* of the *Assistant Director Governance & Contracts* and the *Director of Corporate Services* shall be obtained.
- (ii) Where the value of a relevant contract (or proposed contract) exceeds **£100,000** the *Agreement* of the *Assistant Director Governance & Contracts*, *Director of Corporate Services*, the *Director of Finance* and the *Agreement* of the relevant *Portfolio Holder* shall be obtained. A report advising on the action taken shall be submitted to the *Audit Sub Committee* on a bi-annual basis.
- (iii) Where the value of a relevant contract (or proposed contract) exceeds **£1,000,000** the *Agreement* of the *Assistant Director Governance & Contracts*, *Director of Corporate Services*, the *Director of Finance* and the *Agreement* of the relevant *Portfolio Holder* shall be obtained. A report advising on the action taken shall be submitted to the next meeting of the *Executive* and to the *Audit Sub Committee* on a bi-annual basis.

3.3 All *Exemptions* (as identified above and in Rule 13.1), and the reasons for them, must be completed in writing and recorded. *Exemptions* shall be signed by the *Officer* and countersigned by the *Assistant Director Governance & Contracts*, *Director of Finance* and *Director of Corporate Services*. For the purpose this and associate CPR requirements, an exchange of emails or correspondence via similar electronic mediums can be taken to evidence such action.

3.4 *Heads of Finance* must hold a record and monitor the use of all exemptions granted.

3.5 Use of Framework Type Arrangements

3.5.1 In seeking to demonstrate *Value For Money*, the *Head of Procurement* must be consulted **prior** to commencing any *Procurement* process using any Framework Contract, *Dynamic Purchasing System* arrangement or Catalogue provided by Crown Commercial Services or a similar *Central Purchasing Organisation* Contract, or Joint Contracts with another Authority. The terms and conditions of contract applicable to any such arrangement, including the requirement to undertake competition between providers, must be fully complied with and agreed by the *Assistant Director Governance & Contracts*.

- 3.5.2 Any purchases proposed to be made via any of the entities identified in CPR 3.5.1 above are deemed to comply with these *Contract Procedure Rules* and no exemption is required. However, purchases above the *PCR 2015 Threshold* must be placed under a *PCR 2015* compliant process, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *PCR 2015 Procedures* on behalf of the authority and other consortium members. However, advice must be sought from the *Head of Procurement* as the Council has a legal responsibility for the proper use of such arrangements and any necessary standstill requirements for an above-threshold call-off observed.
- 3.5.3 Before entering into any collaborative procurement arrangements, joint contracts or shared service arrangements with another Public Body or Private Entity, other than those identified in 3.5.1 above, the *Officer* must consult with the *Assistant Director Governance & Contracts*, *Director of Finance* and the *Director of Corporate Services*.
- 3.5.4 All *Contracts* placed under these types of arrangement will be reported as required in these *Contract Procedure Rules*.
- 3.5.5 Where a *Service* is to be provided by a *Voluntary Sector Organisation* through an external *Service Level Agreement* and providing such *Service(s)* is/are amongst those covered within the arrangements identified in the “Light Touch Regime” provided for under Section 7 of the *PCR 2015*, the relevant *Chief Officer*, in consultation with the *Director of Corporate Services*, can decide not to obtain competitive tenders or quotations provided that:
- The *Chief Officer* is satisfied that the *Voluntary Sector Organisation* is or will be able to provide a satisfactory quality of *Service* and that the sums payable under any *Service Level Agreement* entered into represent *Value For Money*.
 - The relevant *Head of Finance* keeps a record of all payments made and any *Grants* received under the *Service Level Agreement*.
 - The *Service Level Agreement* is time limited and subject to renewal under the arrangements identified in this Rule.
- 3.5.6 Approvals will be obtained as provided for in Rule 13.1, as appropriate for the estimated total value of the intended arrangement and in all cases any overriding requirements of the *PCR 2015* will be observed.

3.6 eProcurement Arrangements

- 3.6.1 All *Officers* are required to make use of the Council’s eProcurement System (ProContract) when carrying out any Contracting activity which has an estimated value of **£5,000** and above, unless otherwise agreed with the *Head of Procurement*. Where the Council’s eProcurement System is not used the relevant *Chief Officer* shall ensure that the information required by CPR 6 is recorded and included within any information required to be published by the Council.

3.6.2 The use of eProcurement technology does not negate the requirement to comply with all elements of these Contract Procurement Rules, particularly those relating to completing contracting activity in a fair and transparent way, with any necessary degree of competition and in a way required to establish *Value For Money*.

3.6.3 Unless otherwise agreed by the **Director of Finance** any *Purchase Orders* placed must make use of and be issued through one of the Council's standard electronic IT systems / processes, for example via *iProc*.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these *Contract Procedure Rules*. A *Relevant Contract* is any arrangement made by, or on behalf of, the Authority (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods
- The hire, rental or lease of goods or equipment
- The delivery of services, including (but not limited to) those related to:
 - the recruitment of staff
 - land and property transactions
 - financial and consultancy services

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of interests in land (for which *Financial Regulations* shall apply), or
- Are otherwise included in Regulation 10 of the *PCR 2015*.

4.3 However, any such Services must be procured in a way that demonstrably secures *Value For Money* and/or as appropriate, *Best Consideration*.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The **Officer** must review the intended *Procurement* in a manner commensurate with its complexity, risk and value, taking into account any relevant guidance contained in the *Best Practice Guidance Notes* and associated processes included in the *Procurement* element of the *Council's Intranet*.

- Taking into account the requirements from any relevant Service review.
- Appraising the need for the expenditure and its priority.
- Defining the objectives of the purchase.
- Assessing the risks associated with the purchase / procurement and how to manage them, including those associated with any required consultation, TUPE, Pensions, Insurance and the Tax implications of any contracting arrangements proposed, together with the Social Value Act Legislation.
- Undertaking Preliminary Market Consultation with the “Market” and Service Providers as appropriate and to the extent provided for in the *PCR 2015* (Reg. 40), providing this does not distort or compromise the contracting process.
- Considering what *Procurement* method is most likely to achieve the *Procurement* objectives, including internal or external sourcing, partnering, packaging strategy and collaborative *procurement* arrangements with another local authority, government departments, statutory undertakers, public service procurement consortia or Central Purchasing Organisations (CPOs).
- Considering the appropriate time limits allowed for the completion of the tender process and any statutory requirements that may apply.
- Consulting users, staff and other interested parties, as appropriate, about the proposed *procurement* method, contract standards and performance and user satisfaction monitoring.
- Identifying and record the reasons for any “*Lotting*” Strategy to be used.
- Drafting the specification and terms and conditions that are to apply to the proposed contract.
- Considering the approach to be taken to performance and contract management and the reporting arrangements needed to ensure the delivery of the required service.
- Ensuring the correctness of any use of member or delegated approval for the expenditure and that the purchase is in accords with the approved policy framework, *Scheme of Delegation* as set out in the *Constitution*.
- If the purchase is a *Key Decision*, ensuring all appropriate steps have been taken.
- Setting out these matters in writing if the *Total Value* of the purchase exceeds **£50,000**.
- Ensuring that for any Contracts over £5k and/or involving the Outsourcing (or Insourcing) of any requirements, the necessary Legal, Finance, HR, Pensions, Property, Procurement and IT advice is obtained.

- 5.2 Where the estimated value of the intended arrangement requires the publication of a *Find A Tender and/or Contract Finder Notice*, the required Procurement Documents must be available at the point of publication.
- 5.3 Where the estimated value of the intended arrangement is **£500,000** or more the relevant **Portfolio Holder** will *Approve* the intended action and contracting arrangements, having submitted, for consideration, a formal *Gateway Review*, covering, as appropriate, the matters identified in the Council's Standard *Gateway Review Template* Reports produced must identify, after discussion with the *Relevant Officers in* Legal, Finance, Human Resources, Property, Procurement and Information Technology, any service and cost implications arising from the proposals being considered.
- 5.4 Where the value of the intended arrangement is **£1,000,000** or more the **Executive** will *Approve* the intended action and contracting arrangements, having submitted for consideration a formal *Gateway Review*, covering as appropriate, the matters identified in the Council's Standard *Gateway Review Template*.
- 5.5 Where the estimated value of the intended arrangement is **£500,000** and above, or requires a Member decision, or as directed, the Council's *Procurement Board* may review and advise on the procurement proposal, prior to its submission to the relevant Portfolio Holder or **Executive** as required by CPR 5.3 and 5.4.
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6. RECORDS

6.1 Information to be maintained under the requirements of the “Local Government Transparency Code 2014”

6.1.1 As provided for within the above Code, for all Invitation to Tender or Requests for Quotations with an estimate value of **£5,000** and above, the relevant **Chief Officer**, shall ensure that the following Information and Procurement Records (including that for staff who are employed via consultancy firms of similar agencies or otherwise work on behalf of the Authority), is maintained and provided for publication as necessary.

6.1.2 At the time of the issue of any Invitation to Tender or Request for Quotation the required information to be provided shall include the following:

- reference Number;
- title;
- description of Work / Goods or Service Required;
- the Start and End Date together with any Review Dates envisaged;
- the Service Area responsible.

6.1.3 At Contract and/or Award, the following additional information shall be provided for publication:

- the supplier's name and details;
- the sum to be paid over the length of the Contract (or the estimated annual spend or budget for the Contract);
- any Value Added Tax that can't be recovered;
- whether or not the contract was a result of a Request for Quotation or a published Invitation to Tender;
- whether or not the supplier is a small or medium sized enterprise and/or community sector organisation and if so provide the relevant registration number.

6.1.4 The information identified within CPR 6.1 are mandatory fields for completion within the Council's eProcurement System (ProContract). The System will automatically publish the required details and the use of the Council's eProcurement System, therefore, negates the need for a separate record of this information to be maintained by the relevant Chief Officer. The published eProcurement System Record will be considered to be the Council's Contract Register for activities valued between £5,000 and £500,000.

6.2 Where the information is not held on the Council's eProcurement System and for Contracts with an estimated value less than £50,000, the following contractual records must also be kept by the relevant Chief Officer:

- Invitations to quote and *Quotations*.
- A record:
 - of any exemptions and the reasons for them,
 - of the reason if the lowest price is not accepted.
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.3 Where the *Total Value* exceeds £50,000 the Officer must also record:

- The method for obtaining *Bids* (see Rule 8.1).
- Details of any required Notice and/or advert placed.
- Any *Contracting Decision* and the reasons for it.
- Any exemption under Rule 3 together with the reasons for it.
- The *Award Criteria* in descending order of importance.
- *Tender* documents sent to and received from *Candidates*.
- Pre-tender market research.
- Changes to the contracting timetable.
- Clarification and post-tender negotiation (to include minutes of meetings).
- The contract documents.
- Post-contract evaluation and monitoring.
- Communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.4 Records required by this rule must be kept for six years (12 years if the contract is under seal) after the end of the Contract. However, written documents which relate to

unsuccessful *Candidates* may be microfilmed or electronically scanned or stored by some other suitable method or disposed of after 12 months from award of contract, provided there is no dispute about the award. Documents may then be disposed of as identified in the Council's *Financial Regulations*

- 6.5 Where the *Total Value* exceeds **£50,000** the **Directorate** or **Department** concerned shall maintain a record of the contract placed in the *Corporate Contract Register*, using the corporate system (the Contracts Database), unless otherwise agreed by the **Head of Procurement**.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS

7.1 Restrictions on Use

- 7.1.1 The *PCR 2015* and their accompanying guidance limit the opportunity to make use of *Approved Lists* for requirements with an Estimated Value above **£100,000**, without the opportunity also being advertised in Contracts Finder and allowing any who respond to be considered in the tender process.
- 7.1.2 Where the Estimated Value of an Opportunity is lower than the *PCR 2015* Threshold for Supplies and Services the Authority is also prevented from making use of any Selection process and is required to invite all those expressing an interest, who pass any suitability criteria set, to quote or tender for the opportunity identified.
- 7.1.3 As a result *Approved Lists*, such as Constructionline or TrustMark, should only be used in appropriate circumstances, as agreed in discussion with the **Head of Procurement**. For opportunities with an Estimated Value below **£100,000** the arrangements identified in the Council's "**Local Rules - OK**" procedure (as included in the Appendices to these Rules), may also be used, unless there are operational considerations which prevent their use.
- 7.1.4 Where the Council's eProcurement system is not used to manage the tender process the **Chief Officer** will be responsible for ensuring the issue of any Contract Notices and Advertisements, including those for Contract Finder, required.

7.2 Identifying and Assessing Potential Candidates

- 7.2.1 **Officers** shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* as required within the *PCR 2015*, that a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders, the wider the coverage of the advertisement should be. Examples of where such advertisements/notices may be placed include:

- The Council's website
- Portal websites specifically created for contract advertisements
- National official journals
- Find a Tender
- Contracts Finder

7.2.2 However, the contract opportunity must always be published in Contract Finder if any type of advertisement is to be made.

7.2.3 Where the estimated value of the Contract is greater than **£100,000** The **Officer** shall consult with the **Head of Procurement** on the detailed requirements of Part 4 of the *PCR 2015* and their requirement for the envisaged contracting arrangement.

7.2.4 **Officers** are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process, shall establish that the potential *Candidates* have sound:

- economic and financial standing;
- technical ability and capacity;

to fulfil the stated requirements of the Authority. However, where the estimated value of the contract is below that identified in CPR 7.1.2 the *Suitability Assessment* shall be incorporated into the tender process and documentation as part of the Invitation to Tender.

7.2.5 This shall be achieved in respect of proposed contracts by selecting firms from:

- *Approved Lists* of providers, maintained by the authority or on its behalf or
- Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement, placed on Contract Finder in the first instance.

7.2.6 In the case of *Contracts* with an *estimated value* above the relevant *PCR 2015 Thresholds* the Authority must only consider candidates who respond to the Find a Tender *Contract Notice*.

7.2.7 Public advertisements issued in respect of Rule 7.2.1 above shall reflect the potential degree of interest from *Candidates* as determined within *PCR 2015*.

7.3 Approved Lists

7.3.1 *Approved Lists* may be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *PCR 2015* apply.

7.3.2 **Chief Officers** may draw up in consultation with the **Head of Procurement**:

- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms.
- Criteria for establishing the suitability of those being invited to participate from the lists.

7.3.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.3.4 All *Approved Lists* shall be maintained in an open, fair and transparent manner, be open to public inspection and be compiled and operated in compliance with the relevant *PCR 2015*.

7.3.5 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of Central or Local Government, a Central Purchasing Organisation or similar body will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2 to 7.3.6 inclusive.

7.3.6 Any *Approved List* compiled and operated by the Council will reflect the overarching basic principles identified in Rule 1.1.

7.4 Framework Agreements, Dynamic Purchasing Systems and Electronic Catalogues

7.4.1 The term of a *Framework Agreement*, unless otherwise agreed, by the **Director of Corporate Services**, **Assistant Director Governance & Contracts** and **Director of Finance**, must not exceed four years

7.4.2 In general terms Contracts based on a *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or

- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*;
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - awarding each contract to the *Tenderer* who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

7.4.3 However, the specific requirement on the operation of *Framework Agreements*, identified below, for opportunities valued above and below the stated thresholds must be followed.

7.4.4 Where a *Framework Agreement* is intended to be used for a Contract with an Estimated Value above the relevant *PCR 2015* Thresholds it must be operated as provided for in Part 2 / Section 4/ 33 of the *PCR 2015*.

7.4.5 Where a *Framework Agreement* is intended to be used for a Contract with an Estimated Value **below** the *PCR 2015* Thresholds it must be operated as provided for in Part 4 /Section 106 of the *PCR 2015*.

7.4.6 In a similar fashion use may be made of *Dynamic Purchasing Systems* and Electronic Catalogues providing they are operated in accordance with the arrangements identified in 7.4.5 above.

SECTION 3: CONDUCTING A PURCHASE or DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

8.1 Pre-Tender Requirements

- 8.1.1 The **Officer** must calculate the *Estimated Cost (or Value)*.
- 8.1.2 The following procedures apply where there are no other procedures, which take precedence. Other procedures may include Regulatory Requirements, agency agreements with Government or other Public Bodies. If in doubt, **Officers** must seek the advice of the **Head of Procurement**.
- 8.1.3 It is a requirement of the *PCR 2015* that, for both above and below *PCR 2015* threshold activity all contract documentation should be available prior to the issue of any required Notice or posting to Contract Finder or Find A Tender.
- 8.1.4 To encourage SME engagement in the tender process and unless there is good reason not to do so, consideration should be given (and a reason not to do so recorded) to divide the opportunity in to “Lots”, however the total value of all such “Lots” will determine the value to be taken in to account when determining the Procurement route to be taken.
- 8.1.5 Under Regulatory Powers introduced by the UK Government, Selection Questionnaires are only permitted to be used for contracting arrangements with an estimated value at or above the *PCR 2015* Threshold for Services and Supplies. The Content of the Questionnaire to be use is prescribed by the legislation and any deviation from it is required to be reported to Crown Commercial Services.
- 8.1.6 Below the value identified above, a “*Suitability*” Assessment Process relevant and proportionate to the subject matter of the intended procurement, included within an open tender process, must be used unless other arrangements around these requirements, have been specifically allowed for by the Secretary of State.

8.2 Procurement – Competition Requirements

- 8.2.1 Where the *Estimated Cost or Value* for a purchase is within the limits identified in the first column below, the *Award Procedure* in the second column must be followed. In all cases above £5,000, the Council’s eProcurement system must be used to conduct a procurement, unless otherwise agreed by the Head of Procurement.

Estimated Whole Life Value	Procurement Process, Competition Requirement and Award Criteria
<p>Up to £5,000</p> <p>(Up to £25,000 for Consultancy Services)</p>	<p>Minimum competition requirement: one written quotation.</p> <p>Procurement process: Requesting a quotation (or quotations), apply the Council's 'Local Rules' policy where possible</p> <p>Award procedure: Usually lowest price.</p>
<p>£5,000 up to £100,000</p>	<p>Minimum competition requirement: A minimum of three written quotations must be obtained.</p> <p>Procurement process: A request for quotation process where tenderers are either directly invited to submit a quote (applying the Council's 'Local Rules' policy where possible) or making use of public advertisement (including Contracts Finder).</p> <p>Award procedure: Usually a combination of price and quality.</p>
<p>£100,000 up to <i>PCR 2015</i> thresholds for Supplies and Services</p>	<p>Minimum competition requirement: A minimum of three written tenders must be obtained.</p> <p>Procurement process: Invitation to Tender making use of public advertisement (including Contracts Finder).</p> <p>Award procedure: Usually a combination of price and quality.</p>
<p>Above <i>PCR 2015</i> thresholds for Supplies and Services and/or £500,000</p>	<p>Minimum competition requirement: Either the minimum number set out by the <i>PCR 2015</i> or a minimum of 3 written tenders if unspecified.</p> <p>Procurement process: Invitation to Tender making use of public advertisement (including Contracts Finder and Find A Tender).</p> <p>Award procedure: Most economically advantageous tenderer.</p> <p>The procedure must be conducted in line with the requirements of an opportunity above the thresholds set out in Part 2 of the <i>PCR 2015</i>.</p>
<p><i>Note – Where an intended arrangement is for the provision of Consultancy Type Service, including those for Construction related activity and the estimated value of the intended arrangement is above £50,000 the relevant Portfolio Holder will be Formally Consulted on the intended action and contracting arrangements to be used.</i></p>	

8.2.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

8.2.3 An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Procedure Rules or the *PCR 2015*.

8.2.4 Where the *PCR 2015* apply, the *Officer* shall discuss with the *Head of Procurement and Consult* with the Procurement Board to determine the arrangements to be used for the completion of the *Procurement*. In any case the Final Contract Documentation shall be available for viewing, via the internet, from the date of publication of any required Contract Notice, unless otherwise agreed.

8.3 Assets for Disposal

8.3.1 Assets for disposal must be sent to public auction except where better *Value For Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the Council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the relevant *Head of Finance*. (see also Financial Regulation/Procedure 19)

8.4 Providing Services to External Purchasers and other Public Sector Organisations

8.41 The *Director of Corporate Services*, *Assistant Director Governance & Contracts* and *Director of Finance* must be *Consulted* where contracts to work for organisations other than the authority are contemplated.

8.5 Collaborative and Partnership Arrangements

8.5.1 Collaborative and partnership arrangements are subject to all UK procurement legislation and must follow these *Contract Procedure Rules*. If in doubt, *Officers* must seek the advice of the *Director of Corporate Services**, *Assistant Director Governance & Contracts* and *Head of Procurement*.

8.6 The Appointment of Consultants to Provide Services

8.6.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules as outlined above.

8.6.2 Prior to the procurement of a *Consultant* through a tender process, Human Resources must be consulted on any IR35 issues and permission to proceed Agreed. The engagement of a *Consultant* shall follow the preparation of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment, using the Council's Standard Form of Consultancy Contract, unless otherwise agreed by the *Director of Corporate Services*.*

8.6.3 Records of Consultancy appointments shall be kept in accordance with Rule 6.

8.6.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant *Head of Finance* for the periods specified in the relevant agreement. The *Officer* commissioning

the employment of a *Consultant and/or* responsible for the *Approval* of their employment shall ensure that the *Consultants* tax arrangements or company structure are properly considered and do not result in any tax liability to the Authority.).

9. PRELIMINARY MARKET CONSULTATION

9.1 The *Officer* responsible for the purchase:

- may consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*; but
 - must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
 - must Consult with the *Assistant Director Governance & Contracts* and seek advice from the *Head of Procurement* where the tender under consideration has an estimated value greater than the relevant *PCR 2015* Threshold and observe the requirements of the *PCR 2015* Reg.40/41 in the approach taken on such consultation and any subsequent involvement, by those consulted in the tender process.
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10. TECHNICAL SPECIFICATIONS, STANDARDS, LABELS, SELECTION, SUITABILITY AND AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British or international standards which apply to the subject matter of the contract. The *Officer* must include those standards that are necessary properly to describe the required quality. The *Director of Corporate Services** must be *Consulted* if it is proposed to use standards other than British or international Standards.

10.2 Where the use of a specific Label is to be used to identify a particular technical requirement others proposed as being equivalent must be considered

10.3 In any case the requirements of the above Rules 10.1 and 10.2 shall be operated as required by Regulations 42 – 44 of the *PCR 2015*.

10.4 *Selection Criteria* used, as further identified in Cl.68 of the *PCR 2015*, must be related and proportionate to the subject matter of the contract and may consider factors such as, suitability, economic and financial standing and technical, financial and professional ability. Statutory Guidance on the Standard Selection Documentation to be used and the approach to its assessment is stipulated by Crown Commercial Services and where such arrangements are used the *Officers* must seek the advice of the *Head of*

Procurement, if they wish to depart from the use of the Standard arrangements identified in the Council's *Procurement Practice Notes* and *Model Documents*.

- 10.5 Where the *Estimated Value* of any procurement process is below the *PCR 2015* value identified for Supplies and Services, a selection process may not be used and an Open Tender Process based on a two stage *Suitability Assessment* and tender submission, by all those found to be suitable, must be followed.
- 10.6 The *Officer* must define *Award Criteria* that are appropriate to the purchase, linked to the subject matter of the contract and designed to secure an outcome giving *Value For Money* for the Authority. The basic criteria shall be:
- 'Most Economically Advantageous Tender' ("MEAT"), where considerations other than price also apply; or
 - 'lowest price' where payment is to be made by the authority;
 - 'highest price' if payment is to be received;
- 10.7 Where "MEAT" criteria are adopted, they must be further defined by reference to sub-criteria, which may refer only to relevant considerations. These may, for example, include price/cost of service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental and social value considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. The criteria used, and where possible the weighting attributed to them, shall be included in the Notice and/or tender documentation as appropriate.
- 10.8 *Award Criteria* shall not have the effect of conferring an unrestricted freedom of choice on the Authority and shall ensure the possibility of effective competition.
- 10.9 Unless there are valid and justified reasons to do otherwise, the Council's preferred method of determining *Value For Money* in its *Procurement* arrangements is by the consideration of the *Whole Life Cost* and/or the Life Cycle Costing of the intended arrangement aligned with its *Sustainable Procurement* practice.
- 10.10 *Award Criteria* must not include:
- *Non-commercial Considerations*;
 - Matters, which discriminate against suppliers from signatories to *Government Procurement Agreements*.

11. INVITATIONS TO TENDER/QUOTATIONS

- 11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered, unless agreed by the *Assistant Director Governance & Contracts*.

11.2 All *Invitations to Tender* shall include the following:

- (a) A specification that describes the Authority's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for *Tenderers* to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the *Tenderer* to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for *Tenderers* to complete fully and sign all *Tender Documents* including a form of *Tender* and certificates relating to canvassing and non-collusion.
- (d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the *Tenderer's* expense.
- (e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.
- (f) Notification that no *Tender* will be considered unless it has been submitted using the Council's eProcurement System or, where agreed otherwise, as identified in (g) below, is enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.
- (g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered, unless specifically provided for in the Invitation to Tender and with the prior agreement of the *Head of Procurement* as to the process to be used. (see also Rule 14.3)
- (h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender*, or vice versa. (See also Rule 16.4)

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 17).

11.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender* and may extend the closing date where appropriate.

11.5 All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.6 It is a requirement of the of the *PCR 2015*, that all relevant Contract documentation and information is available at the point of any required Notice (either in Find a Tender or Contracts Finder) or at tender stage, should a Notice not be required.

12. SHORTLISTING

12.1 Where permissible any *Shortlisting* must have regard to the financial and technical standards required to the contract; and be relevant and proportionate to the intended Procurement and be consistent with the selection criteria outlined in the *PCR 2015* Reg.60(9). Specific UK Government Rules apply to UK procurement activity, which legislates for different requirements and treatment for all types of contracting arrangement valued between **£30,000**; **£100,000** and the *PCR 2015* Threshold for Supplies and Services. These are in addition to those identified for above *PCR 2015* Threshold activity. The advice of the *Head of Procurement* should be sought before commencing any *Shortlisting* process.

12.2 Where *Approved Lists* are used, *Shortlisting* may be done by the *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 7.2.3).

12.3 However, where the *PCR 2015* apply, *Approved Lists* must not be used (where outside of any local dispensation), and requirements must be placed via a Find a Tender or Contracts Finder Notice as appropriate (see Rule 7).

13. EXEMPTIONS TO THE NEED FOR COMPETITIVE TENDER

13.1 A decision to directly award a contract to a single *Candidate* or to negotiate with one or more *Candidates* on any arrangements required within the *Procurement* process shall not be made except in compliance with the following and any *PCR 2015* requirements (see also Rule 3). *Note* - For the purpose of this Rule the establishment of a *Service Level Agreement* is treated as being a negotiated arrangement;

Estimated Cost (or Value)	Authorisation Requirement
£5,000 up to £50,000	Chief Officer Approval
£50,000 up to £100,000	Chief Officer Approval in Agreement with <i>Director of Corporate Services</i> , <i>Assistant Director Governance & Contracts</i> and <i>Director of Finance</i> with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£100,000 up to £1,000,000	Chief Officer in Agreement with <i>Director of Corporate Services</i> , <i>Assistant Director Governance & Contracts</i> and <i>Director of Finance</i> and following Approval of the relevant <i>Portfolio Holder</i> , with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£1,000,000 and above	Chief Officer in Agreement with <i>Director of Corporate Services</i> ,

	Assistant Director Governance & Contracts and Director of Finance and the approval of the Executive or the Council as appropriate.
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- 13.2 The Officer concerned will need to ensure that the records necessary to justify the intended action are maintained and issued where necessary, for above and below *PCR 2015* Threshold activity.
- 13.3 In determining the *Value* (and any *Aggregate Values*) for a particular requirement, together with those used to calculate the values of any modifications and/or extensions proposed to existing arrangements, care must be taken to value such activity using the approaches identified in the various parts of the *PCR 2015*. In general terms, it is the *Value* of an activity across the Council, and not of a *Contract* in isolation which determines its treatment within the *PCR 2015*.
- 13.4 In particular, the Threshold for authorisation for Exemptions (as well as any *Extensions* or *Variations* subsequently applied) as detailed in 13.1 shall be the cumulative value of the contract (inclusive of all *Exemptions*, *Extensions* and *Variations* applied to the contract) since the last time it was competitively tendered through a compliant route, together with the proposed whole life value of the Exemption.
- 13.5 Chief Officers with Social Care responsibilities have specific exemptions provided to them under the Council's *Scheme of Delegation* for certain contracting arrangements such as placements.

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

- 14.1 *Candidates* must be given a reasonable and proportionate amount of time in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally, at least four weeks should be allowed for submission of *Tenders*. The *PCR 2015* lays down specific time periods which must be observed.
- 14.2 Tenders over £5k should be completed using the Council's eProcurement system (unless otherwise agreed by the *Head of Procurement*).
- 14.3 In the event that a tender that does not comply with the Council's requirement, as set out in the tender invitation e.g. is qualified, arrived late and/or after other tenders had been opened, is received, the circumstances must be recorded and any evidence of the relevant events retained (i.e. envelope, packaging, receipt documentation etc.). *Chief Officers* may, however, seek the agreement of the *Head of Procurement* to relax these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a *Tender* and will include consideration of any reasonable endeavour made by a *Tenderer* to properly submit their tender by the appointed time, and any opportunity presented that might allow the amendment or change of details submitted so as to offer the opportunity for an unfair advantage to be taken.

14.4 For *Tenders* with an estimated *Value* of **£50,000** or above, where fewer than the minimum number of *Tenders* required have been received the **Assistant Director Governance & Contracts**, **Director of Corporate Services** and the **Director of Finance** shall be *Consulted*, prior to any award decision, on any steps considered necessary to establish and maintain the adequacy of the tender process. Where the *Tender* has an estimated *Value* of less than **£50,000** the relevant **Chief Officer** may decide, on a Value For Money basis, the need for any additional actions required to maintain the adequacy of the tender process.

15. CLARIFICATION PROCEDURES AND ANY PERMISSIBLE POST-TENDER NEGOTIATION

15.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with *Tenderers* after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *PCR 2015* where this might distort competition, especially with regard to price.

15.2 Where information or documentation submitted at tender stage is, or appears to be, incomplete or erroneous, or where specific documents are missing, consideration as to allowing the *Tenderer* to submit, supplement, clarify or complete the relevant documentation or document (within an appropriate time limit) shall be made in consultation with the **Head of Procurement**.

15.3 If post-tender negotiations are permissible and necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the *Tenderer* who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations, tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. **Officers** appointed by the **Chief Officer** to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

15.4 Post-tender negotiation must only be conducted in accordance with the guidance issued by the **Assistant Director Governance & Contracts** who, together with the **Head of Procurement**, must be *Consulted* wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two **Officers**, one of whom must be from a division independent to that leading the negotiations.

15.5 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered unless the **Director of Corporate Services**, **Assistant Director Governance & Contracts** and the **Director of Finance** agree to an alternative course of action.

16. EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES

- 16.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*. Any processes used must ensure compliance with the principles of transparency and the equal treatment of those submitting tenders.
- 16.2 Contracts must be evaluated and awarded in accordance with the stated *Award Criteria*, which must be linked to the subject matter of the *Procurement* and be contract specific. During this process, **Officers** shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 16.3 Care should be taken in the evaluation process, where it is anticipated there may be subsequent changes to Council requirements, to ensure the impact of a reduction or increase in the volumes of expected activity are considered.
- 16.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the *Tenderer*, and dealt with in the following manner:
- The *Tenderer(s)* should be given details of the error(s) found during the examination of the *Tender* and shall be given an opportunity of confirming without amendment, or withdrawing the tender; or
 - Amending the tender to correct any genuine arithmetic error(s) apparent on the face of the document, providing that in this case; apart from these genuine errors no other adjustment, revision or qualification is permitted.
- 16.5 Such amendments should only be made in circumstances agreed with the **Assistant Director Governance & Contracts**.
- 16.6 Unless otherwise agreed by the **Head of Procurement**, the Council's standard approach to Tender Evaluation, as based on the CIPFA "Standing Guide to the Commissioning of Local Authority Works and Services", shall be used for the evaluation of all *Contracts* with a value of **£30,000** and above.
- 16.7 **Officers** may accept, within their relevant financial limit, delegated authority and providing the stipulated degree of separation of duties is maintained, *Quotations* and *Tenders* received in respect of proposed *Contracts*, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules and, in respect of proposed *Contracts* that are expected to exceed **£500,000**, the Approval of the relevant **Portfolio Holder** has been secured. The awarding of *Contracts* that are expected to exceed **£1,000,000** shall be Approved by the **Executive or the Council**, the responsible **Officers** having submitted for consideration a formal *Gateway Review*, covering, as appropriate, the matters identified in the Council's Standard *Gateway Review* Template for consideration at Award of Contract. Where a report is required to be submitted to the **Portfolio Holder** or **Executive**, under the requirements of this Rule, the **Assistant Director Governance & Contracts**, **Director of Corporate Services**, and

the **Director of Finance** shall be given an opportunity to Agree the report prior to its submission to Members.

- 16.8 Where the actual value of any intended *Contract* is greater than that provided for in the original budgetary provision, or any tolerance provided for in the Council's *Capital Programme Procedures* and/or *Financial Regulations* the tender should not be accepted without seeking the advice of the **Director of Finance** and obtaining any necessary authorisations for increased budgetary provision.
- 16.9 Where the intended *Contract* has a value in excess of **£200,000** it should be completed under seal as provided for in Section 17 of these Rules.
- 16.10 Where the Council is in receipt of income or net benefit under a *Contract* it should be signed as a Deed.
- 16.11 In all cases the tender evaluation must be carried out as provided for in the *Invitation to Tender* unless otherwise agreed with the **Assistant Director Governance & Contracts** following *Consultation* with the **Head of Procurement**.
- 16.12 Where the *Total Value* is over **£100,000**, the **Officer** must notify all *Candidates* simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Candidate*. The **Officer** must provide unsuccessful *Candidates* with a period of at least ten days in which to challenge the decision before the **Officer** awards the contract.
- 16.13 If the decision is formally challenged by an unsuccessful *Candidate* then the **Officer** shall not award the *Contract* and shall immediately seek the advice of the **Head of Procurement** and **Assistant Director Governance & Contracts** and **Director of Corporate Services*** as necessary.
- 16.14 The **Officer** shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the **Head of Procurement**:
- How the *Award Criteria* were applied.
 - The prices or range of prices submitted, in either case not correlated to *Candidates'* names.
 - The names of *Candidates* where there were three or more *Candidates*.
- 16.15 If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the **Officer** must give the reasons in writing within 15 days of the request (or 10 Days where an electronic medium is used). If requested, the **Officer** may also give the debriefing information at Rule 15.6 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process.
- 16.16 Where the award of the *Contract* is a *Key Decision* any award must take account and observe the Council's *Call in Procedure* (see Annex B).

16.17 Mandatory Standstill Period – 10 Days

16.17.1. Where a contract decision is required for a tender process completed under the *PCR 2015* (and unless otherwise provided for), the Council must inform any *Candidate* that has submitted an offer, has applied to be amongst those selected to tender for or negotiate the contract, or any *Candidate* who has applied to be party to a *Framework Agreement*, of its decision in relation to the award of the *Contract* or the conclusion of (setting up) a *Framework Agreement*.

16.17.2 The process adopted and information sent must be completed in compliance with the requirements set out in Regulations 83 to 86 of the *PCR 2015* and identify, on an individual basis the "...characteristics and relative advantages..." of the successful *Tenderer(s)* and those not successful.

16.17.3. Unless agreed otherwise with the *Head of Procurement*, the required Notice must be sent using the Council's eProcurement System and the recipient must be given until midnight on the end of the 10th day from issue (or if this is a weekend or bank holiday the end of the next working day), to respond before it can finalise the process and enter in to a contracting arrangement.

16.18 Call in Period

16.18.1 While the periods may run concurrently, officers need also to ensure their compliance with the Council's *Call In Procedure* as identified in part 4 of the Council's Constitution (summarised in Annex C).

16.19 End of Standstill and Call in Period

16.19.1 At the satisfactory completion of the time periods identified in 16.17 & 16.18 the *Head of Service* shall notify the *Head of Procurement* of their end to enable the issue of the necessary Contract Documentation and Award Notices.

16.20 Action on the Receipt of Any Challenge

16.20.1 In the event of any formal letter being received by the Council that indicates a challenge to any element of the Tender or Award Process or if any correspondence is received from the "*Public Procurement Review Service*" at *Crown Commercial Services*, no further action should be taken on the Tender or Award Process until the *Director of Corporate Services** and the *Head of Procurement* and the *Assistant Director Governance & Contracts* have been Consulted and a response agreed. The Council requires that a review of the tender process is completed by the *Officers* identified above if any formal challenge to the tender arrangements is made.

SECTION 4: CONTRACT AND OTHER FORMALITIES

17. CONTRACT DOCUMENTS

17.1 Relevant Contracts

17.1.1 All *Relevant Contracts* that exceed **£100,000** shall be in writing.

17.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done).
- The provisions for payment (i.e. the price to be paid and when).
- The time, or times, within which the contract is to be performed.
- The provisions for the Council to terminate the contract.

17.1.3 Unless otherwise agreed by the **Director of Finance**, the Council's *Official Order Form*, as provided for in *Financial Regulation 5*, shall be used. The **Director of Corporate Services*** shall also agree the use of any standard terms and conditions issued by a relevant professional body that are proposed to be used.

17.1.4 In addition, every *Relevant Contract* or purchase over **£50,000** must be completed under Legal Guidance and state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent.
- Any insurance requirements.
- Health and safety requirements.
- Sustainability requirements.
- Ombudsman requirements.
- Data protection requirements, if relevant.
- That charter standards are to be met. if relevant.
- Equalities requirements.
- Modern Slavery requirements.
- Freedom of Information Act requirements.
- Payment requirements within 30 Days to the Contractor and their Sub-contractor to the same effect.
- Variation Clauses, which fully reflect the Council's potential requirements and the implications of the *PCR 2015* (Regulation 72) and any valid associated Guidance
- Where *Agents* are used to let *Contracts* that *Agents* must comply with the Council's Contract Procedure Rules;
- A right of access to relevant documentation and records of the *Contractor* for monitoring and audit purposes, if relevant.
- Include the Council's standard requirements with regard to *Whistleblowing* and Complaints.

- Any appropriate measures required to support the Council in the event of a Civil Emergency being declared or the Council's *Business Continuity Plan* invoked.
- Consider any reasonable and appropriate opportunities to encourage the use of local businesses, contractors and personnel, together with similar opportunities for Training and Apprenticeship schemes, in line with the requirements of the Social Value Act.

17.1.5 Where it is envisaged that there may be a need for a *Variation* to the Council's requirements during the period of a *Contract*, appropriate conditions should be included allowing for the valuation of any subsequent changes.

17.2 Contract Formalities

17.2.1 All *Contracts* must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Director of Corporate Services*.*

17.2.2 *Officers* can sign (or seal) contracts, or variations to contracts, in line with their budgetary limits agreed as set through Financial Regulations (including agreed schemes of delegation set by Chief Officers as per 5.1.1 of the Financial Regulations) and guidance from the Finance Team.

17.2.3 The *Officer* responsible for securing signature of the *Contract* must ensure that the person signing for the other contracting party has authority to bind it.

17.2.4 Prior to the commencement of the *Contract* (if not provided as part of the tender process) the *Officer* responsible shall request that the Main *Contractor* provides the names of their Sub-contractors and their representative. The Main *Contractor* will also be required to advise the Council of any changes in this information during the term of the *Contract*.

17.3 Sealing

17.3.1 Where *Contracts* are completed by each side adding their formal seal, such *Contracts* shall be signed by the *Director of Corporate Services** or their nominee – consult with Legal Services on arrangements.

17.3.2 Every Council sealing will be consecutively numbered, recorded and suitably signed by the *Officer*. The seal must not be affixed without the authority of the *Director of Corporate Services** or their nominee.

17.3.3 A *Contract* must be sealed where:

- The Council may wish to enforce the *Contract* more than six years after its end;
- The price paid or received under the *Contract* is a nominal price and does not reflect the value of the goods or services;

- There is any doubt about the authority of the person signing for the other contracting party; or
 - The *Total Value* exceeds **£200,000**.
-

18. BONDS AND PARENT COMPANY GUARANTEES

18.1 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:

- The *Total Value* exceeds **£200,000**; or
- Award is based on evaluation of the parent company; or
- There is some concern about the stability of the *Candidate*.

18.2 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** whether a *Bond* is needed: where the *Total Value* exceeds **£200,000** or where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the *Contract* and there is concern about the stability of the *Candidate* or there are other risks associated with the intended contract which require additional security.

18.3 Where the intended *Tender* and/or *Contract* is likely to have *TUPE* implications or require amendment to the Council's Pension Fund arrangements, the **Director of Finance** in consultation with the **Director of Corporate Services** shall agree the intended actions and the value of any Pensions Bond required, prior to any further authorisation otherwise identified.

19. PREVENTION OF CORRUPTION

19.1 The **Officer** must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the **Officer** to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 19.2 below.

19.2 The following clause must be put in every written Council contract:

“The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor’s behalf do any of the following things:

- offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*
- commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*

- (c) *commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause."

20. DECLARATION OF INTERESTS

- 20.1 If it comes to the knowledge of a Member or an employee of the Authority that a *Contract* in which he or she has a personal or pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the **Chief Executive**. The **Chief Executive** shall report such declarations to the appropriate *Committee*.
- 20.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a *Contract* to which the member or employee is directly a party.
- 20.3 A shareholding in a body not exceeding a total nominal value of **£25,000** or 1% of the nominal value of the issued share capital (whichever is the less) is not a personal or pecuniary interest for the purposes of this Contract Procedure Rule.
- 20.4 The **Chief Executive** shall maintain a record of all declarations of interests notified by members and **Officers**.
- 20.5 The **Chief Executive** shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.
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SECTION 5: CONTRACT MANAGEMENT

21. MANAGING CONTRACTS

- 21.1 **Heads of Service** in sponsoring departments are to name **Contract Owners** for all new *Contracts*. All *Contracts* must have a named Council **Contract Owner** for the entirety of the *Contract*.
- 21.2 **Contract Owners** must follow the reporting requirements and procedures set out in these Contract Procedure Rules and any supplementary guidance issued by the **Assistant Director Governance & Contracts**.
- 21.3 As a minimum requirement, the named **Contract Owner** will maintain and keep up to date an accurate record and supporting documents in the *Corporate Contract Register* (via the Contracts Database) required to be maintained by CPR 2.2 and 6.5.
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22. RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 All *Procurement* activity and projects with an estimated value above **£100,000** must incorporate the use of the *Council's Programme and Project* methodologies as appropriate for the cost, complexity and risk associated with the intended activity, including those associated with TUPE, Pensions and Tax liabilities. This includes the preparation of a business case; provision for resources for the management of the contract, for its entirety, must be identified in the business case.

22.2 For all contracts with a value of over **£50,000**, *Contract Owners* must:

- Maintain a risk register during the contract period.
- Undertake appropriate risk assessments and for identified risks.
- Ensure contingency measures are in place.

23. CONTRACT MONITORING, EVALUATION AND REVIEW

23.1 All *Contracts* with a value higher than **£200,000**, or which are *High Risk*, are to be subject to monthly formal review by the *Head of Service*.

23.2 For all *Contracts* with a value higher than **£500,000**, or which are *High Risk*, an annual report must be submitted to the *Portfolio Holder* the responsible *Officers* having submitted for consideration a formal *Gateway Review*, covering, as appropriate, the matters identified in the Council's standard *Gateway Review* Template for consideration as part of Contract Monitoring/Management requirements.

23.3 A Council agreed *Gateway Review* process must be applied to all *Contracts* deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.

23.4 During the life of the *Contract*, the *Officer* must monitor in respect of:

- Performance
- Compliance with specification and contract
- Cost
- Any *Value for Money* requirements
- User satisfaction
- Risk management

23.5 Where the *Total Value* of the contract exceeds **£500,000**, the *Officer* must make a written report to the relevant *Portfolio Holder* evaluating the extent to which the *Procurement* need and the contract objectives (as determined in accordance with Rule 5.2) were met by the *Contract*. This should be done normally when the *Contract* is completed. Where the *Contract* is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent *Contract* and the authorisation requirements identified in Rule 5.1 and 16.6 above.

23.6 **Formal Contract Extensions**

- 23.6.1 An *Extension* is a specific form of *Variation*. A *Formal Contract Extension* is an extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring and Regulation 72 of the *PCR 2015*). No *Formal Contract Extension* should be agreed unless there is sufficient budgetary provision for the Contract and/or it is permitted under the Council's *Capital Programme Procedures* and related responsibilities for financial control of capital projects.
- 23.6.2 The threshold for authorisation for a *Formal Contract Extension* is the value of any single and/or all *Formal Contract Extensions* (inclusive of the proposed Extension) applied to the Contract and the authorisation thresholds are as per Rule 13.1 (except where the contract was initially awarded via *Exemption* in which case Rule 13.4 applies).
- 23.6.3 Where a decision is required to apply a *Formal Contract Extension*, a decision should be sought at least six months before the contract end date to ensure a meaningful decision can be taken.
- 23.6.4 Where a *Formal Contract Extension* would otherwise be a Member decision, delegated authority (to a Chief Officer in Agreement with the Portfolio Holder) may be sought from Members at the point of award of contract. Where delegated authority has been granted, all other Agreement requirements of Rule 13.1 continue to apply. The delegated authority to apply the *Formal Contract Extension* is subject to the completion of required Contract Monitoring reports (Rule 23.2) and must be applied at least six months before the contract end date as per Rule 23.6.3. Where delegated authority has been granted, authorisation may still be referred to Members.

23.7 **Variations**

- 23.7.1 A *Variation* is an amendment to a contract agreed in writing by the parties either in accordance with its terms or by means of negotiation.
- 23.7.2 All proposed *Variations* are subject to any requirements of *Financial Regulations*, statutory restrictions and compliance with any provisions of the *PCR 2015* (particularly those relating to negotiation; modifications and extensions and any limitations imposed by Regulation 72 of the *PCR 2015*).
- 23.7.3 No *Variation* should be issued or agreed unless there is sufficient budgetary provision for the Contract and/or where it is permitted under the Council's *Capital Programme Procedures* and related responsibilities for financial control of capital projects.
- 23.7.4 All *Variation* Orders must be issued promptly and authorised before the work is undertaken. All variations will be contained within agreed limits for each contract and made within the authorised limits determined by the **Chief Officer**

as provided for in *Financial Regulations* and the *Capital Programme Procedures*.

23.7.5 The threshold for authorisation for a *Variation* is dependent upon the proposed action:

- A *Variation (Change Control)*, provided for within the terms of the contract as anticipated from the outset of the tender process and included at the point of authorisation for Contract Award, can be authorised by the relevant Budget Holder up to £200k or Chief Officer up to £500k. *Variations (Change Control)* over £500k require Portfolio Holder decision unless delegated authority was sought at the point of Contract Award. Decision on such variations may also be referred to Members where it is a Key decision or has wider implications. The threshold for authorisation is the value of the single proposed *Variation (Change Control)*.
- A *Variation* for an *Extension Beyond Term* is an extension to a contract where the contract term would otherwise come to an end and no *Formal Contract Extension* options are available.

An *Extension Beyond Term* can be for a maximum of one year only and is authorised as per Rule 13.1.

The threshold for authorisation is the value of any single and/or all *Formal Contract Extensions*, *Extensions Beyond Term* and *Variation (Modifications)* applied to the Contract and the authorisation thresholds are as per Rule 13.1 (except where the contract was initially awarded via *Exemption* in which case Rule 13.4 applies).

Where a decision is required to apply an *Extension Beyond Term*, a decision should be sought at least six months before the contract end date to ensure a meaningful decision can be taken.

- A *Variation (Modification)* is a change to the contract not provided for within the terms of the contract and not anticipated at the outset of the tender process, such as a change in the scope of activities being undertaken and/or changes in price.

The threshold for authorisation is the value of any single and/or all *Extensions Beyond Term* and *Variation (Modifications)* applied to the Contract and the authorisation thresholds are as per Rule 13.1 (except where the contract was initially awarded via *Exemption* in which case Rule 13.4 applies).

23.8 The *Chief Officer* or *Officers* shall consult with the *Head of Procurement* on any need to issue a *Modification Notice* or take other action required by Reg.72 of the *PCR 2015* for all *Extensions* and *Variations*.

DEFINITIONS APPENDIX

Agent - A person or organisation acting on behalf of the Council or on behalf of another organisation.

Agree/Agreement – The process whereby a written record of the agreement of the relevant officer/Member is produced. For the purpose of the operation of Contract Procedure Rules, the evidence of agreement required in writing can either be the physical endorsement/signature of a prepared document or an email sent from a Council email address associated with the Authorising Officer, providing the necessary records are maintained either in a soft or hard format.

Aggregate Values - In circumstances where a contracting authority/utility intends to award more than one procurement for a single overall requirement (for example in phased construction projects), the value of these procurements must be added together. The aggregate figure will determine whether the relevant threshold has been met or not.

Approval – The process whereby a formal report is submitted to and written approval obtained from the relevant officer/Member/Committee/Council.

Approved List - A list drawn up in accordance with Rule 7.2.

Audit Sub Committee – A Sub Committee of the General Purposes and Licensing Committee having the role and responsibilities described within the Council's Constitution.

Award Criteria - The criteria by which the successful *Quotation* or *Tender* is to be selected.

Award Procedure - The procedure for awarding a *Contract* as specified in Rules 8, 10 and 15.

Best Consideration - Achieving maximum value from disposal of an asset, not just maximum price. Disposal at less than market value must contribute to the 'promotion or improvement of the economic, social or environmental wellbeing of the area'.

Best Value - The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. (*Value For Money* has now in many instances superseded this terminology.)

Bids – Oral or written *Quotations* or written *Tenders* as the context requires or demands.

Bond - An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.

Business Continuity Plan – A plan compiled and included within the Council's Business Continuity arrangements in compliance with and support of its responsibilities and duties as identified in the Civil Contingencies Act.

Cabinet – The Council’s main decision making body (i.e. the Executive, consisting of an elected mayor or leader and a number of councillors).

Call In Procedure – The procedure whereby 5 or more Members of the Council can require any decision of the **Executive**, Portfolio Holder, or Committee of the **Executive** or any decision made by an officer under delegated authority from the **Executive** to be subject of scrutiny by the relevant PDS Committee as set out of Part 4 of the Constitution (see Annex D).

Candidate - Any person or organisation who asks or is invited to submit a *Quotation* or *Tender*.

Capital Programme (Control) Procedures – as set out and included in the Capital Programme/Budget book

Central Purchasing Organisation (CPO) – A Central Purchasing Body (CPB) as defined in the Public Contracts Regulations which acquires or concludes arrangements for works, goods and services, in compliance with the Regulations and which is intended for the use of one or more contracting authorities.

Chief Executive – the Council’s **Head of Paid Service** as defined in the Scheme of Delegation

Chief Finance Officer – the Council’s **Director of Finance** or their nominee or such other officer as may be designated Chief Finance Officer by the Council.

Chief Officer - The officers defined as such in the *Constitution*.

Code of Conduct - The code regulating conduct of *Officers* issued by the **Director of Corporate Services**.

Committee - A committee, which has power to make decisions for the Council, for example a joint committee with another local authority, but not a scrutiny committee.

Competitive Dialogue Procedure - A *Procurement* procedure under the *Public Contracts Regulations* where interested bidders must first pre-qualify before being invited to enter into a dialogue with the contracting authority in order to identify and develop a solution.

Competitive Procedure with Negotiation - A new *Procurement* procedure under the *Public Contracts Regulations* which replaces the negotiated procedure. The initial stages of the procedure mirror the restricted procedure, but further tender stages are permitted to negotiate with interested parties to improve the content of their bids.

Constitution - The constitutional document approved by the council which:

- allocates powers and responsibility within the council and between it and others,
- delegates authority to act to the *Cabinet, Committees, Portfolio Holders* and *Officers*,
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consult/Consultation - A process whereby the advice and necessary input to any particular contracting process is obtained and properly considered

Consultant - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract - A "contract" is an agreement between two or more parties which is intended to give rise to legal relations. The Council will accept tender documents supported by electronic signature, which have been submitted through the mandated eProcurement System, providing that where the value is **£100,000** or above the contract document is formally compiled and signed with Legal input and overview. Those over **£200,000** are required to be signed under seal as per CPR 17.3.

Contractor - A person or entity that enters into a contract.

Contracting Decision - Any of the following decisions:

- composition of *Approved Lists*;
- withdrawal of *Invitation to Tender*;
- whom to invite to submit a *Quotation* or *Tender*;
- *Shortlisting*;
- award of contract;
- any decision to terminate a contract;
- any resulting amendments of the Council's Pensions Scheme.

Contract Monitoring Summary Template - A Document held and maintained by the designated **Contracts Owner** to accurately record pertinent Contract information on a standard basis, to better inform management, members and other interested parties on the particular circumstances and requirements of Contracts placed.

Contract Notice – The notice published in the Official Journal of the Economic Union advertising the Council's intention to seek tenders or expressions of interest in a contract for the supply of *Goods, Services and Works*.

Contract Owner – The officer within a service or client department of the Council with principle responsibility for the letting and management of any contract for the supply of *Goods, Services or Works* on behalf of the Council.

Corporate Contract - A contract placed by the *Corporate Procurement Division* or endorsed by the *Head of Procurement* for Corporate use.

Corporate Contracts Register - A record of contracting activity maintained by the **Assistant Director Governance & Contracts** (via the Contracts Database corporate system maintained by **Contract Owners**) which records all contracts placed with an estimated value of **£50,000** and above.

Corporate Procurement Team -The Council's central procurement unit charged with providing strategic direction and advice to secure *Value For Money* in the Council's procurement activities.

Assistant Director Governance & Contracts - As defined in the *Constitution*.

Director of Corporate Services - As defined in the *Constitution*.

Director of Finance – As defined in the *Constitution*.

Dynamic Purchasing System (DPS) - Is a completely electronic process, set up using the restricted procedure and is available for contracts for works, services and goods commonly available on the market. It is similar to an electronic framework agreement, but where new suppliers can join at any time.

Estimated Cost (or Value) - The expected value of *Goods, Services and Works* to be purchased by the Council including any which may be acquired during any optional extension to the term of the contract.

Executive of the Council - As defined in the Council's *Constitution*.

Exemptions – the specific waiver of a requirement for securing competitive *Bids*. A Direct Award of contract or Negotiated Process without Prior Publication.

Extensions – The provision whereby an additional period of time is included and/or authorised to allow for continued performance of the contract. Can include a *Formal Extension Option* or an *Extension Beyond Term*.

Extension Beyond Term – whereby an additional period of time is authorised to allow for continued performance of the contract beyond the stated contract term where no *Formal Extension options* remain or are applicable.

Extreme Urgency – events unforeseeable by, and not attributable to, the Council which preclude compliance with time limits for tendering contracts in accordance with the *PCR 2015 Procurement Regulations*.

Finance Officer - The most senior *Officer* representing the **Director of Finance** or designated by him to provide financial advice to the *Chief Officer*.

Financial Regulations - The financial regulations outlining *Officer* responsibilities for financial matters issued by the **Director of Finance** in accordance with the *Constitution*.

Formal Consultation/Formally Consult – A process where a written record and response/acknowledgement of the document considered is produced.

Formal Extension Option – A *Formal Contract Extension* is an extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring and Regulation 72 of the *PCR 2015*).

Framework Agreement - An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Gateway Review – A review process completed using the Council’s Programme and Project Management guidance or similar best practice, such as that identified in the Cabinet Office/GPS Gateway process, to overview and validate the direction and outcomes from any particular contracting arrangement.

Goods – A physical asset or consumable such as materials, products or equipment and can include a commodity such as Gas, Water or electricity.

Government Procurement Agreement - The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Grant Payments - are a means of providing financial assistance to third sector organisations for a special purpose, for example to support the wider objectives of the local authority in promoting the social, economic or environmental well being of the area. Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how the special purpose is to be achieved (i.e. through conditions that limit or guide the behaviour of the third sector organisation).

Head of Finance – An Officer designated by the **Director of Finance** – As defined in the *Constitution* as having responsibility for financial matters within a particular Directorate, Department or part thereof.

Head of Procurement – The Officer, appointed from time to time, with a “Head of Profession” responsibility for overseeing the Council’s Procurement activity.

Head of Service (HOS) – The Officer identified in the departmental structure as having responsibility for a particular activity or service below Chief Officer Level

High Profile - A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.

High Risk - A high-risk purchase is one which presents the potential for substantial exposure on the Council’s part should it fail or go wrong.

High Value - A high-value purchase is where the value exceeds the *PCR 2015 Threshold* values.

Innovation Partnership Procedure - A new *Procurement* procedure under the *Public Contracts Regulations* where a contracting authority requires a partner to develop an innovative product, service, or works. Under this procedure, the Contract is awarded in accordance with similar rules to the competitive procedure with negotiation.

Invitation to Tender - Invitation to tender documents in the form required by these Contract Procedure Rules.

Key Decision - Decisions that are defined as key decisions in the *Constitution*.

Line Manager - The *Officer's* immediate superior or the *Officer* designated by the *Chief Officer* to exercise the role reserved to the line manager by these contract procedure rules.

Negotiated Procedure without Prior Publication - A *Procurement* procedure under the *Public Contracts Regulations* which can only be used in exceptional circumstances, including (but not only) in The case of “lack” of tenders, where the contract may be awarded only to a particular economic operator, or in the case of “extreme urgency”.

Nominated Suppliers and Sub-contractors - Those persons specified in a main contract for the discharge of any part of that contract.

Nominee(s) – A named individual to whom a *Chief Officer* has delegated certain of his/her specific duties, powers and functions in writing.

Non-commercial Considerations -

- (a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- (b) Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- (c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- (d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- (e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- (f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- (g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- (h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 2006 (*TUPE*) may apply.

Officer - The officer designated by the *Chief Officer* to deal with the contract in question.

Official Order/Purchase Order – as provided for in *Financial Regulations*.

Open Procedure - A *Procurement* procedure under the *Public Contracts Regulations* where the procurement is advertised and all interested providers tender a single fully priced offer.

Parent Company Guarantee - A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

Portfolio Holder - A member of the *Cabinet* to whom political responsibility is allocated in respect of specified functions.

Priority Services - Those services required to be tendered as defined in the UK Public Procurement Directives.

Procurement - The process of acquiring goods, works and services from suppliers. The process spans the whole *Procurement* cycle from the identification of the need through to the end of the service contract or the end of the useful life of an asset. It therefore covers everything from “paper clips” to PFI”.

Procurement Board – An *Officer* board that meets monthly (or as required) to consider and advise Contract Owners on proposed or required procurement actions such as *Procurement Strategy*, *Exemptions*, and *Extensions* prior to finalisation and authorisation.

Procurement Strategy - The document setting out the Council’s approach to *Procurement* and key priorities for the next few years.

Public Contracts Regulations (2015) – The regulations for public procurement covered by domestic legislation for England, Wales and Northern Ireland. Largely speaking the Regulations came in to force on 26 February 2015.

PCR 2015 Procedure - The procedure required by the *PCR 2015* where the *Total Value* exceeds the *PCR2015 Threshold*.

PCR 2015 Threshold - The contract value at which the *PCR 2015* apply – as advised from time to time by the *Head of Procurement* and detailed in these CPR.

Quotation - A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender*).

Relevant Contract - Contracts to which these contract procedure rules apply (see Rule 4).

Restricted Procedure - A *Procurement* procedure under the *Public Contracts Regulations* where the contract is advertised and bidders are invited first to pre-qualify. Only those tenderers who pre-qualify are invited to submit a fully priced tender.

Selection Criteria - The criteria by which potential *Candidates* are selected to *be invited to submit a Quotation or Tender*.

Service Contracts Register – A sub set of the Corporate Contracts Register , recording via the Contracts Database contracting activity required to be subject to competitive tendering and /or valued **£50,000** or above estimated value.

Service Level Agreement (SLA) - An arrangement with a VSO (or similar organisation) which provides the cost and outcome of any given service provision.

Services – An intangible asset, activity or facility provided by a third party (e.g. advertising space).

Scheme of Delegation – The arrangements made by the Council to delegate parts of its decision making processes, as provided for by its *Constitution*.

Shortlisting - The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation, including tender lists compiled under a two stage tender process.

Suitability Assessment - Where the *Estimated Value* of an opportunity is lower than the *PCR 2015* Threshold for Supplies and Services, this is a process that relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet minimum standards of suitability, capability, legal status or financial standing.

Supervising Officer - The *Line Manager's* immediate superior.

Supplies – Generally relates to a purchase or hire of goods (including electricity, gas etc.).

Sustainable Procurement – A process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for the organisation, but also society and the economy while minimising damage to the environment.

Tender - A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Tender Record Log - The log kept by the Relevant *Officer* to record details of *Tenders* (see Rule 14.5).

Tenderer – A *Candidate* who has submitted a *Tender* in response to an *Invitation to Tender*.

Total Value - The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48;
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result;

- (e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value – has the same meaning as **Total Value**.

Value For Money – The optimum combination of *Whole Life Costs* and benefits to meet the service requirements.

Variation – Any amendment to a contract agreed in writing by the parties in accordance with its terms or by means of negotiation. This may include Formal Extension Options, Extensions Beyond Term, Variation (Change Control) and Variation (Modification).

Variation (Change Control) – A Variation provided for within the terms of contract as anticipated from the outset of the tender process and included at the point of authorisation for Contract Award. This may include the call off of additional supplies, services or works; price changes and so on.

Variation (Modification) – A Variation or change to the contract not provided for within the terms of the contract and not anticipated at the outset of the tender process. This may include a change in the scope of activities being undertaken and/or changes in price.

Voluntary Sector Organisation (VSO) – Also known as the “third sector” it includes a range of organisations from unincorporated associations to companies limited by guarantee with charitable status. Generally, but not always, they funded by grant and contract with the Council by way of a *Service Level Agreement*, Note - the same organisation may have separate funding arrangements for different elements of the activity required.

Waive or Waiver – the dispensation of the need for compliance with a particular requirement of these *Contract Procedure Rules*.

Whistleblowing – The raising of concerns under the Public Interest Disclosure Act 1998, in accordance with the Council’s Whistleblowing policy, about some danger or illegality arising or potentially arising from performance (or non-performance) of its function.

Whole Life Costs – The consideration of all costs incurred during the life cycle of the work, goods, service or utility purchased, including those identified by adopting good *Sustainable Procurement* practice.

Work or Works – Those activities listed as Schedule 2 of the *PCR 2015* being, in general terms, construction, engineering or building works.

PROCUREMENT GUIDANCE AND PRACTICE NOTES

PRACTICE NOTES

- 1.1 In accordance with CPR1, the Contract Procedure Rules, and any associated Guidance or Practice Notes, will be made available on the Council's Intranet Site on the Procurement Homepage.
- 1.2 Additional Guidance and Practice Notes, issued or updated as required, complement the Contract Procedure Rules and have been prepared to assist Officers to identify and use best practice.
- 1.3 Important Guidance and Practice Notes include:
- Authorisation template for Gateway Reports
 - Sustainable Procurement Policy
 - Approach to the evaluation of tenders
 - Tender evaluation process
 - Local Rules OK
 - Practice Notes associated with the use of the Contracts Database

Procurement Homepage:

<https://bromley.sharepoint.com/sites/Pub-Procurement>

LBB Procurement Policy:

<https://bromley.sharepoint.com/sites/Pub-Procurement/SitePages/LBB-Procurement-Policy.aspx>

Authorisation – Guidance and Report Templates:

<https://bromley.sharepoint.com/sites/Pub-Procurement/SitePages/Authorisations.aspx>

Contracts Database and General Practice Guidance Notices:

<https://bromley.sharepoint.com/sites/Pub-Procurement/SitePages/Contracts-Database.aspx>

OFFICER SCHEME OF DELEGATION, KEY DECISIONS AND CALL IN

The Scheme of Delegation can be accessed at the following link:

<https://cds.bromley.gov.uk/documents/s50093541/Constitution%20Appendix%2010%20-%20Scheme%20of%20Delegation%20to%20Officers.pdf>

The Council's full Constitution can be accessed here and provides further information on Key Decisions, Call In and governance arrangements:

<https://cds.bromley.gov.uk/ecSDDisplay.aspx?NAME=SD1936&ID=1936&RPID=527894518>

AMENDMENTS, DELETIONS AND ADDITIONS

This section sets out key amendments, deletions and additions for Version Updates of the Contract Procedure Rules.

Version 1.9 1 April 2021

1. Replacement: The title 'Director of Commissioning' has been replaced by 'Assistant Director Governance & Contracts' throughout the document.
2. Replacement: references to EU rules and thresholds have been replaced with reference to Public Contracts Regulations 2015 throughout the document.
3. Page 3: PCR Limits updated and links added. References to PCR Limits elsewhere in the document have also been updated.
4. Paragraph 1.3: expanded to emphasise the need to consult with Procurement, Legal and Finance on all procurement over £5k as well as Human Resources and Information Technology as necessary.
5. Paragraph 1.4: deleted (the need to consult with the Director of Commissioning on service restructures or redesign).
6. Paragraph 1.9: amended to include reference to Corporate Procurement Team and guidance in addition to PCR2015
7. Paragraph 1.11: amended to change need to consult from Director of Corporate Services to Assistant Director Governance & Contracts. Where appropriate, this has been applied elsewhere in the document.
8. Paragraph 2.2.1: amended to reflect current practice on use of Contracts Database; amended to remove reference to Contract Monitoring Summary Template no longer in use (where appropriate, this has been applied elsewhere in the document).
9. Paragraph 3.2: amended to clarify the use of Exemptions (especially the distinction between general use of Exemptions and an Exemption applied as a result of unforeseeable emergency) and the need for Agreement from the Assistant Director Governance & Contracts.
10. Paragraph 5.5: amended to reflect the new arrangements for the Procurement Board.
11. Paragraph 6.5: amended to ensure compliance with transparency requirements.
12. Paragraph 8.2.1: amended to make reference to eProcurement system.
13. Paragraph 8.2.1, Table: updated and amended.
14. Paragraph 8.2.4: amended to reference Procurement Board as the route for consultation.

15. Paragraph 8.6.2 amended to reference IR35 process.
16. Paragraph 12.2 deleted.
17. Paragraph 13.1 amended to make specific reference to Direct Award of contract.
18. Paragraph 13.4 has been placed (and amended – see below) in the appropriate section on Extensions.
19. Paragraph 13.4 – new paragraph added to clarify the use of cumulative value when considering Exemptions.
20. Paragraph 14.2 amended to reflect eProcurement system.
21. Paragraph 14.2 to 14.8: to be deleted as no longer relevant to current practice.
22. Paragraph 16.6 amended to reference guidance document.
23. Paragraph 17.2.2 added to clarify who can sign contracts.
24. Paragraph 17.3 updated to reflect May 2020 Urgency Committee arrangements.
25. Paragraph 21.3 amended to reflect Corporate Contracts Database/Register.
26. Paragraph 23.1 amended as reference to Director of Finance has never happened in practice.
27. Paragraph 23.3 deleted as previously agreed and communicated through practice note.
28. Section 23.8 and 23.9 (was 23.7) – whole section redrafted to:
 - a. Distinguish process between formal extension options, formal Variation (change control) options and modifications/extensions beyond term to contract.
 - b. Use of thresholds and applications of cumulative value clarified.
 - c. Describe delegated authority arrangements at point of award.
29. Paragraph 23.10 (was 23.7.5) amended to cross reference with paragraphs 23.8 and 23.9 and require consultation with Head of Procurement only in line with custom and practice.
30. Definitions: amended to reflect changes detailed above.
31. Annex A: expanded to provide up to date links to documents.
32. Annex B, C and D: replaced with a link