

Report to: **Audit Committee**
Date: **30 July 2015**
Title: **Contract Procedure Rules**
Portfolio Area: **Support Services**
Wards Affected: **All/Corporate**

Relevant Scrutiny Committee: Internal Overview & Scrutiny WD /
Overview & Scrutiny Committee SH

Urgent Decision: **N** Approval and clearance obtained: **Y / N**

Date next steps can be taken:
(e.g. referral on of recommendation or
implementation of substantive decision)

**Recommendations
to be considered
by Council on 6
October 2015**

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Recommendations:

1. To review the updated version of the Council's Contract Procedure Rules (Appendix A)
2. To recommend to Council approval of the reviewed Contract Procedural Rules and their inclusion in the Council's Constitution.

1. Executive summary

The Council's Contract Procedure Rules (the "Rules"), which were adopted in October 2014, were based on the principles, rules and regulations of the previous Public Contracts Regulations 2006, 2009 and 2011. As a result of the fact that these Regulations have been replaced, the Rules must be amended.

The purpose of this report is to allow the Audit Committee to carry out an overview of the updated Contract Procedure Rules to enable them to recommend adoption to the Council of the document.

This covering report carries a summary of the main changes proposed, and

the draft updated Contract Procedure Rules appear at Appendix A.

2. Background

On 26 February 2014 the European Parliament introduced Directive 2014/24/EU on public procurement, which repealed Directive 2004/18/EC. The Directive was transposed in to the Public Contracts Regulations 2015 and was laid in to Parliament and came in to force on 26 February 2015.

The Regulations, which replaces the previous Public Contracts Regulations 2006, 2009 and 2011, seek to clarify and simplify the previous Regulations as well as introduce some reforms, recommended by Lord Young of Graffham. They aim to make public procurement more accessible to small businesses.

The Regulations place a requirement on all public bodies to comply when conducting their procurement activities and it is incumbent upon the Council to ensure that its internal policies, procedures and processes meet the requirements. The Regulations are already in force and as such a decision is required immediately so as to ensure that the Rules are compliant with the legislation.

All Council Officers are expected to comply with the Rules and they affect the way in which the Council conducts its procurement activities with external service providers.

3. Outcomes/outputs

A summary of the key changes to the Rules is given below:

Section Reference (the Rules)	Detail of Change	In accordance with (the Regulations)
3.6	Removal of the need for consultation with Members over the approval of exemptions to help speed up the process	N/A
3.12 – 3.17	The treatment of contracts between public bodies or quasi-public bodies and the extent to which they are subject to the relevant procurement rules is clarified	Reg. 12
6.5	Additional reporting requirements for contracts with a total value in excess of the EU threshold have been added to the Rules	Reg. 84
7.1.2	Clarification is provided on the Council's legal obligation to provide transparent access to its procurement procedures through electronic means, both in publishing opportunities on the Council's own electronic tendering system and via the Cabinet Office's Contracts Finder	Reg. 22
7.1.7 and 12.1	Advice is given to Officers not to include a pre-qualification stage in procurement	Reg. 111(1)

	opportunities for contracts with a total value under the EU threshold in accordance with Lord Young's recommendations	
8.1.1 – 8.1.2	Clarification is provided around assessing the total value of a contract prior to deciding on the appropriate procurement route	Reg. 6
9.2 – 9.5	Advice is given to Officers as to how to treat suppliers prior to the commencement of a procurement procedure, particularly where their assistance is needed to shape the specification and resultant contract in accordance with Regulation	Reg. 40 and 41
10	Revisions have been made to the selection and award criteria that can be used for the purpose of evaluating suppliers	Reg. 57, 58 and 67
12.4 – 12.5	Advice is provided concerning the division of contracts in to lots	Reg. 46
13.6	Removal of different systems for tender opening between South Hams and West Devon given that the Authorities are shared. Removal of the need for a Member to be present at the opening of tenders under the EU threshold to help speed up the process	N/A
16.1.4	Details of contractual clauses that must be included within relevant contracts covering prompt payment, changes to suppliers during the contract term and termination clauses have been added	Reg. 113(2), 72 and 73
20.3 and 21	Greater clarity is given as to the extent to which contracts can be amended during their term without triggering a re-procurement and advice is given as to how change can be provided for at the procurement stage	Reg. 72

Note: The *Corporate Procurement Officer* has taken this opportunity to consider some minor revisions to include formatting and grammatical errors, definitions and less significant amendments from the Regulations. Details of these revisions are not given.

4. Options available and consideration of risk

The Corporate Procurement Officer has undertaken to consult with other local authorities through the Devon and Cornwall Procurement Partnership (DCPP) group concerning the work that they have completed to ensure that their rules surrounding the award of contracts are compliant with the revised legislation and all of the regional procurement colleagues confirmed that work is either underway or complete in respect of this issue.

The Corporate Procurement Officer is also currently working to implement the proposed changes to Teignbridge District Council’s Rules in the interest of maintaining a single set of Rules across the procurement shared service of the three Councils (South Hams District Council, Teignbridge District Council and West Devon Borough Council).

5. Proposed Way Forward

This report gives details of the changes made to the Rules, the reasons for those changes and the reference to the Regulations upon which the changes are made. The report seeks approval for those changes.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<ul style="list-style-type: none"> • The legal background is set out at paragraph 2. The current Rules do not meet the legislative requirements set out in the regulations and must be updated to remain compliant. • It is important that the Contract Procedure Rules are reviewed regularly to make sure that they are up to date, as the procurement environment is lively. • As the Councils of South Hams and West Devon share services, and the Corporate Procurement Officer is shared with Teignbridge, it has become critical that there are no differences between the Rules operating in each Council. With Officers often under pressure it would be too easy to make a mistake and use the wrong Rules, with potentially serious consequences in terms of procurement impropriety, liability to disappointed or successful bidders, and consequent loss of reputation and confidence. Updating the Rules and then training relevant officers about the changes is a sensible precaution.
Financial	N	<ul style="list-style-type: none"> • None, within existing budgets.
Risk	Y	<p>1. Need to update Contract Procedure Rules</p> <p>Risk to the business environment and potential cost to the Council if officers break procurement law.</p> <p>Mitigations</p> <p>a) Updated Rules provide Officers with a set of comprehensive regulations that have been drafted</p>

		<p>to remain within current procurement law and policy.</p> <p>b) The Rules contribute to the control environment and are regularly monitored with breaches reported to the Audit Committee.</p> <p>c) Use of the Rules will protect Officers and the Council from accusations of impropriety from unsuccessful suppliers or others.</p> <p>2. Benefits of Shared Procurement</p> <p>The Corporate Procurement Officer may be restricted in the benefits that they can bring through shared procurement arrangements where the Rules are not aligned across the three partner organisations.</p> <p>Mitigation</p> <p>All key procurement arrangements have been brought up to date and aligned for the future benefit of any shared service agenda.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	The Regulations are based on the principles of equality of opportunity and non-discrimination of service providers and the updated Rules reflect both of these.
Safeguarding	N	No specific safeguarding issues arising from this report.
Community Safety, Crime and Disorder	N	No specific community safety or crime and disorder issues arising from this report.
Health, Safety and Wellbeing	N	No specific health, safety and wellbeing issues arising from this report.
Other implications	N	

Supporting Information

Appendices:

Appendix A revised Contract Procedure Rules.

Background Papers:

None

Approval and clearance of report

All reports must have Finance Service clearance and Legal Service clearance. Your report will only receive clearance if the implications in Section 6 are considered by the Finance and Legal Services to be complete and accurate. Make sure you contact the Finance Service and the Legal Service early on for advice where there are potentially financial or legal implications. If there are other resource implications you must forward your report to the appropriate officer for clearance. If those clearing the report make amendments they will advise you of that fact and refer you to the relevant changes. As report author you are responsible for finalising the report and its content but you are required to have regard to the comments of the Finance and Legal Services and clear reasons for not following their advice.



**South Hams
District Council**



**West Devon
Borough
Council**

CONSTITUTION PART 4

CONTRACT PROCEDURE RULES (JOINT)

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A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption.

Adherence to consistent and comprehensive Rules helps protect the Council against challenges that it has acted unlawfully or fraudulently.

Officers responsible for purchasing must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular Contract.

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-Tendering) fax transmissions as well as hard copy.

- Follow the rules whenever you purchase goods or services or order building work.
- Take all necessary procurement, legal, financial and professional advice.
- Declare any personal financial interest in a Contract. Corruption is a criminal offence.
- Conduct any Value for Money review and appraise the purchasing need.
- Check whether there is an existing Contract or Framework Agreement in place open to the Council that you can make use of before undergoing a competitive process
- Normally allow at least four weeks for submission of bids (not to be submitted by hard copy, fax or e-mail).
- Keep bids confidential.
- Complete a written Contract or Council order before the supply or works begin.
- Identify a Contract manager with responsibility for ensuring the Contract delivers as intended.
- Keep records of dealings with Suppliers.
- Assess each Contract afterwards to see how well it met the quality of delivery and Value for Money requirements.

In accordance with the Constitution, the S. 151 Officer shall have the power to make amendments from time to time to these Contract Procedure Rules after consultation with the Monitoring Officer, Internal Audit and the Corporate Procurement Officer. Proposed amendments must be submitted to the Audit Committee for recommendation to the Council of approval, where appropriate.

Terms in italics are defined in the Definitions Appendix.

Acknowledgements: CIPFA

Contributors:

Corporate Procurement Officer (Shared)

Internal Audit: South Hams and West Devon Councils (Shared)

Internal Audit: Teignbridge District Council

Legal team: South Hams and West Devon Councils (Shared)

S. 151 Officer and Monitoring Officer

DEFINITIONS

Term	Definition
Agent	A person or organisation acting on behalf of the <i>Council</i> or on behalf of another organisation.
Award Criteria	The criteria by which the <i>Contract</i> is to be awarded to the successful <i>Tenderer</i> (see further Rules 10 and 11.3).
Award Procedure	The procedure for awarding a <i>Contract</i> as specified in Rules 8, 10 and 15.
Bid	A <i>Supplier's</i> proposal submitted in response to the <i>Procurement Documentation</i>
Bond	An insurance policy: if the <i>Contractor</i> does not do what it has promised under a <i>Contract</i> with the <i>Council</i> , the <i>Council</i> can claim from the insurer the sum of money specified in the <i>Bond</i> (often 10% of the <i>Contract</i> value). A <i>Bond</i> is intended to protect the <i>Council</i> against a level of cost arising from the <i>Contractor's</i> failure.
Code of Conduct (Officers)	The code regulating conduct of <i>Officers</i> , available on the <i>Council's</i> Intranet.
Code of Conduct (Members)	As set out in the <i>Constitution</i> – Part 5.
Concession Contracts	Shall mean a public <i>Contract</i> under which <i>Supplier/s</i> are given the (exclusive) right to exploit the works or services provided for their own gain and where the <i>Supplier's</i> income is generated solely from third parties or as a combination of revenue streams from both third parties and the <i>Council</i>
Constitution	The constitutional document approved by the <i>Council</i> which: <ul style="list-style-type: none"> • Allocates powers and responsibility within the <i>Council</i> and between it and others • Delegates authority to act to the Executive/Committees, Other Member Bodies and <i>Officers</i>; regulates the behaviour of individuals and groups through rules of procedure, codes and protocols. • Available on the Internet
Consultant/ Consultancy	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 <i>Council</i> has no ready access to employees with the skills, experience or capacity to undertake the work.
Contract	Is a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which a contracting authority engages a person or organisation to provide goods, works or services.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"> • Withdrawal of <i>Invitation to Tender</i> • Whom to invite to submit a <i>Quotation</i> or <i>Tender</i> • <i>Shortlisting</i> • Award of <i>Contract</i> • Any decision to terminate a <i>Contract</i> • Any decision to extend or vary a <i>Contract</i>.
Term	Definition
Contracts Finder	A web-based portal provided for the purpose of under- <i>EU Threshold Contracts</i> on behalf of the Cabinet Office
Contracts Notice	An advertisement placed in the Official Journal of the European Union, which is a legal requirement for all procurements that exceed the <i>EU Threshold</i> .

DEFINITIONS

Corporate Contract	A <i>Contract</i> let by the <i>Corporate Procurement Officer</i> to support the <i>Council's</i> aim of achieving <i>Value for Money</i> to include <i>Contracts</i> let by the <i>Council</i> and/or <i>Contracts</i> or <i>Framework Agreements</i> let by other organisations to which the <i>Council</i> has access.
Corporate Procurement Officer	The <i>Council's</i> procurement <i>Officer</i> charged with providing strategic direction and advice to secure <i>Value for Money</i> in the <i>Council's</i> procurement activities.
Dynamic Purchasing System	A completely electronic system of limited duration which is— (a) established by a contracting authority to purchase commonly used goods, work, works or services; and (b) open throughout its duration for the admission of economic operators which satisfy the <i>Selection Criteria</i> specified by the contracting authority; and (c) submit an indicative <i>Tender</i> to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
Electronic Auction	Is a means of seeking the <i>Supplier's</i> pricing in an electronic format in a live competitive environment, the aim of which is to achieve greater <i>Value for Money</i> than traditional tendering
Executive/ Hub Committee	The <i>Council's</i> Executive / Hub Committee as defined in the <i>Constitution</i> .
EU Procedure	The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> .
EU Threshold	The value at which the EU public procurement directives and UK procurement regulations apply.
European Economic Area	The members of the European Union, and Norway, Iceland and Liechtenstein.
Financial Procedure Rules	The <i>Financial Procedure Rules</i> outlining <i>Officer</i> responsibilities for financial matters issued by the <i>S. 151 Officer</i> in accordance with the <i>Constitution (Financial Procedure Rules)</i> .
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 <i>Contracts</i> to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the <i>European Economic Area</i> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
Group Manager, Lead Specialists. Level 3 Managers and Executive Director	The <i>Officers</i> defined as such in the <i>Constitution</i> .
High Profile	A high-profile purchase is one that could have an impact on functions integral to <i>Council</i> 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 <i>Council's</i> part should it fail or go wrong.
High Value	A high-value purchase is where the value exceeds the <i>EU Threshold</i> values.
Interests	Is a connection to another person or organisation that meets any of the following criteria: (a) Ownership of shares in a <i>Supplier</i> or any other financial <i>Interest</i> in a <i>Supplier</i> whether held by the relevant individual or by a close

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	<p>relative of the Individual or by any corporate entity in which the individual has an <i>Interest</i>; and/or</p> <p>(b) Employment by a <i>Supplier</i> of the individual or a close relative of the Individual; and/or</p> <p>(c) Provision of services to a <i>Supplier</i> by the Individual or by the firm the individual is associated with, and/or</p> <p>(d) Connection with, whether prejudicial or otherwise, any person/s said to be affected by the outcome of a procurement process.</p>
Invitation to Tender (ITT)	<i>Invitation to Tender</i> documents in the form required by these Contract Procedure Rules.
Key Decision	Decisions that are defined as <i>Key Decisions</i> in the <i>Constitution</i> .
Lots	One of a number of categories of goods, works or services which a single procurement process has been divided into with a view to awarding to multiple <i>Suppliers</i>
Monitoring Officer	As identified in the <i>Constitution</i> . The <i>Monitoring Officer</i> or the <i>Monitoring Officer's</i> formally nominated deputy
Nominated Suppliers	Those persons specified in a main <i>Contract</i> for the discharge of any part of that <i>Contract</i> .
Non-Commercial Considerations	<p>(a) The terms and conditions of employment by <i>Contractors</i> 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').</p> <p>(b) Whether the terms on which <i>Contractors</i> <i>Contract</i> with their <i>Sub-Contractors</i> constitute, in the case of <i>Contracts</i> with individuals, <i>Contracts</i> for the provision by them as self-employed persons of their services only.</p> <p>(c) Any involvement of the business activities or interests of <i>Contractors</i> with irrelevant fields of government policy.</p> <p>(d) The conduct of <i>Contractors</i> or workers in industrial disputes between them or any involvement of the business activities of <i>Contractors</i> in industrial disputes between other persons ('industrial disputes').</p> <p>(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, <i>Contractors</i>.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of</p>
Term	Definition
Non-Commercial Considerations (Continued)	<p><i>Contractors</i> or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by <i>Contractors</i> for any institution to or from which the authority gives or withholds support. <i>Continued overleaf</i>. (h) Use or non-use by <i>Contractors</i> 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 <i>Non-Commercial Considerations</i> to the extent necessary or expedient to comply with Best <i>Value</i>; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (<i>TUPE</i>) may apply</p>
Officer	The <i>Officer</i> designated by the Executive Director, Group Manager or Lead Specialist to deal with the <i>Contract</i> in question.
Parent Company Guarantee	A <i>Contract</i> which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a <i>Contract</i> with the <i>Council</i> , the <i>Council</i> can require the parent company to do so instead.

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Portfolio Holder	A member of the <i>Executive/Committees</i> to whom political responsibility is allocated in respect of specified functions.
Pre-Qualification Questionnaire (PQQ)	The <i>PQQ</i> is a questionnaire issued to ascertain the suitability of potential <i>Suppliers</i> to provide goods, services or works as identified in the <i>Tender</i> advertisement / <i>Contracts Notice</i> .
Prior Information Notice (PIN)	An advertisement placed in the Official Journal of the European Union, which indicates to the open market the Authority's intentions in advance of a formal procurement or number of procurements taking place
Priority Services	Those services required to be <i>Tendered</i> as defined in the EU public procurement directives.
Procurement Documentation	Shall mean the documents dispatched to <i>Suppliers</i> as part of procurement process; comprised of the instructions and information to applicants, <i>Contract</i> information, specification, pricing schedule and certificates for signature.
Procurement Strategy	The document setting out the <i>Council's</i> approach to procurement and key priorities for-a specified period of time.
Purchasing Guidance	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these Contract Procedure Rules. The guidance is available on the <i>Council's</i> intranet and Procurement Tool.
Quotation	A <i>Quotation</i> of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i>). Definition - A formal statement of promise (submitted usually in response to a request for <i>Quotation</i>) by a potential <i>Supplier</i> to supply the goods or services required by a buyer (the <i>Council</i>), at specified prices, and within a specified period. A <i>Quotation</i> may also contain terms of sale and payment, and warranties. Acceptance of <i>Quotation</i> by the buyer constitutes an agreement binding on both parties
Relevant Contract	<i>Contracts</i> to which these Contract Procedure Rules apply (see Rule 4).
S. 151 Officer	The <i>Officer</i> as may be designated <i>S. 151 Officer</i> by the <i>Council</i> in line with the <i>Constitution</i> , including the appointed Deputy <i>S. 151 Officer</i> .
Selection Criteria	The Authority's minimum requirements by which the <i>Tenderer</i> is to be assessed as being suitable to proceed with the <i>Tender</i> process
Service Manager	The <i>Officer's</i> immediate superior or the <i>Officer</i> designated to exercise the role reserved to the <i>Service Manager</i> by these Contract Procedure Rules.
Shortlisting	The process of selecting <i>Suppliers</i> who are to be invited to quote or <i>Bid</i> or to proceed to final evaluation.
Standstill	Shall mean the period between notification of the intention to award a <i>Contract</i> in accordance with the <i>EU Procedure</i> and the formal award of said <i>Contract</i>
Sub-Contractors	Those persons specified in a main <i>Contract</i> for the discharge of any part of that <i>Contract</i> .
Supplier	Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> .
Tender	A <i>Supplier's</i> proposal submitted in response to the <i>Invitation to Tender</i>
Tender Register Pro Forma	The log kept by the <i>Monitoring Officer</i> to record details of <i>Tenders</i> (see Rule 13.4).
Total Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase, <i>Contract</i> calculated as follows: (a) Where the <i>Contract</i> is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period, including any permitted extensions

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	<p>(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.</p> <p>(c) Where the <i>Contract</i> is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of <i>Contracts</i> have been entered into or are to be entered into to fulfill that requirement</p> <p>(e) Where the <i>Contract</i> is to be executed over a period for goods or services and</p> <ul style="list-style-type: none"> • a series of <i>Contracts</i>; or • a <i>Contract</i> which under its terms is renewable <p>is entered into</p> <p>(f) Where there are a number of requirements over a given period for <i>Contracts</i> that have similar requirements or are for the</p>
	<p>same type of goods and service</p> <p>(g) For feasibility studies, the value of the scheme or <i>Contracts</i> which may be awarded as a result</p> <p>(h) For <i>Nominated Suppliers and Sub-Contractors</i>, the <i>Total Value</i> shall be the value of that part of the main <i>Contract</i> to be fulfilled by the <i>Nominated Supplier or Sub-Contractor</i></p> <p>(i) The <i>Total Value</i> of all <i>Contracts</i> expected to be placed under a <i>Framework Agreement</i></p> <p>(j) The <i>Total Value</i> of all <i>Contracts</i> expected to be placed under a <i>Dynamic Purchasing System</i></p> <p>(k) The <i>Total Value</i> of the requirement where more than one (1) organisation will purchase under the same <i>Contract</i></p>
<p>Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)</p>	<p>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 <i>Contractor</i>, local authority in-house team) to another (e.g. following a <i>Contracting out</i> 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</p>
<p>Value for Money</p>	<p><i>Value for Money</i> is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.</p>

DEFINITIONS

1. BASIC PRINCIPLES

All purchasing procedures and the letting of *Concession Contracts* must:

- Comply with these Contract Procedure Rules and *Financial Procedure Rules* (both at Part 4 of the *Constitution*)
- Achieve *Value for Money* for public money spent
- Be consistent with the highest standards of integrity, having regard to the *Council's* Anti Fraud, Corruption and Bribery Policy and Strategy, and the Office of Fair Trading guidance on Anti Competitive Behaviour.
- Ensure fairness in allocating public *Contracts*
- Comply with all legal and financial 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* Procurement Strategies
- Be followed by *Officers* of the *Council* in all procurement activities including circumstances where there has been any challenge by the community.

2. OFFICER RESPONSIBILITIES

2.1 *Officers*

2.1.1 *Officers* responsible for purchasing must comply with these Contract Procedure Rules, *Financial Procedure Rules*, the Code of Conduct and with all UK and European Union binding legal requirements. *Officers* must ensure that any *Agents*, *Consultants* and *Contractual* partners acting on their behalf also comply.

2.1.2 *Officers* must:

- Comply with the Basic Principles as above
- Have regard to the *Council's* Purchasing and *Contract* Guidance
- Ensure that the appropriate approved budgetary provision is in place
- 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 an auditable reason not to
- **For *Contracts* with a *Total Value* above £50,000, take a report to the Executive / Hub Committee at least 6 months before the *Contract* is due to end to consider whether it is appropriate to *Tender* on the same basis as the existing arrangement**
- Keep the records required by Rule 6

2.1.3 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 are considered and obtain legal advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Group Managers, Lead Specialists and Level 3 Managers

2.2.1 Group Managers, Lead Specialists and Level 3 Managers must:

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- Comply with the Basic Principles as above
- Ensure that their staff comply with Rule 2.1
- Ensure that Exemptions are recorded under Rule 3.2 detailing the nature and value of the *Contract*, parties to the *Contract*, and the circumstances justifying the Exemption and send original exemption to *Monitoring Officer*
- Ensure that the originals of all *Contracts* are given to the *Monitoring Officer* for secure storage (see Rule 16.2.6).

3. EXEMPTIONS TO THESE RULES

Principles

- 3.1 The *Council* and its *Executive / Hub Committee* have power to authorise exemptions from the requirement to seek *Quotations* or invite *Tenders* for specific projects, and for South Hams any such decision may be a *Key Decision*.
- 3.2 Where necessary because of exceptional circumstances the *Officer (Group Manager, Lead Specialist or Level 3 Manager)* may seek an exemption with the approval of the *Officers* and members set out in the table below. **The exemption process must not be used as a method of avoiding the use of these Contract Procedure Rules.**
- 3.3 The circumstances where an exemption may be sought are:
- **Life or Death** – Is there a significant chance that the life or health of *Officers*, members or the public will be put at real risk?
 - **Increased Costs/Loss of Income** – Will the *Council* incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the *Council*)?
 - **Limited Markets** – Would the *Council* be wasting its time obtaining *Quotations* as supply of the product or service is demonstrably restricted to one or a few businesses? (Evidence that the market has been tested must be available)
 - **Risk to Reputation** – Would the *Council* be criticised for failing to act promptly?
- 3.4 **No exemption** can be used if the **EU Procurement Rules** apply. The latest EU procurement limits are available from either the *Corporate Procurement Officer* or *Internal Audit*.

Process

- 3.5 Pro-formas must be used and are available on the *Council's* Intranet or from the *Monitoring Officer* or *Internal Audit*.

DEFINITIONS

- 3.6 Exemptions from compliance with the Contract Procedure Rules may be granted with the original signatures of:

Total Value (excl. VAT)	Exemption Authorised By
£7,500–£50,000	<i>Internal Audit Monitoring Officer S. 151 Officer</i>
£50,001–EU Threshold	<i>Corporate Procurement Officer (Internal Audit in his/her absence) Monitoring Officer S. 151 Officer</i>
Above EU Threshold	No exemption permitted

- 3.7 **Total Value** is discussed at Paragraph 8 and the **Definitions Prefix**, which says that to obtain the estimated value of the *Contract*, the *Officer* must calculate the *Total Value* (excluding VAT) for the period of the *Contract*. **For example, a Contract let for 5 years at an estimated £20,000 per year, excluding VAT, has a Total Value of £100,000. The procurement must be based on £100,000 NOT the annual amount.**
- 3.8 Forms supported by the evidence that the exemption criteria have been met, must be sent to the *Monitoring Officer* or *Internal Audit*, and the *Corporate Procurement Officer*, in the first instance.
- 3.9 The original copy of the fully completed form must be sent to the *Monitoring Officer*, with a copy to Internal Audit.
- 3.10 The number of approved Exemptions will be reported to the Audit Committee by Internal Audit.
- 3.11 In exceptional circumstances an Exemption may be deemed necessary that is outside of the four criteria at 3.3. Any such Exemption can only be granted by the relevant member body on receipt of a joint report of the applicant and the *Corporate Procurement Officer*.

Contracts between One or More Public Bodies

- 3.12 Where the *Council* seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to *Financial Procedure Rules*).
- 3.13 Where the *Council* seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that three limited conditions are met, that:
- The *Council* must exercise over the body to be awarded the *Contract* “a control which is similar to that which it exercises over its own departments”; meaning that the *Council* must have a power of decisive influence over both strategic objectives and significant decisions of the body awarded the *Contract*,

DEFINITIONS

- More than 80% of the activities of the body to be awarded the *Contract* must be carried out in the performance of tasks entrusted to it by the *Council*; and
 - There must be no direct private capital participation in the body to be awarded the *Contract*.
- 3.14 Where the public sector body that is controlled by the *Council* seeks to provide goods, works or services by entering in to a formal arrangement with its controlling *Council* or another public sector body controlled by the same *Council* it may do so without triggering a procurement exercise where it can be demonstrated that a limited condition is met, that:
- There is no direct private capital participation in the body being awarded the *Contract*.
- 3.15 Where the *Council* seeks to provide goods, works or services by entering in to a formal arrangement with one or more public sector bodies over which it has no control it may do so without triggering a procurement exercise where it can be demonstrated that three limited conditions are met, that:
- The *Council* must exercise jointly with other public sector bodies “a control which is similar to that which it exercises over its own departments” over the body to be awarded the *Contract*;
 - More than 80% of the activities of the body to be awarded the *Contract* must be carried out in the performance of tasks entrusted to it by the joint public sector bodies; and
 - There must be no direct private capital participation in the body to be awarded the *Contract*.
- 3.16 The *Council* and other public sector bodies can be said to exercise joint control over another body where all of the following conditions are met, that:
- The decision-making bodies of the controlled body are composed of representatives of all participating public sector bodies;
 - The participating public sector bodies are able to jointly exert decisive influence over the strategic objectives and significant decisions of the body awarded the *Contract*; and
 - The body to be awarded the *Contract* does not pursue any interests which are contrary to those of the controlling public sector bodies.
- 3.17 A *Contract* concluded exclusively between two or more public sector bodies may not trigger a procurement exercise where it can be demonstrated that three limited conditions are met, that:
- The *Contract* establishes or implements a co-operation between the participating public sector bodies with the aim of ensuring that public services they have to perform are provided with a view to achieving common objectives;
 - The implementation of that co-operation is governed solely by considering relating to the public interest; and
 - The participating public sector bodies perform on the open market less than 20% of the activities with which the *Contract* is concerned;

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- 3.18 *Officers* must proceed with caution when invoking any of the exceptions given within this section, and advice must be sought from the *Corporate Procurement Officer*.

COLLABORATIVE ARRANGEMENTS

- 3.19 The *Corporate Procurement Officer* must be consulted prior to commencing a procurement process using any purchasing consortia *Contracts* e.g. Crown Commercial Services (CCS). The terms and conditions of *Contract* applicable to any purchasing consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.
- 3.20 In order to secure *Value for Money*, the *Council* may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.
- 3.21 All purchases made via a purchasing consortium are deemed to comply with these Contract Procedure Rules and no exemption is required.
- 3.22 However, purchases above the *EU Threshold* must be let under the *EU Procedure*, unless the consortium has demonstrated that it has satisfied this requirement already by letting their *Contract* in accordance with the *EU Procedures* on behalf of the authority and other purchasing consortium members.
- 3.23 Any *Contracts* entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption is required. However, **advice must be sought from the *Corporate Procurement Officer***.
- 3.24 The use of electronic procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these Contract Procedure Rules, particularly those relating to competition and *Value for Money*.

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 *Council* for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
- The supply of goods (for disposal of goods and assets see the *Financial Procedure Rules*)
 - 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
 - financial, legal and *Consultancy* services
 - Development Agreements under certain circumstances (see Section 25 for further details)

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- *Concession Contracts*

and where the *Supplier* is:

- Another public sector organisation, to include a town and/or parish *Council*
- A body wholly or jointly owned or controlled by the *Council*
- A third sector organisation, to include social enterprises, not-for-profit organisations or charities.

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 land and buildings (for which *Financial Procedure Rules* shall apply), subject to the detail provided at section 24; or
- *S. 151 Officer* dealing in the money market or obtaining finance for the *Council*; or
- *Contracts* made by the *Monitoring Officer* for the appointment of counsel
- Allocation of grant funding.

5. STEPS PRIOR TO PURCHASE

5.1 The *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any *Purchasing Guidance*, by:

- Ensuring the Social Value (Public Services) Act 2012 is complied with for all service *Contracts* where the *Total Value* exceeds the *EU Threshold*
- Taking into account the requirements from any relevant *Value for Money* review and the views of the community where appropriate and in line with related *Council* guidance
- Appraising the need for the expenditure and its priority, including the position of any existing *Contract* or *Framework Agreement* in terms of end date/required notice
- Defining the objectives of the purchase and consider whether it is appropriate to *Tender* on the same basis as the existing arrangement (see also Rule 2.1.2)
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate about the proposed procurement method, *Contract* standards and performance and user satisfaction monitoring
- Ensuring that the appropriate terms and conditions are used to apply to the proposed *Contract* (if other than the *Council's* standard terms and conditions, the advice of the *Corporate Procurement Officer*, the *Council's* Solicitor and/or *Monitoring Officer* must be sought)

DEFINITIONS

- Setting out these matters in writing if the *Total Value* of the purchase exceeds £7,500.

5.2 The *Officer* must also confirm that:

- There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the *Constitution*
- South Hams - If the purchase is a *Key Decision* (as defined in the *Constitution*), all appropriate steps have been taken.
- In the case of expenditure on an asset (particularly property), that the asset is the *Council's* responsibility.

6. RECORDS AND REPORTING

6.1 Where the ***Total Value*** is less than **£50,000**, the following records must be kept:

- 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 (to accept a *Quotation* other than the lowest, the *Officer* must be satisfied that the *Tender* represents the most economically advantageous bid and best *Value for Money*. The *Award Criteria* for this should have been set out in advance and evaluation records must be retained. See Rule 10).
- Written (including electronic) records of communications with the successful *Contractor*.

6.2 Where the ***Total Value*** exceeds **£50,000** the following records must be kept:

- Pre-Tender market research
- Any exemption under Rule 3 together with the reasons for it
- The method for obtaining *Bids* (see Rule 8.1)
- The *Selection Criteria* in descending order of importance
- The *Award Criteria* in descending order of importance
- *Invitation to Tender* documents sent to and received from *Suppliers*
- Clarification and post-*Tender* negotiation (to include minutes of meetings)
- Any *Contracting Decision* and the reasons for it
- Legal advice
- The *Contract* documents and any variations or extensions
- Post-Contract evaluation and monitoring
- Communications with *Suppliers* and with the successful *Contractor* throughout the period of the *Contract*,
- Ongoing checking of the financial position of the successful *Contractor* throughout the period of the *Contract* (see also Section 10 Contract Management).

6.3 Records required by this rule must be kept for **six years** after the end of the *Contract*.

DEFINITIONS

- 6.4 Documents which relate to unsuccessful *Suppliers* must be destroyed after **12 months** has elapsed from the date of the award of successful *Contract*, provided there is no dispute about the award.
- 6.5 Where the **Total Value exceeds the EU Threshold** the *Officer* shall draw up a written report which shall include at least the following:
- The name and address of the *Council*, the subject-matter and value of the *Contract*, *Framework Agreement* or *Dynamic Purchasing System*;
 - Where applicable, the results of the *Selection* stage and reduction in *Tenderers*, namely:-
 - The names of the selected *Tenderers* and the reason for their selection;
 - The names of the rejected *Tenderers* and the reasons for their rejection;
 - The reasons for the rejection of *Tenders* found to be abnormally low; the name of the successful *Tenderer* and the reasons why its *Tender* was selected and, where known:-
 - The share (if any) of the *Contract* or *Framework Agreement* which the *Tenderer* intends to sub-contract to third parties; and
 - The names of the main *Contractor's* sub-contractors (if any);
 - For *Competitive Procedures with Negotiation* and *Competitive Dialogue* the circumstances which justify the use of those procedures;
 - For *Negotiated Procedures without Prior Publication*, the circumstances which justify the use of this procedure
 - Where applicable, the reasons why the *Council* has decided not to award a *Contract* or *Framework Agreement* or to establish a *Dynamic Purchasing System*
 - Where applicable, the reasons why means of communication other than electronic means have been used for the submission of *Tenders*;
 - Where applicable, conflicts of *Interest* and subsequent measures taken.

Where the *Contract Award Notice* contains the information required above, the *Council* may refer to that notice.

7. ADVERTISING, FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS

7.1 Identifying and Assessing Potential Suppliers

Identifying

- 7.1.1 Wherever practicable *Officers* shall ensure that where the *Total Value* of the proposed *Contract* does not exceed **£50,000** they shall invite a minimum of three *Suppliers*, one of whom must have a head office which is registered within the *Council's* boundaries. *Officers* shall be seen to alternate the *Suppliers* to whom *Quotation* documentation is sent so as to ensure fair competition within the market.

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7.1.2 *Officers* shall ensure that, where proposed *Contracts*, irrespective of their *Total Value*, might be of interest to potential *Suppliers* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the *Contract* to potential bidders from other member states, the wider the coverage of the advertisement should be. Advertisements must be placed on the *Council's* electronic tendering system and *Contracts Finder*. Advertisements must include at least:

- The time by which any interested *Supplier* must respond to the opportunity;
- How and to whom the *Supplier* is to respond; and
- Any other requirements for participating in the procurement.

7.1.3 Where the *Council* published information on *Contracts Finder* it shall by means of the internet offer unrestricted and full direct access free of charge to the *Relevant Contract* documents and specify in the information published on *Contracts Finder* the internet address at which those documents are available.

7.1.4 In addition to the above, advertisements may also be placed in:

- The *Council's* website
- National official journals, or
- The Official Journal of the European Union (OJEU)/E-Notices/*Tenders Electronic Daily* (TED) (even if there is no requirement within the *EU Procedure*).

7.1.5 Notices must be placed in the OJEU for *Contracts* with a value exceeding the *EU Threshold* and may take the form of a *Contracts Notice for Prior Information Notice*.

7.1.6 For proposed *Contracts* that are expected to exceed £50,000, assessment and selection will be in conjunction with the *Corporate Procurement Officer*.

Assessing

7.1.7 The *Council* shall not include a pre-qualification stage in a procurement under the *EU Threshold*.

7.1.8 In any event the *Council* may ask *Suppliers* to answer *Selection* questions to assess their ability to meet requirements or minimum standards of suitability, capability, legal status or financial standing, only if each such question is:

- Relevant to the subject-matter of the procurement; and
- Proportionate.

7.2 Approved Lists

7.2.1 *Approved Lists* will not be maintained. This is because of the cost of proper administration and the need to ensure that competition is maximised.

7.2.2 *Suppliers* interested in doing business with the *Council* must register on the *Council's* electronic tendering system, which is available at www.supplyingthesouthwest.org.uk

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7.2.3 A register of pre-qualified *Contractors* and *Consultants* maintained by or on behalf of central government (e.g. Constructionline, Accredited) will be not be deemed to be an *Approved List* for the purpose of these Contract Procedure Rules and therefore can be used after having sought the advice of the *Corporate Procurement Officer*.

7.3 Framework Agreements

- 7.3.1 A *Framework Agreement* is an arrangement of one or more *Contracting* authorities with one or more *Suppliers* in order to establish the terms governing the *Contracts* awarded during a given period.
- 7.3.2 In setting up a *Framework Agreement* the term must not exceed four years. There must be one (a single-provider framework), or more than two (2) (multi-provider framework) *Suppliers* within an agreement under EU procurement law. The *Council's Corporate Procurement Officer* must always be consulted before any action is taken.
- 7.3.3 New framework *Suppliers* may not be added during the life of a *Framework Agreement*.
- 7.3.4 The *Total Value* of the *Framework Agreement* must be the total of all *Contracts* that are anticipated to be awarded under the agreement and as such it is recommended that a realistic range be provided within the *Contracts Notice* or *Tender* advertisement.
- 7.3.5 *Contracts* based on *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 (also known as a *direct award*), or
 - Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call off by holding a further 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 the *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*.
- 7.3.6 *Contracts* based on a *Framework Agreement* may under no circumstances entail substantial modifications to the terms laid down in that *Framework Agreement*.
- 7.3.7 When a *Framework Agreement* has been selected for use only the *Suppliers* that appear on the agreement may be approached to provide the *Contract*. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.

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- 7.3.8 *Contracts* may be awarded beyond the life of a *Framework Agreement* provided that such *Contracts* are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that significantly exceeded the life of the *Framework Agreement* where it was not common practice or expected by the market to do so.
- 7.3.9 A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off *Contract*.
- 7.3.10 The *Standstill* obligations need only be applied to *Contracts* awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

7.4 Dynamic Purchasing System

- 7.4.1 A *Dynamic Purchasing System* is similar to a *Framework Agreement* insofar as it is an arrangement of one or more contracting authorities with one or more *Suppliers* in order to establish the terms governing the *Contracts* awarded during a given period. The *Total Value* must be the total of all contracts that are anticipated to be awarded under it.
- 7.4.2 The way in which the *Dynamic Purchasing System* is different to a *Framework Agreement* is that additional *Suppliers* can be added throughout the life of the arrangement and the life of the arrangement can be for a period, which is proportionate to the nature of the works, services or goods to be procured under it, as specified by the *Council*. Additionally, the term of the *Dynamic Purchasing System* is not limited to four years.
- 7.4.3 In opening up access to *Suppliers* to the *Dynamic Purchasing System* the *Officer* must:
- Offer unrestricted, direct and full access to the procurement documents by electronic means at all times throughout the life of the *Dynamic Purchasing System*;
 - Allow new applications to be submitted throughout the life of the *Dynamic Purchasing System*;
 - Complete the evaluation of a newly submitted application within ten days of its receipt;
 - Admit to the *Dynamic Purchasing System* all new *Suppliers* that satisfy the *Selection Criteria*; and
 - Notify *Suppliers* of their admission to the *Dynamic Purchasing System* or rejection of their application.
- 7.4.4 In awarding a *Contract* under the *Dynamic Purchasing System* the *Officer* must:
- Place an advertisement against the *Dynamic Purchasing System* to notify *Suppliers* of the requirement to award a *Contract*. Where the *Dynamic Purchasing System* has been established in accordance with the EU procurement rules, i.e. where the *Total Value* exceeds the *EU Threshold*, this must take the form of a simplified *Contracts Notice*;

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- Evaluate any new applications in response to the advertisement prior to issuing *Invitations to Tender* under the *Dynamic Purchasing System*;
- 7.4.5 All *Suppliers* admitted to the *Dynamic Purchasing System* must be given an opportunity to respond to the *Invitation to Tender*. The *Contract* shall be awarded to the *Supplier* that submits the best *Bid* in accordance with the *Selection and Award Criteria* set out in the original advertisement or *Contracts Notice*.
- 7.4.6 The *Council's Corporate Procurement Officer* must always be consulted before any action is taken to establish a *Dynamic Purchasing System*.

8. COMPETITION REQUIREMENTS FOR PURCHASE AND PARTNERSHIP ARRANGEMENTS

8.1 Purchasing: Competition Requirements to Obtain Quotations or Tenders

- 8.1.1 The *Total Value* of a *Contract* is the whole of the value or estimated value (in money or equivalent value) for a single purchase in the following circumstances:
- The total amount payable, net of VAT, as estimated by the *Council*, including any form of option and any renewals of the *Contracts* as explicitly set out in the procurement documents, to include any prizes or payments that the *Council* intends to make to the *Councils*
 - Where the purchase is regular in nature or is intended to be renewed within a given period, the calculation of the estimated *Contract* value shall be based on either of the following:
 - the total actual value of the successive *Contracts* of the same type awarded during the preceding 12 months or financial year adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial *Contract*;
 - the total estimated value of the successive *Contracts* awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.
 - Where the *Contract* does not indicate a *Total Value*, the basis for calculating the estimated *Contract* value shall be the following:
 - in the case of fixed-term *Contracts* where that term is less than or equal to 48 months, the *Total Value* for their full term;
 - in the case of *Contracts* without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48.
 - Where a proposed work or a proposed provision of services may result in *Contracts* being awarded in the form of separate *Lots*, account shall be taken of the total estimated value of all such *Lots*.
 - Where the *Contract* relates to the leasing, hire, rental or hire purchase of products, the value to be taken as a basis for calculating the estimated *Total Value* shall be as follows:
 - for fixed-term *Contracts*, where that term is less than or equal to 12 months, the total estimated value for the term of the *Contract* or, where the term of the *Contract* is greater than 12 months, the *Total Value* including the estimated residual value;
 - for *Contracts* without a fixed term, or public *Contracts* the term of which cannot be defined, the monthly value multiplied by 48.

DEFINITIONS

- For *Contracts* for insurance services, the premium payable and other forms of remuneration
- For *Contracts* for banking and other financial services, the fees, commissions payable, interest and other forms of remuneration
- For design *Contracts*, the fees, commissions payable and other forms of remuneration
- Where the contracting body is comprised of separate operational units, account shall be taken of the total estimated value for all those units except where the separate operational unit is independently responsible for its procurement, or certain categories of its procurement, the values may be estimated at the level of the unit in question
- In the case of *Framework Agreements* and *Dynamic Purchasing Systems*, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of all the *Contracts* envisaged for the total term of the *Framework Agreement* or the *Dynamic Purchasing System*
- In the case of innovation partnerships, the value to be taken into consideration shall be the maximum estimated value, net of VAT, of the research and development activities to take place during all stages of the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership
- For works *Contracts*, the calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the goods and services that are made available to the *Contractor* by the Authority provided that they are necessary for executing the works.

8.1.2 The general rules when calculated the *Total Value* of a *Contract* are as follows:

- The choice of the method used to calculate the estimated value of a *Contract* shall not be made with the intention of excluding it from the scope of the Contract Procedure Rules
- A *Contract* shall not be subdivided with the effect of preventing it from falling within the scope of the Contract Procedure Rules
- The estimated value shall be calculated as at the moment at which the call for competition is sent or, at the moment at which the *Council* commences the procurement procedure
- The *Total Value* shall be that part of the main *Contract* to be fulfilled by the *Nominated Supplier or Sub-Contractor*.

8.1.3 The following procedures apply where there are no other procedures which take precedence (such as agency agreements with government). If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer*.

8.1.4 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Short listing* shall be done by the persons specified in the third column.

Total Value (excl. VAT)	Award Procedure	Short listing
(Up to £7,500)	A minimum of one <i>Quotation</i> , but good practice to seek most favourable prices and terms, having regard to the <i>Council's Procurement Strategy</i> .	<i>Officer</i> - See also <i>Financial Procedure Rules</i>

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(£7,501 - £50,000)	A minimum of three written <i>Quotations</i>	<i>Officer and Lead Specialist or Level 3 Manager</i>
(£50,001 – <i>EU Threshold</i>)	<i>Invitation to Tender</i> by advertisement	<i>Officer and Lead Specialist or Level 3 Manager</i> in consultation with the <i>Corporate Procurement Officer</i>
Above <i>EU Threshold</i>	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement	<i>Officer and Lead Specialist or Level 3 Manager and Group Manager</i> in consultation with the <i>Corporate Procurement Officer</i>
All values. Collaborative Contracts. ICT	All system developments and purchases of computer equipment or software must be approved by the Community of Practice Lead for ICT and awarded in line with these Rules.	<i>Officer, Support Services Group Manager</i> in consultation with the <i>Corporate Procurement Officer</i>

- 8.1.5 Where it can be demonstrated that there are insufficient suitably qualified *Suppliers* to meet the competition requirement, all suitably qualified *Suppliers* must be invited to quote and *Tender* and the *Corporate Procurement Officer* informed. If it can be clearly demonstrated that less than the required *Quotations* are available, then an Exemption form in line with paragraph 3.3 must be completed.
- 8.1.6 Where the *EU Procedure* is required, the *Officer* shall also consult the *Corporate Procurement Officer*, as appropriate, to determine the method of conducting the purchase. See table at Rule 8.1.4.
- 8.1.7 Where the *Council* procures on behalf of itself and other partners (acting as lead authority, the *Total Value* will be the overall value of the *Contract* and not the element of cost that applies to the *Council* itself.
- 8.1.8 Where procurement is for a service to be shared between authorities, it must be stated in advance both how the costs are to be apportioned between the partners and where the ownership of any assets falls.

8.2 Collaborative and Partnership Arrangements

- 8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules (Rule 1). If in doubt, *Officers* must seek the advice of the *Monitoring Officer* and the *Corporate Procurement Officer*. See table at Rule 8.1.4.

8.3 The Appointment of Consultants to Provide Services

- 8.3.1 Construction *Consultants*, to include architects, engineers and surveyors, financial and management *Consultants*, legal advisors and *Consultants* and any other professional persons considered *Consultants* as per the definition provided shall be selected and commissions awarded in accordance with the limits and procedures detailed within these Contract Procedure Rules and as outlined at Rule 8.1.4.

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Total

- 8.3.2 The engagement of a *Consultant* shall follow the agreement 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 to be in the form agreed by the *Monitoring Officer*.
- 8.3.3 Records of *Consultancy* appointments shall be maintained in accordance with Rule 6.
- 8.3.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the *Council's Insurance Officer* for the periods specified in the respective agreement.
- 8.3.5 *Officers* must be aware of the *Council's* duty to assess the employment status of individuals and to assess whether they will be working for the *Council* in an "employed capacity" or "self employed". The HM Revenue and Customs criteria must be used in the assessment of status and if the individual could be deemed as employed, the *Council's* recruitment and payroll procedures must be followed (links to *Financial Procedure Rules*).

8.4 Assets - Disposal

- 8.4.1 The disposal of assets must be made in line with the requirements of *Financial Procedure Rules* and the Delegation Scheme.

8.5 Contracts to Provide Services to External Purchasers

- 8.5.1 The *Monitoring Officer*, *Corporate Procurement Officer* and *Financial Procedure Rules* must be consulted where *Contracts* to work for organisations other than the authority are contemplated.

9. PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 9.1 The *Officer* responsible for the purchase: may, prior to the issue of the *Invitation to Tender/Quotation*, consult potential *Suppliers* 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 *Supplier*.
- 9.2 The *Officer* may seek or accept advice from potential *Suppliers* that can be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in the violation of the principles of non-discrimination and transparency.
- 9.3 The *Officer* shall take appropriate measures to ensure that competition is not distorted, including:
- (a) Communicating to the other *Tenderers* any relevant information exchanged resulting from the involvement of the *Supplier/s*; and
 - (b) Fixing adequate time limits for the receipt of *Tenders*.

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- 9.4 *Supplier/s* that have assisted the *Officer* in preparing the procurement procedure shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat all *Suppliers* equally and *Supplier/s* shall be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.
- 9.5 For service *Contracts* where the *Total Value* will exceed the *EU Threshold* the *Officer* must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

10. STANDARDS AND SELECTION & AWARD CRITERIA

- 10.1 The *Officer* must define the *Selection Criteria* that are related and proportionate to the subject matter of the *Contract*. These shall form a stage one assessment of whether a *Tenderer* may progress with a *Tender* process, whether from the *Pre-Qualification Questionnaire (PQQ)* to *Tender* stage or from the *Selection* stage evaluation to the *Award* stage evaluation in an open *Tender*. The criteria to be assessed against may be chosen from the following:
- Criteria for the mandatory exclusion of the *Supplier*, such as conspiracy, prior criminal convictions, evidence of corruption, bribery, fraud, terrorism, money laundering, tax evasion, etc. (this list is not exhaustive)
 - Criteria for the discretionary exclusion of the *Supplier*, such as bankruptcy, grave professional misconduct, evidence of distorting competition, conflict of *Interest*, significant deficiencies in the delivery of a prior public *Contract*, etc. (this list is not exhaustive)
 - Information as to economic and financial standing; such as, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive)
 - Information as to technical or professional ability; such as
 - the *Supplier's* professional ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
 - evidence of a sufficient level of experience demonstrated by suitable references from *Contracts* performed in the past
 - evidence that the *Supplier* possesses the necessary human and technical resources and experience to perform the *Contract* to an appropriate quality standard (this list is not exhaustive).
- 10.2 The *Officer* shall include within its procurement procedures the Crown Commercial Services Standard *Pre-Qualification Questionnaire* for the purposes of assessing the *Selection Criteria*. This shall apply to all procurement procedures with the exception of *Contract* for *Works*, which can include the PAS 91 standard for assessing the *Selection Criteria*.

The *Corporate Procurement Officer* must be consulted where the *Total Value* of the *Contract* is likely to exceed the *EU Threshold* and in any event to provide advice and guidance concerning the *Crown Commercial Services Pre-Qualification Questionnaire* to ensure that the questions are related and proportionate to the subject matter of the *Contract*.

- 10.3 *Selection Criteria* must not include:

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- *Award Criteria*;
 - *Non-Commercial Considerations*; or
 - Criteria that is not related and proportionate to the subject matter of the *Contract*.
- 10.4 The *Officer* must ascertain what are the relevant British or equivalent European or international standards which are linked to the subject matter of the *Contract* and are appropriate to define characteristics of the *Works, Goods* or *Services* that are the subject-matter of the *Contract*. The *Officer* must include those standards which are necessary properly to describe the required quality. This includes sustainability, environmental and health and safety standards. The *Monitoring Officer and Corporate Procurement Officer* must be consulted if it is proposed to use standards other than European standards.
- 10.5 The *Officer* must set out the technical specification in the procurement documents that lay down the characteristics required of the *Works, Services* or *Goods*, which can include the following:
- Levels of environmental and climate performance;
 - Design for all requirements (including accessibility for disabled persons)
 - Performance
 - Safety or dimensions
 - Procedures concerning quality assurance
 - Packaging
 - Rules relating to design and costing
 - Inspection and acceptance conditions, etc. (this list is not exhaustive).
- 10.6 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:
- 'Most economically advantageous', where considerations in addition to price also apply;
 - 'Lowest price' where payment is to be made by the authority when the *Award Criteria* is price alone; or
 - 'Highest price' if payment is to be received (See *Financial Procedure Rules* on disposal of assets).
- 10.7 If the former criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. The criteria to be assessed against may be chosen from the following:
- Quality, including technical merit, aesthetic and functional characteristics, social, environmental and innovative characteristics
 - Organisation, qualification and experience of staff assigned to perform the *Contract*
 - After-sales service and technical assistance
 - Cost, on the basis of a fixed price or life-cycle costing, etc. (this list is not exhaustive)
- 10.8 *Award Criteria* must be accompanied by the relative weightings ranked in order of importance to the *Council* in the context of the specific procurement and must be linked to the subject-matter of the *Contract*.

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10.9 *Award Criteria* must not include:

- *Selection Criteria*;
- *Non-Commercial Considerations* (See Definitions Appendix);
- Matters which discriminate against *Suppliers*, irrespective of size, from the *European Economic Area* or signatories to the *Government Procurement Agreement*
- Criteria that is not related and proportionate to the subject matter of the *Contract*.

11. PROCUREMENT DOCUMENTATION

11.1 *Council Officers* must prepare their *Procurement Documentation* using the *Council's* standard templates, which are available on the *Council's* Intranet site or via the *Corporate Procurement Officer*.

11.2 The *Procurement Documentation* shall state that no *Bid* will be considered unless it is received by the date and time stipulated. No *Bid* delivered in contravention of this clause shall be considered under any circumstances.

11.3 The *Procurement Documentation* shall include the following:

- A specification that describes the *Council's* requirements in sufficient detail to enable the submission of competitive *Bids*;
- A requirement for *Suppliers* to declare that the *Bid* content, price or any other figure or particulars concerning the *Bid* have not been disclosed by the *Supplier* to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- A requirement for *Suppliers* to complete fully and sign all *Bid* documents including a form of *Tender* and certificates relating to canvassing and non-collusion;
- Notification that *Bids* are submitted to the *Council* on the basis that they are compiled at the *Supplier's* expense;
- In the event that the *Contract* will not be divided in to separate *Lots*, the procurement documents will indicate the main reasons why not;
- 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;
- Notification that no *Bid* will be considered unless it is submitted via the *Council's* approved electronic tendering system;
- A stipulation that any *Tenders* submitted by fax or e-mail shall not be considered, see Rule 13.3;
- The method by which any arithmetical errors discovered in the submitted *Bids* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa;
- Instructions to *Suppliers* concerning the procurement process and *Procurement Documentation* and information concerning the *Contract* opportunity;
- The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the *Supplier's* pricing;
- A requirement for *Suppliers* to indicate in its *Tender* any share of the *Contract* that it intends to sub-contract to third parties and details of those sub-contractors, if known;

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- A requirement for *Suppliers* to indicate in its *Tender* whether it is bidding as part of a consortium and details of the other consortia members.
- 11.4 All *Suppliers* invited to *Bid* 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.
- 11.5 All *Procurement Documentation* must specify the goods, service or works that are required, together with the terms and conditions of *Contract* that will apply (see Rule 16).
- 11.6 The *Procurement Documentation* must state that the *Council* is not bound to accept any *Quotation* or *Tender*, either as a whole or in part.

12. SHORTLISTING

- 12.1 The *Officer* will not include a *Pre-Qualification* stage in any procurement under the relevant *EU Threshold*. *Officers* may reject *Bids* from *Suppliers* submitted against procurement procedures under this threshold only in accordance with the mandatory or discretionary rejection *Selection Criteria*.
- 12.2 Where the procurement exceeds the *EU Threshold*, any *Shortlisting* must be done in accordance with the permitted *Selection Criteria*.
- 12.3 Evaluation criteria must be transparent and sub-criteria specified. *Shortlisting* records must be kept and held for the period specified in the *Council's* Document Retention Policy and Rule 6.
- 12.4 Where the *Contract* is subdivided in to *Lots* the procurement documents shall indicate whether *Tenders* may be submitted for one, for several or for all of the *Lots*.
- 12.5 Where the *Contract* is subdivided in to *Lots* the procurement documents may state the number of *Lots* that may be awarded to one *Supplier* and any criteria or rules that will be applied in determining the way in which the *Lots* will be awarded.
- 12.6 *Officers* must contact the *Corporate Procurement Officer* prior to implementing *Shortlisting* criteria in to their procurement documents. The *Officers* responsible for *Shortlisting* are specified in Rule 8.1.4.

13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

- 13.1 *Suppliers* must be given an adequate period 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 *EU Procedure* lays down specific time periods (see the *Council's Purchasing Guidance on the Council's Intranet*).
- 13.2 All *Tenders* must be submitted through the *Council's* approved and secure electronic tendering system.
- 13.3 *Tenders* received by fax or other electronic means (e.g. email) must be rejected.

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13.4 Each *Tender* must be:

- Suitably recorded so as to subsequently verify the date and precise time it was received
- Adequately protected immediately on receipt to guard against amendment of its contents
- Recorded immediately on receipt in the *Tender Register Pro-Forma*.

13.5 *Tenders* received after the set date and time must not be accepted and the *Corporate Procurement Officer* informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.

Tender Opening

13.6 The Member Services department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. *Tenders* in excess of the *EU Threshold* must be opened in the presence of a *Council Member*.

13.7 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum) must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

14.1 Providing clarification to potential or actual *Suppliers* of an *Invitation to Tender* or *Tender* is permitted:

- In writing via the *Council's* electronic tendering system;
- At a meeting provided that a written record is made of the meeting
- In a way that is fair, transparent and equal to all participants.

14.2 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, such decisions must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price. If in doubt, seek professional advice from the *Corporate Procurement Officer* or *Monitoring Officer*.

14.3 If post-tender negotiations are 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 *Suppliers* have been informed.

14.4 *Officers* appointed by the Group Manager (Lead Specialist or Level 3 Manager) 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.

DEFINITIONS

- 14.5 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Corporate Procurement Officer* who 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.
- 14.6 Where post-tender negotiation results in a fundamental change to the specification (or *Contract* terms) the *Contract* must not be awarded but re-tendered.

15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING SUPPLIERS

- 15.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Suppliers* must be preserved at all times and information about one *Supplier's* response must not be given to another *Supplier*.
- 15.2 *Tenders* and *Quotations* must be evaluated and awarded in accordance with the *Selection* and *Award Criteria*. 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.
- 15.3 The arithmetic in compliant *Tenders* must be checked. **If arithmetical errors are found they should be notified to the *Tenderer*, who should be requested to confirm the price or withdraw their *Tender*.**
- 15.4 *Officers* may use *Electronic Auctions* as means of driving additional *Value for Money* and as part of the *Award Criteria*, where this process is completed using the *Council's* electronic tendering portal.
- 15.5 *Electronic Auctions* may also be used as a tool for seeking *Bids* in sale transactions, such as land, where the highest possible price is sought from an applicant. (Links to 'Disposals' in *Financial Procedure Rules*). Where the *Officer* wishes to use such a tool, the *Corporate Procurement Officer* must be contacted to offer assistance.
- 15.6 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed *Contracts*, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules. Awarding of *Contracts* that are expected to exceed the approved budget sum shall be referred back to the S. 151 *Officer*.
- 15.7 Where the **Total Value is over £50,000**, the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, and include the reasons why for the unsuccessful bidders. Where an unsuccessful *Supplier* requests debrief information the *Officer* may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the *Officer* to do so.
- 15.8 Where the **Total Value will exceed the EU Threshold** the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*, unless it is known sooner in the procurement process that a *Supplier* has been unsuccessful, in which case the *Officer* must notify the *Supplier* soonest with as much of the

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information required at 15.8 below as possible. (See 15.9 for further details). The latter applies most particularly, but not exclusively, in the case of a Restricted Procedure whereby the *Officer* must communicate the list of shortlisted *Suppliers* to those that have not been shortlisted.

15.9 The letters to the unsuccessful *Suppliers* must contain:

- The criteria for the award of the *Contract*;
- The reasons for the decision, including the characteristics and relative advantages of the successful *Tender*, the score (if any) obtained by:
 - the *Supplier* which is to receive the notice; and
 - the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*,
- The name of the *Supplier* to be awarded the *Contract*, or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*; and
- A precise statement of either—
 - when the *Standstill Period* is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
 - the date before which the *Council* will not enter into the *Contract* or conclude the *Framework Agreement* or *Dynamic Purchasing System*.

15.10 The *Officer* must provide a *Standstill Period* of at least ten working days, where the communication is made electronically (fifteen days if not) to allow unsuccessful *Suppliers* the opportunity of challenging the decision before the *Officer* awards the *Contract*. The *Standstill Period* shall end at midnight on the final day of *Standstill* and no sooner. Where the last day of the *Standstill Period* is not a working day, the *Standstill Period* is extended to midnight at the end of the next working day. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the *Monitoring Officer* and *Corporate Procurement Officer*.

15.11 Where the *Supplier* has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said *Supplier*, with the reasons that they were unsuccessful.

16. CONTRACT DOCUMENTS

16.1 Relevant Contracts

16.1.1 All *Contracts* above £7,500 shall be **in writing** in a form approved by the *Monitoring Officer*.

16.1.2 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*.

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16.1.3 The *Council's* purchase orders or standard terms and conditions must be used for simple purchases of goods. In any circumstances that require special terms and conditions, the advice of the *Monitoring Officer* and *Corporate Procurement Officer* must be sought.

16.1.4 In addition, every *Relevant Contract* of purchase **over £50,000** must also state clearly as a minimum:

- Health and safety requirements (where applicable and proportionate)
- Sustainability and environmental management requirements (where applicable and proportionate)
- Social Value Act requirements (where applicable, i.e. for service *Contracts* with a *Total Value* in excess of the *EU Threshold*)
- Equality Act 2010 requirements (where applicable and proportionate)
- Any insurance requirements
- Data protection requirements, if relevant
- Charter standards to be met, if relevant
- Bribery Act 2010 requirements
- Freedom of Information Act requirements
- A right of access to relevant documentation and records of the *Contractor* for monitoring and audit purposes if relevant
- Prevention of Corruption and Anti Competitive Behaviour (see paragraphs 18.1 and 18.2) and
- A transparency clause that allows the *Council* to comply with the government's transparency agenda
- Any confidentiality requirements
- Tax evasion and avoidance requirements
- A prompt payment clause stating that payment of undisputed invoices will be made within 30 days by *Contractors* and sub*Contractors*
- A clause concerning technical staff where those staff are inherent to the successful outcome of the *Supplier's Bid* giving a requirement for the *Supplier* to notify the Authority where they intend to replace those members of staff
- Termination clauses that are compliant with the *Public Contracts Regulations 2015*.

Where *Agents* are used to let *Contracts*, those *Agents* must comply with the *Council's* Contract Procedure Rules

16.1.5 The formal advice of the *Monitoring Officer* on the form of documentation to be used must be sought for *Contracts* where any of the following apply:

- Where the *Total Value* exceeds £50,000; or
- Below £50,000 if other than the *Council's* standard terms and conditions are to be used; or
- Those involving leasing arrangements (when the *S. 151 Officer* should also be advised); or
- Where it is proposed to use a *Supplier's* own terms; or
- Those involving the purchase of application software with a *Total Value* of more than £50,000; or
- Those that are complex in any other way.

16.2 Contract Formalities

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16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Purchase orders - up to £50,000	Electronic Order or Signature	Authorised <i>Officer</i> (see Rule 16.2.3)
<i>Contracts</i> and licences up to £50,000. <i>Council's</i> Standard Terms and Conditions	Signature	<i>Group Manager</i> or Nominated Deputy (Rule 16.2.3) or <i>Monitoring Officer</i>
<i>Contracts</i> and licences up to £50,000 Non Standard Terms and Conditions	Signature	<i>Group Manager</i> , on the advice of the <i>Monitoring Officer</i> (Rule 16.2.3) or <i>Monitoring Officer</i>
Above £50,000 or if any of para 16.1.5 applies except ICT software.	Sealing (unless advised by the <i>Monitoring Officer</i> that sealing is not necessary)	<i>Monitoring Officer</i> (See also Rule 16.2.3 and 16.3)
ICT - system developments and purchases of computer equipment or software	Method of completion in line with limits above	As above, except in all cases to be the Support Service Manager in consultation with the Lead Specialist for ICT

Method of Completion By

16.2.2 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 *Monitoring Officer* or *S. 151 Officer*.

16.2.3 The *Officer* responsible for securing a signature on the *Contract* must ensure that the person signing for the other *Contracting* party has authority to bind it. An award letter is insufficient. The use of Letters of Intent (which are binding for the *Council*) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the *Monitoring Officer* before issue. The same rules relating to signatures apply.

16.2.4 Any new *Contract* should not be signed until the *Contract* it replaces is either ended or under notice.

16.2.5 Depending on the circumstances an *Officer* of the *Council* may be subject to disciplinary action if he/she signs a *Contract* without being specifically authorised to do so.

16.2.6 All **original** *Contracts*, (save straight forward purchase orders, must be given to the *Monitoring Officer* for secure storage. **It is the responsibility of the Officer to ensure that this happens, only copies of Contracts should be held within services.** An electronic copy must be copied to the *Corporate Procurement Officer* for all *Contracts* with value over £50,000. The *Contract* award must also be notified to the *Business Development Group Manager*.

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16.2.7 *Contract* award notices must be placed on the *Council's* electronic tendering system and *Contracts Finder*.

16.3 Sealing

16.3.1 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, or
- There is any doubt about the authority of the person signing for the other *Contracting* party.

South Hams

16.3.2 Where appropriate *Contracts* are completed by each side adding their formal seal. The fixing of the *Council's* seal must be witnessed by a further *Officer* on behalf of the *Monitoring Officer*.

16.3.3 Every *Council* sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the *Council's Constitution*.

West Devon

16.3.4 *Contracts* must be sealed in accordance with *Council Procedure Rule 16.3* and will be overseen by the *Council's* Solicitor.

17. BONDS AND PARENT COMPANY GUARANTEES

17.1 The *Officer* must consult the *S. 151 Officer* about whether a *Parent Company Guarantee* is necessary when a *Supplier* is a subsidiary of a parent company and:

- The *Total Value* exceeds £50,000, or
- Award is based on evaluation of the parent company, or there is some concern about the stability of the *Supplier*.

17.2 The *Officer* must consult the *S. 151 Officer* about whether a *Bond* is needed:

- 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 *Supplier* **i.e. following a formal risk assessment.**
- Where the *Total Value* exceeds £500,000.

18. PREVENTION OF CORRUPTION & ANTI COMPETITIVE BEHAVIOUR

18.1 Prevention of Corruption

18.1.1 The *Officer* needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent

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bribery, as well as the *Council's* Anti Fraud, Corruption and Bribery Policy and Strategy.

18.1.2 The *Officer* must comply with the *Officers' 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 18.1.3 below.

18.1.3 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:*”

- (a) 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
- (b) Commit an offence under the Bribery Act 2010, 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.”

18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, and this should be followed where it is practical to do so:

- : (a) Use non-collusion clauses, certificates of independent *Bids* and requests;
- (b) Ensure sufficient credible bidders;
- (c) Look for suspicious bidding patterns (further guidance available);
- (d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain *Suppliers' areas*.

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the *Officer* should contact the *Corporate Procurement Officer* or Internal Audit.

19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a *Contract* in which he or she has an *Interest* has been or is proposed to be entered into by the *Council*, he or she shall immediately give written notice to the *Monitoring Officer*.

19.2 *Officer* must comply with the *Officers' Code of Conduct*, as discussed at paragraph 18.1.2.

DEFINITIONS

- 19.3 All *Councillors* must comply with the Members' *Code of Conduct* and register all *Contracts* for goods, services or works made between the *Council* and:
- The *Councillor*,
 - A firm in which s/he is a partner
 - A company in which s/he is a remunerated director
 - A member of the *Councillor's* family or a person with whom they have a close association, or a partnership or company employing or operated by such a person
 - Any person or body who has a place of business in the Council's area and in which the *Councillor* has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredth of the total issued share capital) which ever the lower.
- 19.4 The *Monitoring Officer* shall maintain a record of all declarations of *Interests* notified by *Councillors* and *Officers*.

20. MANAGING CONTRACTS

- 20.1 **Group Managers (or Lead Specialists and Level 3 Managers) must appoint Contract Managers for all new *Contracts* and for the entirety of the *Contract*.**
- 20.2 Contract Managers must follow best practice in the area of supplier relationship and contract management.
- 20.3 **Extensions** should not be made unless this is provided for in the *Invitation to Tender* and the *Contract* itself. Group Managers (Lead Specialists or Level 3 Managers as appropriate) must contact the *Monitoring Officer* and the *Corporate Procurement Officer* before any extension is actioned. Any extensions to *Contracts* are to be in writing in the form approved by the *Monitoring Officer*, sequentially numbered and stored with the original *Contract*.
- 20.4 **Payments** to *Contractors* will only be made on certification by the designated Contract Manager in line with the *Financial Procedure Rules*.
- 20.5 Ongoing checking of the financial position of the successful *Contractor* throughout the period of the *Contract*. The level of any review will vary depending on the type of *Contract* and *Contractor* involved, so the advice of the *S. 151 Officer* or Internal Audit must be sought
- 20.6 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the *Contract*.
- 20.7 If the Contract Manager does not consider that such damages should be deducted s/he must seek and follow the advice of the *Monitoring Officer* and *S. 151 Officer*.
- 20.8 The Contract Manager must notify the *Monitoring Officer*, the responsible *Group Manager* and the *S. 151 Officer* promptly on becoming aware of any significant **dispute**, or **claim for additional payment** in connection with a

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Contract. No liability shall be accepted without the approval of the Executive / Hub Committee in such cases.

21. MODIFICATION OF CONTRACTS DURING THEIR TERM

21.1 *Contracts and Framework Agreements* may be modified during their term without the need for a new procurement procedure in the following limited cases:

- where the change has already been provided for in the original procurement documents in clear, precise and unequivocal review clauses, provided that they state the scope and nature of the possible modifications or options and the conditions under which they may be used and they do not alter the overall nature of the *Contract* or *Framework Agreement*
- for additional works, services or goods by the original *Supplier* that have become necessary and were not included in the initial procurement, where a change of *Supplier* cannot be made for economic or technical reasons or would cause significant inconvenience or substantial duplication of costs
- where the need for change follows circumstances that could not have been foreseen
- where the modification does not alter the overall nature of the *Contract*
- where an increase in the price does not exceed 50% of the value of the original *Contract* or *Framework Agreement*
- where a new *Supplier* replaces the one to which the *Council* originally awarded the *Contract*
- where the change is not substantial.

21.2 Where a change is proposed to a *Contract* that exceeds the *EU Threshold* the *Officer* must contact the *Corporate Procurement Officer*.

22. RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 A business case must be prepared for all procurements with a potential value over the *EU Threshold*. 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 Managers* must:

- Maintain a risk register during the *Contract* period in accordance with the *Council's* Risk Management Strategy
- Undertake appropriate risk assessments and for identified risks (in consultation with the *Council's* Lead *Officer* – Risk Management and Risk Management Strategy as appropriate)
- Ensure contingency measures are in place
- Monitor the financial performance of the *Contractor* or any parent company and alert the *S. 151 Officer* if there is any concerns.

23. CONTRACT MONITORING, EVALUATION AND REVIEW

Contracts Financed from Revenue

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- 23.1 All *Contracts* which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to formal review(s) by the Contract Manager with the *Contractor*. The review may be conducted at a frequency that is determined by the risk value and profile of the *Contract*.
- 23.2 As a minimum, for all *Contracts* with a value higher than the *EU Threshold* limits, or which are *High Risk*, an annual report must be submitted to the *Senior Leadership Team* detailing the financial and service performance.
- 23.3 A *Contract* 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 Contract Manager must monitor and take any necessary corrective action in respect of:
- Performance
 - Compliance with specification and *Contract*
 - Cost
 - Any *Value for Money* requirements
 - User satisfaction and risk management.
- 23.5 When the *Contract* is completed the Contract Manager must submit a report to the Senior Leadership Team. The report must evaluate the extent to which the purchasing need and the *Contract* objectives (as determined in accordance with Rule 5.2) were met by the *Contract*. 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*.

Contracts Financed from the Capital Programme

- 23.6 Procurement for approved capital projects must be made in line with these Rules. Having regard to Rule 15.4, where any *Tender* for projects under the Capital Programme **exceeds the available budget by 10% or £50,000** approval to proceed may be made by the Community of Practice Lead Specialist for Assets and *S. 151 Officer* with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Executive / Hub Committees should be sought prior to acceptance.
- 23.7 The *S. 151 Officer* and the Community of Practice Lead Specialist for Assets, has monitoring responsibilities to receive regular reports from Project Managers on the performance of their project; and report quarterly to the Executive / Hub Committee on the overall progress of the Capital Programme.
- 23.8 The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

Project Overspends

- 23.9 In monitoring expenditure on a project, the *Officer* / Project Manager should seek the formal approval of the *S. 151 Officer*, Community of Practice Lead Specialist for Assets (or Executive / Hub Committee where relevant) at the

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earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded.

The following table sets out the authorisation required:

Project Total Value excl. VAT	Overspend excl. VAT	Authorised By
Up to £500,000	£25,000 to £50,000	<i>S. 151 Officer</i> Community of Practice Lead Specialist for Assets With retrospective reporting to the Executive/Committee within the quarterly monitoring report.
Up to £500,000	Exceeds £50,000	Executive/Committee
Over £500,000	10%	Executive/Committee

24. STATE AID

Definition

24.1 State aid can be defined any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and/or *Suppliers* or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

24.2 Where the *Council* wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

24.3 For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is give by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

24.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the *Council* will not be permitted to grant it.

Exemptions for State Aid

24.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

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- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period
 - Aid in favour of SMEs, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection.
 - Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.
- 24.6 Such Aid must still be notified to the European Commission and as a result *Council Officers* are advised to seek the advice and guidance of the *Council's Solicitor* and/or *Monitoring Officer* and *Corporate Procurement Officer* where State Aid may be said to exist on a particular project or procurement.

25. DEVELOPMENT AGREEMENTS

Definition

- 25.1 A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercial desirable as a result of incentivisation by the public sector body.
- 25.2 Where the *Council* wishes to establish a development agreement that meets the definition above again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or *Concession Contract* and may therefore be subject to the legislation on public procurement.
- 25.3 For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
 - The development agreement is ancillary or incidental to a transfer or lease of land or property from the *Council* to the developer, and is intended to protect the interests of the *Council* which is the lessor or otherwise retains an interest in the land or property;
 - The development agreement is based on proposals put forward by the developer, rather than requirements specified by the *Council*, albeit that these proposals may be sought, and the "winner" chosen by the *Council*;
 - There is no pecuniary interest passing from the *Council* to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;

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- The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
- The development does not consist of or contain works for the direct economic benefit of the *Council*. The involvement of the *Council* consists only in the exercise of statutory land-use planning powers.

25.4 Where a development agreement cannot be said to meet the criteria defined above a public works or *Concession Contract* must be awarded in accordance with the public procurement legislation.