

# Contract Procedure Rules

---

## Contents

1. INTRODUCTION .....	2
2. APPLICATION AND INTERPRETATION .....	2
3. PROCUREMENT GUIDANCE .....	6
4. RECORD KEEPING .....	6
5. FORM OF CONTRACT .....	7
6. LOW VALUE CONTRACTS (under £5,000) .....	7
7. MEDIUM VALUE CONTRACTS (£5,000-£100,000) .....	8
8. HIGH VALUE CONTRACTS (over £100,000) .....	8
9. TENDER / QUOTATION PROCEDURE .....	8
10. PROVISION OF PRE BID SUBMISSION CLARIFICATION .....	9
11. EVALUATION PRINCIPLES .....	9
12. TECHNICAL AND FINANCIAL APPRAISAL .....	10
13. AWARD OF CONTRACT .....	10
14. CONTRACT VARIATIONS (Changes to duration, value, scope and Contractor) .....	10
15. CONTRACT EXTENSIONS .....	11
16. CONCESSIONS AND UTILITIES .....	11
17. CONTRACTOR SUBSIDIES AND STATE AID .....	11
18. CONTRACT MANAGEMENT .....	12
19. CONSULTANTS .....	13
20. SUB-CONTRACTING .....	13
21. NON-COUNCIL STAFF .....	13
22. PUBLIC TO PUBLIC COOPERATION OR IN-HOUSE BIDDING .....	13
23. INSURANCE .....	14
24. SECURITY FOR PERFORMANCE .....	14
25. CONTRACT EXECUTION .....	14
26. GOVERNANCE .....	14
27. DEPARTURE FROM THE CONTRACT PROCEDURE RULES .....	15
28. TRADING .....	15
APPENDIX 1 - THE COUNCIL'S PROCUREMENT PROCESS .....	16
APPENDIX 2 - APPROVAL LEVELS .....	17

## 1. INTRODUCTION

- 1.1 The Council has a statutory duty under Section 135 Local Government Act 1972 to make Rules for the provision of supplies, services, works and Concessions. These Rules should be read in conjunction with the Council's Procurement Guidance published on the Council's Intranet which provides more detail on specific procedures and practice.
- 1.2 These Contract Procedure Rules apply to all new procurements from 1 January 2016. The City Solicitor is responsible for updating and maintaining these Rules and has delegated authority to amend these Rules and the Procurement Guidance from time to time in article 12 of the constitution.
- 1.3 These Rules apply to all Contracts that are to be entered into by the Council as appropriate to the value of the transaction. They also apply to any Concession Contracts or Grant Agreements made by the Council that have required service outcomes or specifications.

## 2. APPLICATION AND INTERPRETATION

### 2.1 Definitions

In these Rules:

- "Anti-Bribery Legislation"** Means the Bribery Act 2010 any provision relating to the prevention of corruption in any legislation relating to Local Government and any statute amending or replacing them and any statutory instrument made thereunder.
- "Authorised Officer"** means the officer with delegated authority from the relevant Service Director for the receipt of quotations and tenders and for signing Contracts
- "Best Value"** means the Council's duty under Section 3 Local Government Act 1999 to promote economies, efficiencies, and effectiveness
- "Category Manager"** means the person responsible for overseeing all procurement and Contract management activity for the Category within the Council that they are responsible for.
- "Commissioner"** means the person responsible for planning and scoping the requirements which form the object of the Contract, as described in the Procurement Guidance.
- "Concession Contract"** means an agreement whereby the Council grants another person, whether legal or natural, the right to provide a service or function, or carry out works, at that person's risk, to the public, as more fully described in Procurement Legislation and with appropriate and measurable levels of service (KPIs)
- "Contract Manager"** means the person responsible for the management of the Contract, its scope and maintaining day-to-day relationships with the supplier as described in the Procurement Guidance.
- "Contract"** means a Contract (whether in writing or otherwise) for supplies, services, or for the execution of any works and also includes Framework Agreements, Dynamic Purchasing Systems, and Concession Contracts. It excludes exempt Contracts.
- "Contracting Authorities"** means Central Government, local government bodies, bodies governed by public law or associations formed by any one or more of these.

<b>"Contract Guide"</b>	means a document based on a standard template which summarises the key procedures and actions to be undertaken in the management of the Contract,
<b>"Contract Operations Manual"</b>	means a document based on a standard template which provides, in a summary form, information on key stakeholders, relationships, contractual and financial arrangements concerning the Contract.
<b>"Contractor"</b>	means any person or company seeking to enter into a Contract with the Council.
<b>"Council"</b>	means Portsmouth City Council.
<b>"Dynamic Purchasing System"</b>	means a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the Contracting Authority and open throughout its validity to any Contractor which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
<b>"Equalities"</b>	Any duty or requirement placed on the council or any other body by the Equality Act 2011 or any legislation amending or replacing it and any statutory instrument made thereunder.
<b>"eSourcing Solution"</b>	means the on-line system maintained by the Council for notifying potential suppliers and Contractors of Contract opportunities, issuing tender documentation, administration of clarifications, receiving and receipting bids, awarding and managing Contracts and maintaining compliance with the Transparency Code through the publication of Contract spend.
<b>"Estimated Total Cost"</b>	means the aggregate total whole life cost of the supplies or services to be provided or works to be performed under a Contract estimated prior to its procurement, calculated in accordance with Procurement Legislation, as described in the Procurement Guidance.
<b>"European Directive"</b>	means a Directive made in accordance with the Treaty on the Functioning of the European Union by the Commission of the European Union.
<b>"European Threshold"</b>	means the threshold applying to local authorities at which supplies, services and works are subject to the European Directives.
<b>"Exempt Contract"</b>	means Contracts for the acquisition or disposal of an interest in land, the grant of a licence (unless a licence involves the letting of a Concession Contract), the raising of finance, Contracts of employment or a Contract for the provision of legal services in connection with litigation or dispute resolution.

<b>"Framework Agreement"</b>	means an agreement which establishes the terms under which a Contractor will enter into Contracts with the Contracting Authority in the period during which the Framework Agreement applies. A Contractor may be awarded a Contract under a framework for a period which extends beyond the termination date of the framework providing that the Contract is entered into before that date and is proportionate to the duration of the framework.
<b>"Grant Agreement"</b>	means an agreement whereby the Council provides monies to another person, whether legal or natural to provide a function or service without the expectation of any monetary benefit to the Council except the repayment of the monies if the services are not performed or not performed to a specified standard.
<b>"Joint Procurement Agreement"</b>	means combining the procurement actions of two or more Contracting Authorities. The key defining characteristic is that there should be only one tender published on behalf of all participating authorities.
<b>"Operational Contract"</b>	means a Contract that: <ul style="list-style-type: none"> <li>• lasts more than eighteen (18) months but less than four (4) years (including extensions) in duration; or;</li> <li>• is a Contract with a lifetime value of less than £4 million and greater than £400,000 (including extensions) or;</li> <li>• is a Contract for major equipment requiring on-going maintenance.</li> </ul> <p>Notwithstanding the above, a Contract that exceeds eighteen (18) months in length and is less than £100,000 in lifetime value is classified as a Transactional Contract.</p>
<b>"Procurement Category Business Partner"</b>	means the procurement officer responsible for advising the relevant Authorised Officer.
<b>"Procurement Document"</b>	means any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, including the Contract notice, the prior information notice where it is used as a means of calling for a competition, the technical specifications, the descriptive document, the invitation to tender, proposed conditions of contract, formats for the presentation of documents by Contractors, information on generally applicable obligations and any additional documents
<b>"Procurement Legislation"</b>	means the procurement directives of the European Union and any regulations that implement them within the United Kingdom
<b>"Service Director"</b>	means the senior officer under the Council's constitution of the Council Service responsible for the Contract
<b>"Social Value Duty"</b>	Means the duty imposed upon the Council by the Public Services Social Value Act 2011

<b>"Regulated Contract"</b>	means a Contract to be entered into which is subject to the provisions of the Procurement Legislation (in particular the Public Contracts Regulations 2015 and Concession Contracts Regulations 2016 as amended or replaced from time to time). The most up to date version of the Regulations may be obtained from Legal Services.
<b>"Strategic Contract"</b>	means a Contract that: <ul style="list-style-type: none"> <li>• lasts more than four (4) years (including extensions) in duration; or</li> <li>• is a Contract with a lifetime value in excess of £4 million (including extensions); or</li> <li>• is a Contract which is critical to the ongoing effective operation of the Council and is sourced from a market that only has three or fewer providers capable of supply; or</li> <li>• is an annually renewable Contract that has been in place for four or more years; or</li> <li>• is a Contract with potential for either high service user risk or high risk of reputational impact to the Council.</li> </ul> <p>Notwithstanding the above, a Contract that exceeds four (4) years in length but is under £1 million in lifetime value is classified as an Operational Contract.</p>
<b>"Transactional Contract"</b>	means a Contract that; <ul style="list-style-type: none"> <li>• lasts less than eighteen (18) months (including extensions); or</li> <li>• has a lifetime value less than £400,000 (including extensions); or</li> <li>• is a Contract for one-off supplies for a product to be consumed with no on-going maintenance.</li> </ul>
<b>"Transparency Information/Code"</b>	means the information that the Council is required to publish under the Local Authority Transparency Code 2015 to be found at <a href="https://www.gov.uk/government/publications/local-government-transparency-code-2015">https://www.gov.uk/government/publications/local-government-transparency-code-2015</a> as amended or replaced from time to time.
<b>"Umbrella Agreement"</b>	means one of the following agreement types: Framework Agreements, Dynamic Purchasing System, corporate Contracts, shared service arrangements, purchase of services from another Contracting Authority, etc.

Any departure from the definitions of "Operational", "Transactional" or "Strategic" in relation to Contracts shall be approved by the Procurement Manager, whose decision shall be final.

## 2.2 Compliance and Best Value, Social Value Duties, Equalities and Anti-Bribery Legislation

Every Contract, except Exempt Contracts, made by the Council shall comply with these Rules. Where compliance with these Rules contradicts the requirements of any statutory legislation the views of Legal Services must be obtained. Where compliance with these rules contradicts any specific best practice guidance advice must be sought from Legal Services and Procurement Services.

The Council is under a legal duty to promote Best Value and to consider the Public Services (Social Value) Act 2013 and the Public Sector Equality Duty and every officer engaged in the letting of Contracts shall have regard to these duties.

All Members and Officers of the Council must disclose any conflict of interest that they may have relating to a Contract to which these rules relate and in which they are acting on behalf of the Council. If any member or officer has such an interest they must not take any further part in the awarding of the Contract or grant and complete any appropriate declarations and registrations of interest.

No Member or Officer may solicit or receive any gift or financial inducement in respect of any Contract which is being awarded by the Council or commit any corrupt act or any offence under the Bribery Act 2010 or any act in breach of the Codes and Protocols set out in Part 4 of the Council's Constitution.

#### 2.3 Subdivision of Contracts

No Contract shall be subdivided into smaller Contracts or let via a series of short term agreements so as to avoid compliance with these Rules or Procurement Legislation. Contracts may be divided into lots, particularly to encourage procurement opportunities for Small and Medium Enterprises but the costs of the Contract shall be aggregated accordingly. Where a Regulated Contract is not divided into lots then a written record of that decision, with reasons, shall be included in the Contract notice and kept on the Council's eSourcing Solution. Detailed guidance on aggregation is provided in the Procurement Guidance. Contract and Category Managers must review the aggregate spend on Contracts for which they are responsible regularly (and at least every 6 months) to assess whether new Contracts should be procured.

#### 2.4 Value Added Tax

In calculating the value of a Contract for the purposes of these Rules, the sum shall be exclusive of VAT.

#### 2.5 Schools

Maintained Schools, and the Council where it acts on their behalf, must comply with these Rules when procuring Contracts. This includes use of the Council's eSourcing solution for such Contracts. In addition the appropriate Contract register entries must be made as set out in Rule 4.

#### 2.6 Other Contracting Authorities

Where the Council procures a Contract jointly with one or more other Contracting Authorities then approval of the proposed tender must be given through the Council's Gateway Process involving, where appropriate, the Strategic Contract Management Board. Where such a collaborative procurement exercise is undertaken then the Procurement Category Business Partner must be consulted and use of a Joint Procurement Agreement shall be considered as appropriate.

### **3. PROCUREMENT GUIDANCE**

3.1 Members and Officers must have regard to the guidance relating to the procurement of Contracts through the Gateway process and the awarding of grants through the Grantway process. Officers must also ensure that they carry out ongoing management of the Contract in accordance with these rules and any guidance issued by the Procurement Service.

### **4. RECORD KEEPING**

4.1 For all Contracts with a value of £5,000 or greater the following must be logged on the Council's eSourcing solution prior to commencement of the Contract:

- A copy of the draft Contract document to be replaced with a signed copy when available.
- The evaluation documents
- The standstill notice - if applicable

- Any waivers
- Any variations to the Contract
- Copy of the Contract operations manual (in respect of Strategic Contracts)
- Copy of the Contract Guide (in respect of Operational and Strategic Contracts)

4.2 Contracts should be reviewed annually and information updated accordingly.

4.3 A copy of the Contract Set-up form

## **5. FORM OF CONTRACT**

5.1 Contracts must accord with the Approved Forms of Contract and any significant amendments or deviations must:

- a) Be referred to the Service Director, in relation to Contracts up to a value of £50,000;
- b) Be referred to the Procurement Category Business Partner, in relation to Contract with a value between £50,000 and £100,000
- c) Be referred to Legal Services in relation to Contracts with a value of £100,000 or above.

Each of whom shall have regard to the strategic importance of the Contract, and the risks associated with the change.

5.2 Risks shall be categorised as low, medium and high.

- A Low Risk is one which is unlikely to occur and which will have little or no impact on the provision of supplies and services under the Contract.
- A Medium Risk is one which is likely to occur and which will have significant impact on the provision of supplies and services under the Contract.
- A High Risk is one which is almost certain to occur and will have a major impact on the provision of supplies and services under the Contract.

5.3 Where a risk comprises one element from any category then the risk shall be assessed as being in the higher category.

5.4 The advice of legal services shall be sought where any of the risks are assessed as being medium or high.

5.5 In circumstances where an Approved Form of Contract is not to be used, the proposed form shall be approved by legal services.

5.6 Where these Rules require a Contract opportunity to be offered by tender, all documents relating to that tender, including draft terms of Contract must be available when the opportunity is advertised or when the OJEU Contract notice is published.

## **6. LOW VALUE CONTRACTS (under £5,000)**

6.1 Where the Estimated Total Cost of a Contract does not exceed £5,000 no Contract shall be let unless at least three quotations have been obtained or the purchase is being made via a compliantly let Umbrella Agreement.

6.2 In the event that it is not possible due to factors outside of the Authorised Officers control - e.g. single source such as DVLA, Land Registry, utilities, etc. or price setting market norms such as low value purchases from retailers, transport operators, etc. - to obtain three quotations, the Authorised Officer is required to ensure Value for Money is achieved on a proportionate basis by consideration of purchasing options available.

6.3 Where quotations are sought the Authorised Officer must ensure that an audit trail is maintained and recorded on file. Quotations should be sought ideally in writing and via the Council's eSourcing solution. Where verbal quotations are sought the quotation from the successful organisation must be confirmed in writing and put on file.

6.4 In instances where no quotations have been sought where prices are set by seller in line with market norms no file note is required. For instances where competition is viable but less than three quotations have been obtained and the purchase has not been made via a compliant

Umbrella Agreement the Authorised Officer should file a written record stating the reasons for this.

- 6.5 Where supplies or services are paid for using a Purchasing Card then the Authorised Officer must satisfy themselves that it is an appropriate method of purchase and must not use the card in a way that will permit avoidance of these rules.

See flowchart at Appendix 1 for more details.

## **7. MEDIUM VALUE CONTRACTS (£5,000-£100,000)**

- 7.1 No Contract with an Estimated Total Cost between £5,000 and £100,000 shall be let unless at least three written quotations have been obtained from appropriately qualified and competent bidders via the Council's eSourcing solution or the purchase is being made via a compliantly let Umbrella Agreement.
- 7.2 Where the provisions of the Council's Grantway process apply these must be followed in strict accordance.
- 7.3 In seeking quotations, the Authorised Officer must ensure that an audit trail is maintained and recorded on the Council's eSourcing solution. Quotations must be sought via the Council's eSourcing solution. The Council's standard procurement documentation must be used.
- 7.4 Where the Authorised Officer decides to invite quotations via advertised process via publication to the unrestricted area of the Council's eSourcing solution the opportunity must also be advertised on Central Government's Contracts Finder.
- 7.5 In instances where no quotations have been sought and the purchase has not been made via a compliant umbrella agreement or where quotations have been sought but fewer than three have been obtained the Authorised Officer must seek approval from the relevant Service Director and any other officers relevant to the decision making process prior to the issue of Contract award letters to bidders in accordance with delegated authority provisions. A waiver must be completed, approved and filed on the Council's eSourcing solution.

## **8. HIGH VALUE CONTRACTS (over £100,000)**

- 8.1 No Contract with an Estimated Total Cost over £100,000 shall be let unless at least three written tenders have been obtained from appropriately qualified and competent bidders via the Council's eSourcing solution following an advertised tender process or the purchase is being made via a compliantly let Umbrella Agreement.
- 8.2 The provisions of the Council's Gateway and Grantway processes must be followed in strict accordance. Any departure from these processes must be expressly approved and documented within a completed waiver.
- 8.3 The opportunity must also be advertised on Central Government's Contracts Finder. Regard should also be given to advertisement of the opportunity within trade journals and other publications as appropriate.
- 8.4 In seeking tenders the Authorised Officer must ensure that an audit trail is maintained and recorded on file in accordance with the Council's record keeping policies. Tenders must be sought via the Council's eSourcing solution. The Council's standard procurement documentation must be used.
- 8.5 Contracts with a value in excess of the relevant EU threshold must be let in accordance with the relevant Procurement Legislation. Commissioners must also follow the Gateway/Grantway process and any advice from the Procurement Service.

## **9. TENDER / QUOTATION PROCEDURE**

- 9.1 The Procedure shall be approved in accordance with the Gateway/Grantway Process and supporting Procurement Guidance as deemed appropriate by the Procurement Category Business Partner.
- 9.2 The Council's standard procurement documentation must be used and may only be altered or omitted with the express advice and approval of the Procurement Category Business Partner.



- 9.3 All invitations shall state that no bid shall be considered unless it is submitted in accordance with the requirements described in the instructions for quoting / tendering, and that no costs of tendering shall be met (without the express approval of the Procurement Manager).

## **10. PROVISION OF PRE BID SUBMISSION CLARIFICATION**

- 10.1 All requests for clarification from bidders must be dealt with as a matter of urgency in order to mitigate any delays to bidders in preparing their submissions. Similarly where the Authorised Officer identifies a requirement for further information or clarification or correction of previously distributed documentation this must be addressed and issued as a matter of urgency.
- 10.2 All responses to requests for clarification must be issued to all bidders. Where the Authorised Officer wishes just to respond to the requesting bidder for reasons of commercial confidence the approval and advice of the relevant Procurement Category Business Partner must be sought.
- 10.3 All requests for clarifications and responses must be filed and fully auditable using the Council's eSourcing solution (where utilised.). The clarifications and responses must be recorded via a clarification log in accordance with the Procurement guidance and standard template documentation.

## **11. EVALUATION PRINCIPLES**

- 11.1 Low and Medium Value Contracts shall be evaluated and agreed by the Authorised Officer.
- 11.2 High Value Contracts shall be evaluated and agreed under the Gateway Process involving the Procurement Category Business Partner, Service Director and any other officers relevant to the decision making process.
- 11.3 The assessment of bids must be in full accordance with the evaluation methodology communicated to bidders within the procurement documentation.
- 11.4 In the assessment of bids where it becomes apparent that a bidder has made a genuine mistake in their pricing they must be given the opportunity to correct their bid. In all instances the Authorised Officer must obtain the approval and advice of the Procurement Category Business Partner before seeking corrections from the relevant bidders via the Council's eSourcing solution.
- 11.5 Where further information is to be sought from bidders following submission of bids, which extends further than clarifying what has already been submitted and constitutes the submission of new information, the Authorised Officer must obtain the approval and advice of the Procurement Category Business Partner before seeking further information from the relevant bidders.
- 11.6 Full detailed bid information must be sought from all bidders at the point of inviting bids. Any departure from this must be expressly approved by the Procurement Category Business Partner in line with the Council's Gateway processes.
- 11.7 Should the Authorised Officer have a case to reject a bid as non-compliant they must gain the approval and advice of the Procurement Category Business Partner before proceeding.
- 11.8 Should the Authorised Officer consider a bid to be abnormally low they must investigate this with the relevant bidder/s, and in accordance with Procurement Legislation. Before proceeding with investigation the Authorised Officer must gain the approval and advice of the Procurement Category Business Partner. Following this investigation should the Authorised Officer consider that the reasoning and any corrections put forward by the bidder does not satisfy their concerns and wishes to reject the bid, they must seek the approval and advice of the Procurement Category Business Partner.
- 11.9 Should the Authorised Officer consider that a bidder does not meet minimum requirements and wishes to set aside the bid - which may relate to previous experience, legal standing, H&S record, financial standing, etc. as appropriate to the Contract in question - approval and advice must be sought from the Procurement Category Business Partner.

- 11.10 Should the Authorised Officer wish to take previous or current Contractual performance into account in the assessment of a bid - whether the Contract/s in question relates to Council or other Contracting Authorities - approval and advice must be sought from the Procurement Category Business Partner.

## **12. TECHNICAL AND FINANCIAL APPRAISAL**

- 12.1 The Authorised Officer shall comply with the Financial Rules of the Council as published by the S151 officer as amended from time to time.
- 12.2 The Authorised Officer shall in relation to all medium and high value (low value as appropriate) Contracts compile a report which refers to:
- a) Budget for the Contract.
  - b) Technical requirements of the Contractor.
  - c) Financial appraisal of the Contractor's offer (undertaken by Financial Services and approved by the S151 Officer).
  - d) Financial appraisal of the Contractor (undertaken by Financial Services).
- 12.3 For high value Contracts compilation of this report will normally be achieved as part of the Gateway process.
- 12.4 The form and level of detail contained within the report should be proportionate to the value and risk associated with the Contract.

## **13. AWARD OF CONTRACT**

- 13.1 The award of all high value Contracts must be in strict accordance with the requirements of the Council's Gateway/Grantway processes.
- 13.2 All high value Contracts must be awarded in accordance with the provisions set out within the Procurement Legislation following the standstill provisions in full and using the Council's procurement documentation. Any departure from this process will only apply to the letting of high value Contracts which fall below the EU Procurement thresholds and must be expressly approved following the requirements of the Gateway/Grantway process.
- 13.3 The award of all medium value Contracts must be in accordance with the Grantway process if applicable. Approval must be sought from the Service Director and any other officers relevant to the decision making process prior to the issue of intention to award letters to bidders in accordance with delegated authority provisions.
- 13.4 The award of all low value Contracts must be in accordance with delegated authority provisions with approval sought by the Service Director, Budget Holder and any other relevant officers as appropriate, proportionate and appropriate to the Contract in question.
- 13.5 All challenges to any procurement process or to a subsequent Contract at any point must be referred to Legal Services and Procurement Service within one working day

## **14. CONTRACT VARIATIONS (Changes to duration, value, scope and Contractor)**

- 14.1 Contracts usually have conditions permitting variation relating mainly to the duration or the costs. Where a variation is permitted by the Contract then it must be recorded in accordance with those terms and executed according to the form of the original Contract. Thus a Contract executed under seal may only be varied by deed.
- 14.2 Where the variation amends the conditions of the Contract, including the specification an assessment of the effect of the variation on the value of the Contract must be carried out.
- 14.3 If the increase in value of the Contract is less than 10% for service and supply Contracts and less than 15% for works Contracts then no new procurement needs to take place.
- 14.4 If additional supplies, services or works are needed and the use of a new Contractor would:
- a) be economically or technically difficult, e.g. because of difficulties relating to interchangeability or integration with existing equipment; or

- b) cause significant additional or duplication of costs,

then the original Contract may be varied without a further procurement process subject to the increase in cost being less than 50% of the original value. Any variation must be in accordance with Procurement Legislation and approved by Procurement Service, Legal Services and the budget holder for the Contract.

- 14.5 If the Contract to be varied is a strategic Contract then the Strategic Contract Management Board must be consulted in respect of any variation as soon as the need or request for a variation is identified or made.
- 14.6 Where the variation involves any change to the provider then Legal Services must be consulted.

## **15. CONTRACT EXTENSIONS**

- 15.1 The Service Director shall be consulted prior to the extension of a Contract with an aggregate total value of less than £100,000.
- 15.2 Subject to 15.4 below, where a Contract provides for an extension and the value of the existing Contract together with the extension exceeds £100,000, the approval of the Procurement Category Business Partner, Service Director, Budget Holder, Category Manager and Legal Services shall be sought.
- 15.3 In all cases where the extension of a Contract will bring the total of the original value and the value of the extension over £1,000,000 then approval must be sought from the Strategic Contract Management Board.
- 15.4 In cases where the proposed extension is not allowed within the terms of the Contract and the extension is thus a direct award then approval shall be sought as per appendix 2.

## **16. CONCESSIONS AND UTILITIES**

- 16.1 All Concession Contracts, whether for works or services shall be let according to the provisions of these Rules as if they were non-Concession Contracts unless the relevant opportunity is one covered by Procurement Legislation. The estimated value of the Concession shall determine the procurement route to be used. The value of the Concession shall be determined in an objective manner set out in the document offering the concession and shall be an estimate of the total turnover (excluding VAT) from the Concession over the period for which it is to be let, including for any extension/variations in scope and/or duration.
- 16.2 Concessions exceeding the European Threshold shall be procured in accordance with Procurement Legislation. More detailed information is contained with the Procurement Guidance.
- 16.3 All Contracts for the sale of Utilities must also comply with the provisions of these rules together with any applicable Procurement Legislation when brought into force. ([link](#))

## **17. CONTRACTOR SUBSIDIES AND STATE AID**

- 17.1 Where it is proposed to provide financial support to a Contractor, or where a Contractor proposal entails financial support or benefit from the Council or another public body necessary to ensure the continuance of Contracting activity (State Aid), the advice of legal services must be sought prior to advertising the opportunity or concluding the Contract.
- 17.2 State Aid is when taxpayer funded resources are used to provide assistance to one or more organisations in a way that gives an advantage over others. The legislative framework that applies to State Aid is very technical and legal advice should be obtained well in advance in the event that the rules on State Aid may apply. The Service Director shall consult with the City Solicitor when State Aid issues are applicable. State Aid is likely to become applicable if the following applies:
- The assistance is provided with or through state, including Council, resources.

- The assistance gives one or more economic entities an advantage over others (includes not-for-profit organisations and charities as well as businesses and an advantage is anything that they could not get themselves on the open market).
- The assistance distorts or has the potential to distort competition (even small distortions count).
- The assistance affects trade between Member States of the European Union (this is defined broadly, if something is tradable, it is covered).

17.3 Assistance may be through payments to the Contractor, subsidised payments, the provision of equipment or support or low cost loans.

17.4 In certain circumstances financial assistance may be given where the amounts involved may be covered by de minimis provisions. Legal advice should still be obtained to ensure that de minimis applies before any financial assistance is given to another organisation.

## **18. CONTRACT MANAGEMENT**

18.1 All Contracts shall be managed in accordance with the Contract Management Procedures provided by the Procurement Service.

18.2 Contract management standards apply to all Contracts depending on their classification as Strategic, Operational or Transactional.

18.3 All Contracts:

- Contract documents must be stored on the council's eSourcing Solution as described in section 4
- Contract managers (and others closely involved in managing contracts) must have read and understood the contract documents.
- Contract Managers must check that valid insurance documents are provided by Contractors, proving that the annual premium has been paid, to cover the duration of the Contract, and that copies are stored on the council's eSourcing Solution.
- Contract Managers must review the aggregate spend on Contracts for which they are responsible every six months to assess whether new contracts should be procured
- Meetings with contractors to discuss performance must take place at least every 12 months. Key Performance Indicators must be used to assess performance at least every 12 months, and records of assessment must be kept up to date on the council's eSourcing Solution. (NB different minimum intervals apply to Operational and Strategic Contracts)

18.4 Operational Contracts:

In addition to the standards in section 18.3 the following standards also apply to Operational Contracts:

- Contract managers (and others closely involved in managing contracts) must sign a declaration that they have read and understood the contract documents.
- Operational Contracts must have a Contract Guide in place at the start of the Contract which is kept up to date throughout the duration of the Contract.
- Assessment of performance using Key Performance Indicators and meetings with Contractors to discuss performance must take place at least every 6 months.

18.5 Strategic Contracts:

In addition to the standards in sections 18.3 and 18.4, the following standards also apply to Strategic Contracts

- Strategic Contracts must have a Contract Operations Manual in place at the start of the Contract which is kept up to date throughout the duration of the Contract.
- Assessment of performance using Key Performance Indicators and meetings with Contractors to discuss performance must take place at least every 3 months.

- Meetings between Contractors and the Council at director level must take place at least every 12 months to discuss performance, strategy and future business opportunities.
- Contract Managers must keep a record of any Contract variations of duration, value or scope on the Council's eSourcing Solution and in the Contract Operations Manual in order to maintain a deal history of the Contract.

## **19. CONSULTANTS**

- 19.1 No Ex-Employee of the Council or of any other Public Sector Body covered by the Small Business Enterprise and Employment Act 2015 shall be engaged by the Council without the express consent of the City Solicitor and the Service Director responsible for Human Resources.
- 19.2 Any ambiguity on whether a Contract is an employment Contract or a consultancy Contract covered by these rules should be referred to HR, Legal Services and Procurement Service.

## **20. SUB-CONTRACTING**

- 20.1 For Above Threshold Contracts the advice of legal services shall be sought as to the form and obligation to sub-contract.
- 20.2 Where a sub-contractor is to be engaged then the Council is under an obligation to ensure that the Contractor is under the same timescale obligations as to payment of the sub-contractor as the Council is to the Contractor.

## **21. NON-COUNCIL STAFF**

- 21.1 Any person who is not an officer of the Council, but is engaged by the Council to advise, conduct, or supervise any stage of a Tender, must:
- a) Comply with the Council's Contract Procedure and Financial Rules
  - b) Produce on request, all records relating to the Contract he/she are engaged on, to the Service Director; and
  - c) Pass all relevant records to the Procurement Manager at the end of his/her appointment/engagement
  - d) Sign a declaration of interest relating to any Contract that they were involved with on behalf of the Council and give it to the Procurement Category Business Partner.
- 21.2 The Authorised Officer must ensure that non-council staff comply with these Rules and consult the Procurement Category Business Partner as appropriate.

## **22. PUBLIC TO PUBLIC COOPERATION OR IN-HOUSE BIDDING**

- 22.1 Advice should be sought from the Procurement Category Business Partner and, if appropriate, Legal Services on proposals involving the provision of a service through a subsidiary company, jointly owned, or jointly provided.
- 22.2 Where an in-house provider wishes to compete for an Above Threshold tendered Contract, the Tender Documents must comply with the following:
- a) That those involved with the in-house tender will maintain appropriate divisions with those managing the tender process for the Council to ensure that the in-house bid team has no advantage over non-Council bidders. In house tender bid teams must sign declarations that they have maintained independence of the tender review team,
  - b) The fact that there will be an in house tender must be noted on the relevant OJEU notice and the Council's proposed arrangements should the in house bid be successful must be described, and
  - c) No information other than that provided to all bidders will be supplied to the in-house bidder.

## **23. INSURANCE**

- 23.1 The Authorised Officer shall ensure all Contractors have sufficient levels of insurance in place prior to entering and throughout the duration of a Contract.
- 23.2 These amounts may only be varied on the advice of the Insurance Officer whose advice shall be sought on any other insurances required.

## **24. SECURITY FOR PERFORMANCE**

- 24.1 When drafting the invitation to tender the Authorised Officer shall seek the advice of the Procurement Service, Legal Services and Financial Services on whether a Contract performance bond or some other form of security for performance is required prior to entering into a Contract. The amount of, and form of security shall be determined by Legal Services in consultation with the S151 Officer having carried out an appropriate financial risk assessment. Such security must be effected with a reputable body authorised to effect such security and approved by the S151 officer or by way of a parent company guarantee if appropriate. Where appropriate a sum for liquidated damages to be included in the Contract prior to any award to a Contractor shall be set in consultation with the relevant technical officer and finance manager.

## **25. CONTRACT EXECUTION**

- 25.1 Contracts must be executed in accordance with the following:
- a) Under hand - value under £100,000
  - b) Seal - value over £100,000
- 25.2 For all Contracts below £100,000, the Service Director is authorised to sign Contracts and having regard to the Council's scheme of delegation may authorise an officer of the Council to enter into Contracts as an Authorised Officer. Where delegated authority is used then a record must be kept in accordance with the Council's procedures.
- 25.3 All Contracts with a value in excess of £100,000 must be entered into and sealed by Legal Services.

## **26. GOVERNANCE**

- 26.1 Authority to enter into Contracts
- Authority for Officers of the Council to enter into Contracts on behalf of the Council is governed by the Scheme of Delegation.
- 26.2 Gateway/Grantway
- The Gateway and Grantway processes govern the assessment of the business case for entering into each Contract and for oversight of the process of awarding the Contract/grant.
- 26.3 Strategic Contract Management Board
- This board supervises the management of strategic Contracts, including the commissioning process.
- Approval must be sought from the Strategic Contract Management Board for:
- Procurement of Strategic Contracts jointly with one or more other Contracting Authorities (see section 2.6)
  - Contract variations of Strategic Contracts (see section 14.5)
  - Extension of high value Contracts (see section 15.3)
  - Price increases in Strategic Contracts where the proposed price increase is either:
    - Above that provided for in the contract; or
    - Above inflation (Consumer Price Index (CPI))

## **27. DEPARTURE FROM THE CONTRACT PROCEDURE RULES**

27.1 Waiver of these Rules may be sought in the following circumstances:

- a) Where the need to enter into a Contract arises in circumstances that cannot be reasonably foreseen or
- b) Where the need to enter into or extend a Contract arises in exceptional circumstances.

27.2 These examples are not exhaustive but indicative of the situations where a waiver may be sought.

27.3 When the need for a waiver becomes apparent the Authorised Officer must seek approval following the approval levels that apply to waiver applications which can be found in appendix 2.

27.4 Blanket waivers may be approved in certain situations where the normal process to be followed is considered inappropriate. Such waivers must be fully supported with justifiable reasons and will only remain in force for one year from the date of approval.

## **28. TRADING**

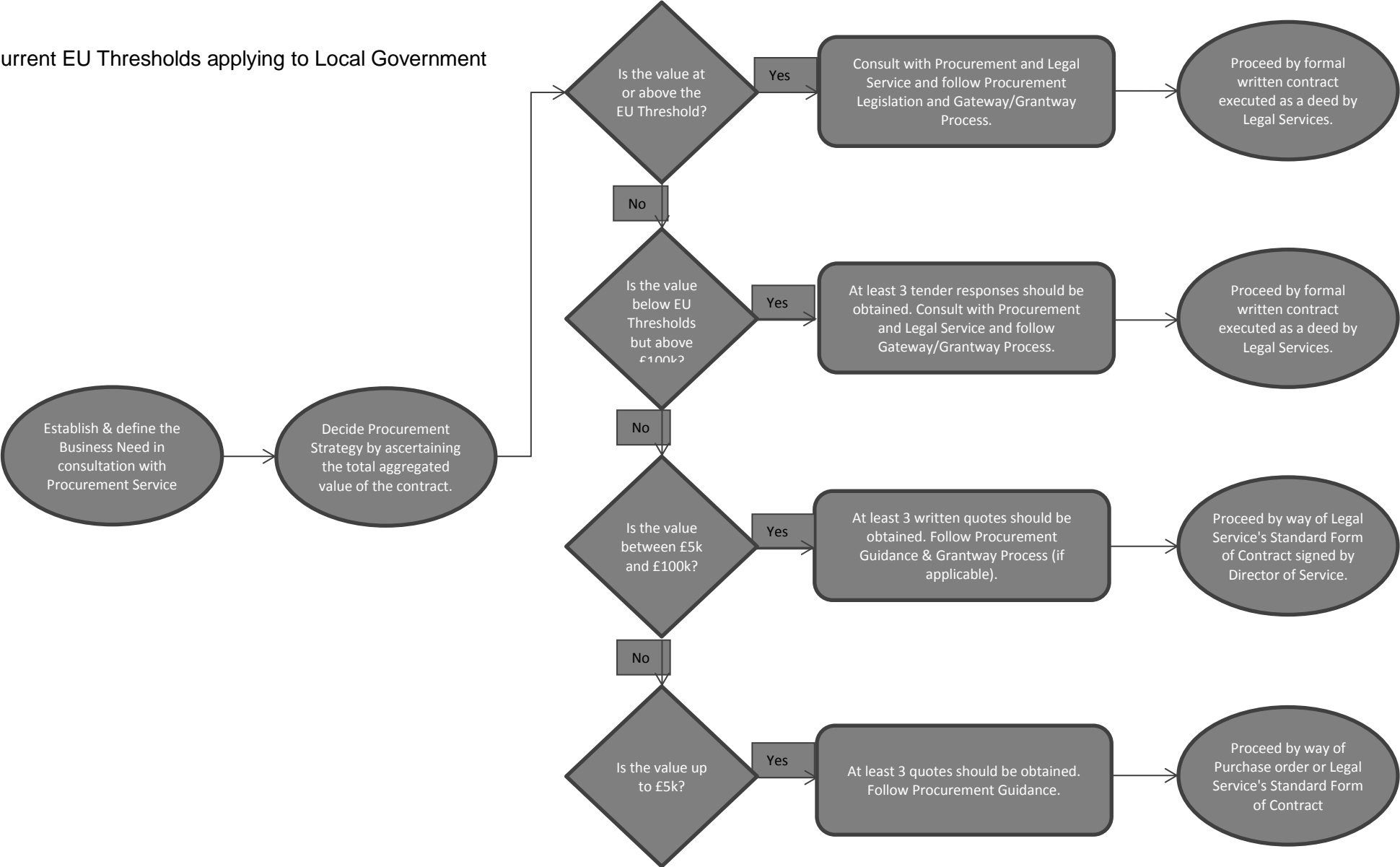
28.1 Any proposals to sell or trade in services, supplies, or assets must be referred to Legal Services. Any proposal to dispose of Council Property other than land must be referred to the Procurement Manager. Proposals to dispose of land must be referred to the Corporate Asset Manager.

## **29. REVIEW OF RULES**

The City Solicitor shall keep these Rules under review and may make minor changes (including changes consequential to changes in legislation).

# APPENDIX 1 - THE COUNCIL'S PROCUREMENT PROCESS

Current EU Thresholds applying to Local Government





## APPENDIX 2 - APPROVAL LEVELS.

Value	Type	Sign off required	Considerations - must give regard to:
Up to £100k	Contract terms - standard approved form	Authorised Officer	<ul style="list-style-type: none"> <li>• Value for money - benchmarking.</li> <li>• Reputational risk</li> <li>• Transparency - market challenge</li> <li>• Peer review &amp; market norms</li> <li>• Proportionality</li> </ul>
	Contract terms - bespoke	Legal Services	
	Contract award	Director of Service signature under hand	
	Waiver - Direct award	Director of Service approval file note form	
	Extension in Contract term		
	Extension out of Contract term		
	Variation - up to 10% (services) or 15% (works)	Procurement Manager and Legal Services	
Variation - up to 50% for services and works			
£100k - £1m	Contract terms - standard approved form	Authorised Officer in consultation with Legal Services	<ul style="list-style-type: none"> <li>• Value for money - benchmarking.</li> <li>• Reputational risk</li> <li>• Transparency - market challenge</li> <li>• Peer review &amp; market norms</li> <li>• Proportionality</li> <li>• Breach of PCRs 2015 (supplies/services) if direct award/extension out of term.</li> <li>• VEAT Notice/Contract Award without competition for direct awards if over EU Thresholds.</li> </ul>
	Contract terms - bespoke	Legal Services	
	Contract award	Legal Services to sign under seal	
	Waiver - Direct award	Procurement Manager and relevant Officers - waiver form	
	Extension in Contract term	Procurement Category Business Partner and relevant Officers - Authority to Extend Form	
	Extension out of Contract term	Procurement Manager and relevant Officers - waiver form	
	Variation - up to 10% (services) or 15% (works)	Director of Service, Budget Holder, Category Manager, Legal Services and Category Business Partner.	
Variation - up to 50% for services and works	Director of Service, and relevant Officers, Legal Services, Category Business Partner plus Procurement Manager		
Over £1m	Contract terms - all	Legal & Gateway Board	<ul style="list-style-type: none"> <li>• Value for money - benchmarking.</li> <li>• Reputational risk</li> <li>• Transparency - market challenge</li> <li>• Proportionality</li> <li>• Peer review &amp; market norms</li> <li>• Breach of PCRs 2015 (supplies/services/works) if direct award/extension out of term</li> <li>• VEAT Notice/Contract Award without competition for direct awards if over EU Thresholds.</li> </ul>
	Contract award	Gateway Board/SCMB	
	Waiver - Direct award	Gateway Board	
	Extension in Contract term	Strategic Contract Management Board.	
	Extension out of Contract term		
	Variation - up to 10% (services) or 15% (works)	Strategic Contract Management Board.	
	Variation - up to 50% for services and works		