

# CONTRACT PROCEDURE RULES

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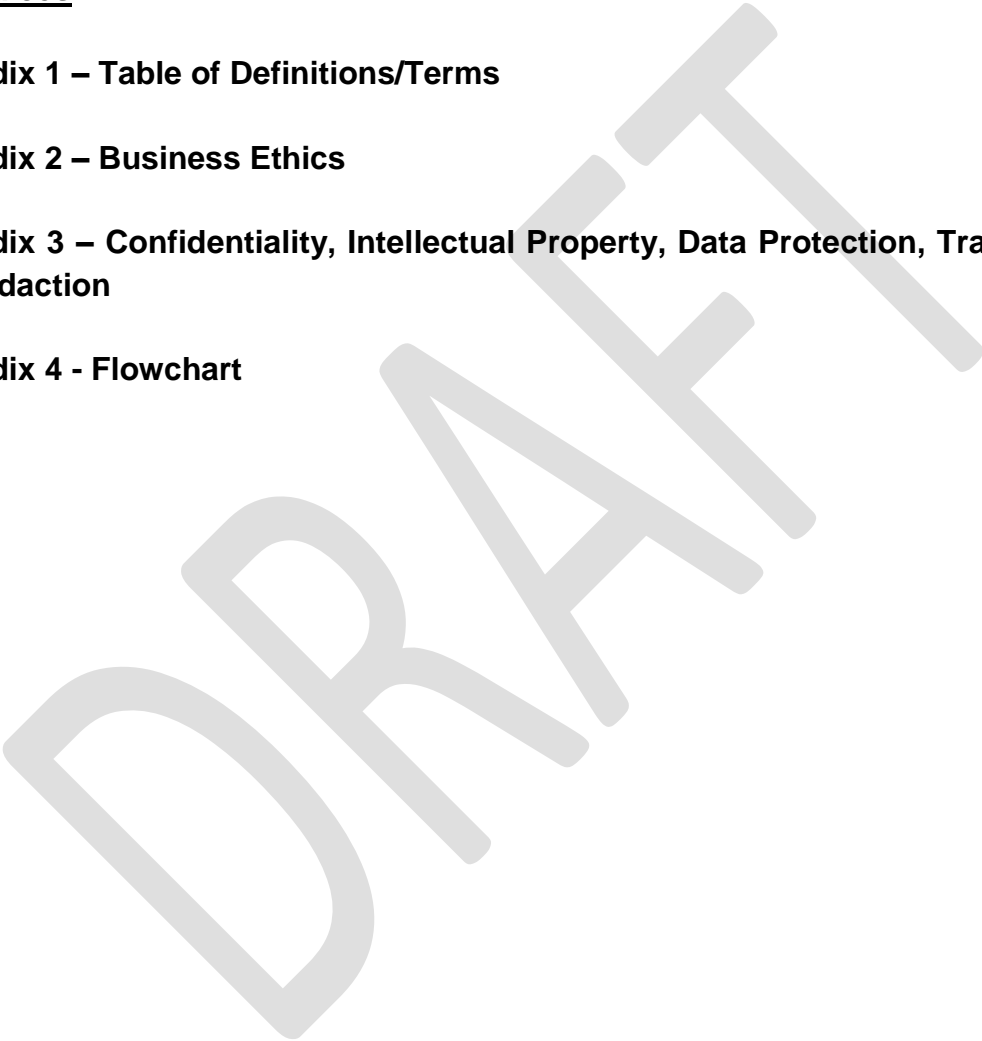
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## **Executive Summary to the Contract Procedure Rules**

Public Sector procurement is the process of acquiring goods, supplies, services or works for the delivery of a Council's obligations to its residents and visitors. The procurement process must be carried out within a specific legal framework and based on principles of equal treatment, transparency, proportionality and without-discrimination such that Contracts over a specified value may be tendered for by any interested and appropriately qualified Supplier. This is to ensure that the Council achieves the optimal solution which also provides Value for Money with reference to social, economic and environmental factors across the whole life of each Contract, demonstrates good internal governance, stewardship and the proper spending of public monies.

The Contract Procedure Rules (CPRs) set out below are issued in accordance with Section 135 of the Local Government Act 1972. The CPRs provide a framework that governs how the Council will manage its external expenditure with third parties and ensure compliance with public procurement legislation, its various other statutory obligations and delivery of vital public services.

The CPRs must be considered along with the Council's Financial Regulations and Schemes of Delegation.

### **Compliance**

All Officers, Members and any Agents empowered to spend Council funds or dispose of assets must comply with these CPRs. They explain the procurement processes to be applied based on the nature, complexity and value of expenditure.

If anyone breaches the CPRs, it may lead to disciplinary action under the relevant Code of Conduct. The Borough Solicitor and/or Head of Procurement will report any breaches of the CPRs to the Corporate Management Team on at least a quarterly basis.

### **What these CPRs Cover?**

The CPRs apply:

- whenever the Council intends to spend money (or provide other payments in kind) under Contracts for goods (supplies), services or works;
- to expenditure from either capital or revenue sources;
- to the award of concessions (for further information, please refer to the Procurement Team);
- to offer goods for re-sale.

The CPRs do not apply to the following items, which are managed by separate policies/ legislation:

<b>Exclusion</b>	<b>Relevant Policy/ Law</b>
Contracts for the acquisition or lease of land and/or real estate (unless related to a Contract for goods, services or works)	Managed via Property Services
Contracts of employment	HR/Recruitment Policies
The seeking of offers in relation to financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments, in particular transactions by the Council to raise money or capital	Managed by the Finance and Treasury Management function
To internal agreements between departments within the Council	Operated under the Finance and Treasury Management internal systems
Any contract relating to the engagement of Counsel or other legal specialists	Legal Services are either exempt from the PCR15 or are subject to the Light Touch Regime, depending on the nature of the advice or representation sought – Please refer to the Borough Solicitor for further guidance.
In the event of civil contingencies	The Civil Contingencies Act 2004
Awarding of Grants	This is managed according to Grant conditions and application process. Please refer to the Borough Solicitor for further guidance.

### **Pre-procurement steps**

To ensure legislative compliance, Officers must ensure that any necessary pre-procurement steps have been taken. This may include:

- Check to see whether there is an existing Corporate Contract or Hampshire/ National Framework Agreement that can be used before commencing a new procurement;
- Take all necessary legal, financial, and professional advice, ensuring budgetary approval has been obtained before the procurement process commences;
- Declare any personal interest (financial or otherwise) in a Contract. Please note that any form of corrupt behaviour can amount to criminal prosecution;
- Conduct a Value for Money review and in appropriate cases, draft a Business Case and follow the Gateway process;
- Collate a comprehensive set of requirements, performance management criteria and suitable contract terms (refer to the Procurement Team for the Council's standard terms and conditions) before commencing the process;
- Consider any workforce implications, including TUPE;

- Consider the need to conduct an Equality Impact Assessment;
- Consider the National Procurement Policy Statement (in particular, how social value factors can be used to support new businesses, jobs, skills, tackle climate change, reduce waste and improve supplier diversity, innovation and resilience);
- Consider aggregation rules and not enter into separate contracts, or select a method of calculating the Estimated Total Value to circumvent the application of CPRs or the PCR15.

### **Practical Tender Steps**

- Ensure all communications with Suppliers are conducted electronically (using the Council's electronic portal - Proactis) and in writing to ensure a clear audit trail of the procurement process and how decisions have been reached. Manage all procurement processes through the Council's electronic procurement portal (Proactis) to ensure all requirements (quotations or tenders) are managed in a transparent manner, treat all suppliers equally and all supporting information is retained for audit and reporting purposes.
- Where an opportunity requires advertisement, a Contract Notice must be published on Find a Tender Service (FTS) and/ or Contracts Finder (CF) in accordance with the PCR15 – this to be managed through the Council's e-tendering portal (Proactis).
- Allow sufficient time for Suppliers to prepare appropriate responses to the procurement document requirements - advice should be sought from the Procurement Team.
- Keep Tenders/ Quotations confidential at all times and do not disclose contents with any third parties.
- Complete a written Contract or Council Purchase Order before the commencement of the works/ services or the delivery of goods; all Orders for Contracts over £5,000 must be placed on the Council's Contracts Register which is part of the Proactis e-tendering portal.
- Ensure a Contract Award Notice is published for all contracts awarded over £25,000 in Contracts Finder within the specified time.
- Identify a contract manager with responsibility for ensuring the Contract delivers as intended.
- Keep appropriate records of all engagement with Suppliers.
- Assess each Contract on its conclusion or termination if earlier, to assess how well it met the Council's procurement objectives and delivered Value for Money.

In exceptional circumstances, certain exemptions can be approved by following the process set out in the CPRs. The Officers who are authorised to approve the exemptions are set out in **Section 8.2** below. Seeking an exemption of these CPRs does not exempt the Council from the need to comply with the Procurement Legislation or with general law.

## Other Key Documents

The CPRs should be read alongside the following:

- Council's Procurement Strategy incorporating Social Value and Climate Change;
- Council's Financial Procedure Rules;
- Transparency Code;
- Any other guidance issued by the Borough Solicitor or the Head Procurement
- Business Ethics – (Appendix 2)
- Confidentiality – (Appendix 3)
- Intellectual Property – (Appendix 3)
- Data Protection, Transparency & Redaction – (Appendix 3)

Anyone undertaking procurement activity on behalf of the Council (but especially in the context of purchasing contract above the FTS Threshold) **must** refer to the following documents, where appropriate:

- Public Procurement (EU Exit) Regulations 2020;
- Public Services (Social Value) Act 2012;
- Bribery Act 2010;
- Small Business, Employment and Enterprise Act 2015;
- Equalities Act 2012;
- Modern Slavery Act 2015;
- any other relevant legislation.

In accordance with the Constitution, the Full Council has the power to make amendments from time to time to these CPRs.

### **FURTHER ADVICE:**

Any questions about the application of these CPRs should be directed to the Borough Solicitor and/or the Head of Procurement.

If you are unclear about the procurement rules, please seek relevant advice before taking any procurement or disposal action.

## SECTION 1

### SCOPE OF CONTRACT PROCEDURE RULES

#### 1. BASIC PRINCIPLES

All procurement and asset disposal procedures must:

- Comply with these CPRs;
- Support the Council's corporate and departmental aims, objectives and policies;
- Demonstrate Value for Money (VfM) in the use of public funds;
- Demonstrate integrity;
- Ensure equal and non-discriminatory treatment of Suppliers in the award of public contracts;
- Comply with all Public Procurement and related legislative requirements;
- Ensure that Non-commercial Considerations do not influence any Tender/Quotation;
- Comply with the Council's Financial Regulations and Scheme of Delegations.

**Note:** should there be a discrepancy between the CPRs and public procurement legislation, legislation shall take precedence. Where there is a conflict between public procurement legislation and other relevant legislation, the Borough Solicitor will assess their application and advise on the process to be followed.

#### 2. RELEVANT CONTRACTS

2.1 All Relevant Contracts must comply with the CPRs.

2.2 A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, goods (supplies) and services. These include arrangements for:

- All purchases including;
  - consultancy requirements;
  - equipment hire or lease through rental agreements
- The use of internal/external Framework Agreements and Dynamic Purchasing Systems;
- Procurement under the Light Touch Regime, as covered by Chapter 2 of PCR15;
- Below threshold procurements under Chapter 4 of PCR15;
- The procurement of Concession Contracts as defined in CCR16;
- All collaborative procurements with other public bodies;
- The disposal of assets or surplus goods by the Council.

2.3 Relevant Contracts do not include:



- contracts of employment which make an individual a direct employee of the Council;
- Sponsorship agreements;
- Purchases made at public auction or of goods sold due to insolvency (fire sale);
- Land contracts (including leases, licences and transfers), for which Financial Regulations shall apply;
- Grants of money where the Council is not specifying requirements, except for general conditions of grant;
- Funding or financing arrangements;
- Agreements excluded by PCR15 and CCR16.

2.4 Services excluded under Regulation 10 PCR15 include:

- Legal advice that may lead to or is in preparation for judicial proceedings, or representation at judicial proceedings;
- Arbitration or conciliation services;
- Purchase or sale of any interest in land, (including leasehold interests);
- Financial advice for the sale, purchase or transfer of sureties;
- Audio-visual/radio broadcasts;
- Legal advice in relation to arbitration/ conciliation for either the preparation or representation in legal proceedings that may result in a court or tribunal hearing;
- Application for loans;
- Employment contracts between an individual and the Council
- Public transport by rail or metro;
- Political campaigns;
- Civil Defence

### 3. OFFICER RESPONSIBILITIES

3.1 Officers responsible for procurement, or disposal of surplus assets (see **Section 8.3**), must comply with the CPRs and ensure that any Agents, Consultants or contractual partners acting on behalf of the Council also comply with the CPRs.

3.2 Officers must:

- Follow these CPRs for the procurement of goods (supplies) services and works at all times;
- Carry out all project assignments with regards to the following:
  - Where the procurement involves outsourcing/ insourcing of a service or the procurement which involves a service provision change, consider whether TUPE rules, concerning the protected transfer of employees from one organisation to another, should apply;
  - Identify and undertake any consultation requirements;
  - Identify and investigate potential conflicts of interest;

- Identify any other procurement restrictions such as purdah (the period of time immediately before elections or referendums).
- Check whether a suitable Corporate Contract or Hampshire/National Framework Agreement exists before seeking to procure a new Contract. Where a suitable Corporate Contract or Hampshire/National Framework Agreement exists, this must be used unless there is a justifiable reason, which has been prior approved by the Head of Procurement.
- Take all necessary legal, financial and professional advice, including:
  - Collating a set of project requirements/ specification and supporting documents;
  - working with the Legal Team to collate a suitable set of contract terms and conditions;
  - working with the Procurement Team to agree a proportionate procurement process including instructions and selection/ evaluation criteria;
- Ensure all collated Orders or Contracts are duly completed in accordance with the CPRs and then forwarded to the Procurement Team for entry onto the Council's Contract Register;
- Keep all records required under the CPRs;
- Ensure that all necessary approvals (including approval of the Business Case) for the project to commence have been obtained including Board approval/delegated approval for both the project and the procurement exercise, and Budgetary approval.

### **3.3 Supervision and compliance**

3.3.1 Chief Officers and Section Heads must ensure that all staff in their departments comply with the CPRs.

3.3.2 Chief Officers must:

- maintain a register of contracts completed under the Council's seal and arrange their safekeeping by the Legal Team;
- ensure all exemptions approved under the CPRs are recorded on the Contracts Register.

## **4. EXEMPTIONS and COLLABORATIVE ARRANGEMENTS**

4.1 The Council and its Boards have power to waive any requirements within these CPRs for specific projects, taking into account the value, nature of the requirement and urgency as set out in Para 4.2 below.

4.2 Where the value is below the FTS Threshold, an exemption can be agreed by a Chief Officer in consultation with the Borough Solicitor (with the exception of a procurement of less than £5000, which can be agreed by the relevant Section

Head and Head of Procurement). This approval will require at least **one** of the following:

- evidence of urgency (which means normal time limits cannot be met)
- un-foreseeability (which is outside the control of the Council or could result in disruption to Council services);
- quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route;
- evidence the Council would otherwise be exposed to immediate and significant financial, legal or reputational risk that has been identified in the relevant risk register;
- only one supplier is objectively able to provide the works, services or goods (supplies) in question, for example, where the supplier has exclusive Intellectual Property, artistic or other rights, is a monopoly or where the goods bought are for re-sale (in which case the exemption **must** relate to the number of Quotes / Tenders that are sought);
- additional or new goods (supplies), services or works are required which, through unforeseen circumstances, were not included in an existing Council Contract and are necessary for the completion of the Contract and/or cannot be carried out separately;
- new goods (supplies), services or works are required which are a repetition of goods (supplies), services or works carried out under the original Contract, provided they are required within 1 year of the original Contract.
- goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Supplier would result in incompatibility or disproportional technical difficulties in operation or maintenance.

4.3 Where an exemption is sought for a Relevant Contract that is above the FTS Threshold/ Regulated by the PCR15, a direct award may only be made exceptionally in the following circumstances:

- the procurement is exempt under Regulation 10 or 14 PCR15;
- the procurement can be awarded in accordance with Regulation 32 PCR15 such that :
  - an Open or Restricted procedure has been advertised, and no suitable responses were received;
  - When strictly necessary, for reasons of extreme urgency, brought about by events unforeseeable to the Council, which make the timescales for an Open or Restricted procedure or competitive procedure with negotiations cannot be complied with;
  - Only one Supplier is objectively able to provide the goods (supplies), services or works in question, for example where the

supplier has exclusive Intellectual Property, artistic or other rights or competition is absent for technical reasons;;

- In the case of goods (supplies) Contracts:
  - The goods are for research purposes only,
  - The goods are in addition to goods already supplied by an existing Supplier, to replace or be used alongside the original goods, and where a change of supplier would mean the new products would be incompatible with the existing ones, or where this would cause dis-proportionate technical difficulties in operation and maintenance;
  - For supplies purchased on a commodity market,
  - For the purchase of supplies on “particularly advantageous” terms, specifically where a supplier is being wound up by a liquidator, or similar;
- new works or services are required which are a repetition of works or services carried out under the original Contract, provided they are required within 3 years of the original Contract and the conditions under which this will be used and awarded are fully disclosed when the original Contract is procured;

In these instances, the exemption must be approved by a Chief Officer, based on an assessment of risk; a report with appropriate justifications must then be taken to the next Policy and Organisation Board to support the action taken.

- 4.4 Should a VEAT Notice be assessed by a Chief Officer as being required to manage potential risk to the Council where Para 4.3 applies, this will be approved, and a log of all published VEAT notices shall be maintained by the Procurement Team.
- 4.5 All exemptions (signed), and the reasons for them, must be recorded by the relevant Chief Officer, and added to the Contract Register.
- 4.6 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements. The Officer must consult with the Borough Solicitor or Head of Procurement where the procurement is to be made using collaborative procurement arrangements with another local authority, government department or central purchasing body.
- 4.7 Before procurement via a central purchasing body, the Borough Solicitor or Head of Procurement must be satisfied that their processes comply with both relevant Procurement Legislation and these CPRs. On confirmation, no exemption is required either for the process or when making the call-off.

## SECTION 2

### **COMMON REQUIREMENTS**

#### **5. PLANNING**

5.1 In deciding how to procure a requirement, the Officer must consider:

- the need for the expenditure and its priority;
- how best to define the objectives of the procurement;
- the risks associated with the procurement and how to manage them;
- which users (internal/ external) should be consulted on the procurement?
- The value and nature of the procurement, specifically:
  - whether for goods (supplies), services or works;
  - who will use the resultant contract (which part of the Council and/ or partnering authorities); and
  - the total duration of the requirement including any extension or options to extend.
- which Legislation will apply to the procurement:
  - For Below FTS Threshold – the CPRs and Part 4 of PCR15;
  - Above FTS Threshold:
    - Parts 1- 3 PCR15, including Schedule 3, relating to the Light Touch Regime;
    - Concession Contracts Regulations 2016
- which procurement method is most likely to achieve the objectives of achieving Value for Money and to ensure quality delivery of services. This will include an assessment of:
  - internal delivery or external sourcing;
  - partnering and collaborative procurement arrangements with another local authority, government department, or central purchasing body;
  - lot structure/ requirement strategy.
- which contract standards and performance management requirements should be used;
- how this information should be presented in the procurement documents.

5.2 There must be confirmation that there is Member or delegated approval for the expenditure and the procurement complies with the approved policy framework and Scheme of Delegation as set out in the Constitution.

#### **6. PRE-TENDER MARKET ENGAGEMENT**

6.1 The Officer responsible for the procurement may make use of preliminary market consultation prior to the issue of the Invitation to Tender/ Quotation. The nature of pre-procurement engagement or consultation should focus on:

- What is being procured?
    - based on the nature, level, timescales and standard of the Council's requirements to ensure they are achievable, provided this does not prejudice any potential Candidate;
    - what will the competitive process look like?
- 6.2 Any market engagement must be managed transparently and ensure:
- all interested Suppliers have the same opportunity to engage and Officers **Must** keep adequate records of discussions carried out;
  - it does not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort competition, and
  - prior advice regarding market engagement has been sought from the Borough Solicitor or Head of Procurement.

## 7. CALCULATING CONTRACT VALUE

- 7.1 Contract value means the estimated aggregate or recurring value payable in pounds sterling **inclusive** of Value Added Tax over the entire contract period, including any extensions of the Contract. Where the Contract period is not fixed the estimated value of the Contract must be calculated by multiplying the monthly spend value by 48 (four years).
- 7.2 Where an existing Contract is being extended, the aggregate value includes the amount spent to date plus the expected forward value.
- 7.3 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of these CPRs or Procurement Legislation.
- 7.4 In the case of Framework Agreements or Dynamic Purchasing Systems the contract value must be calculated to include the total estimated value, **inclusive** of VAT, of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic Purchasing System.
- 7.5 Concession Contracts are contracts under which the Council outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the contractor/ provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs. Concession Contracts must meet certain requirements and advice must be sought from the Head of Procurement in the first instance, where a concession contract is being considered.

**8. ROUTE TO MARKET OPTIONS****8.1 Procurement Plan**

**CHECK WHETHER YOU NEED TO PROCURE OR NOT. IF YOU NEED TO, SPEND WISELY!**

Does the Council already have in place any Contract or Framework Agreement in scope which can be used? Check the Contract Register

Is there an external Framework Agreement/ DPS or Contract that can be used?

Allow plenty of time to draft the specification and the detail it will need

How can Think Local apply to what you are buying?

Does the scope include Social Value for Residents or the Area?

How will you decide on the procurement route?

Should we be leasing rather than buying?

If buying, what form of Contract are you going to use?

Who has the delegated authority to agree the procurement/ approve the procurement method and process/ approve the Contract award?

How will you decide who will win the Contract?

## 8.2 Procurement Options

Based on the above considerations, Officers should select the procurement process (means for demonstrating competition and achieving Value for Money) as follows:

Table 1

Total Value	Award Procedure	Selection Criteria	AUTHORITY TO AGREE PROCUREMENT PROCESS	APPROVAL DOCS REQUIRED	AUTHORITY TO AWARD CONTRACT	AUTHORITY TO SIGN EXEMPTION
Any Value	<p><b>Option 1 – Use of existing corporate Contract</b> – no process required</p> <p><b>Option 2 – use of compliant Framework or DPS</b> let by Central Purchasing Body/ partner authority</p> <p>2a - Direct Award, or</p> <p>2b - further mini-competition</p>	Availability for use, suitability of scope <b>Framework Rules</b>				
Less than £5,000	<p><b>Direct Award with a supplier</b></p> <p><b>Obtain 3 Quotes to evidence Value for Money</b> (<i>using the Quick Quote Function on Proactis</i>)</p> <p><b>Exemption to seeking Quotes</b> may be agreed where a Direct award/ negotiation may offer the optimal solution/ VFM in accordance with the rule in CPR 4.2</p>	<b>Most Economically Advantageous Quote</b>	Budget Holder/ Section Head	Bid Evaluation	Budget Holder/ Section Head	Section Head in agreement with Head of Procurement
£5,001, to	<b>Quotations from three suppliers</b> identified through and managed via the	<b>Most Economically Advantageous</b>	Section Head/ Budget Holder	Bid Evaluation	Section Head/ Budget Holder	Chief Officer



<p><b>£50,000</b></p>	<p>Council's e-tendering portal (<i>using the Invitation to Quote Function on Proactis</i>)</p> <p><b>Exemption to seeking Quotes</b> may be agreed where a Direct award/ negotiation may offer the optimal solution/ VFM in accordance with the rule in CPR 4.2</p>	<p><b>Quote</b></p> <p><b>Publish Contract Award Notice on Contracts Finder for contract above £25,000. This will apply even in the case of use of Framework Agreement or DPS and the contract has not been advertised.</b></p>				
<p><b>£50,001, to FTS Threshold</b></p>	<p><b>Open Tender Advertisement</b> via the Council's e-tendering portal (Proactis) &amp; Contracts Finder</p> <p><b>Exemption to advertisement</b> may be agreed where a Direct award/ negotiation may offer the optimal solution/ VFM subject to compliance with the PCR15, in accordance with the rule in CPR 4.2</p>	<p>No PQQ selection stage is allowed</p> <p>Publish Contract Notice on Contracts Finder if open advert.</p> <p>Suitability assessment questions can be requested.</p> <p><b>award to be based on Most</b></p>	<p><b>Section Head/ Budget Holder</b></p>	<p>Tender Evaluation Document</p>	<p><b>Section Head/ Budget Holder</b></p>	<p>Chief Officer</p>

		<p><b>Economically Advantageous Tender as appropriate</b></p> <p><b>Contract Award Notice on Contracts Finder required for contracts above £25,000</b></p>				
<b>Above FTS Threshold</b>	<p><b>Advertisement</b> via the Council's e-tendering portal (Proactis), Contracts Finder, and Find a Tender Service,</p> <p><b>Exemption and Direct Award allowed</b> in accordance with Regulation 32, PCR15 as set out in Para 4.3 of the CPRs</p>	<p><b>Standard Selection Questionnaire (SSQ) must be used (Financial Assessment to be approved by the Borough Treasurer as part of the procedure)</b></p> <p><b>ITT -Most Economically Advantageous Tender</b></p> <p>Contract Award notices on FTS and CF required (within 24 hours)</p>	Section Head in Consultation with Head of Procurement and Borough Solicitor	Tender Evaluation Document & Regulation 84 report	<b>Chief Officer/ Policy &amp; Organisation Board (if the original budget has been exceeded)</b>	<b>NOT ALLOWED</b> above FTS Threshold unless Reg 32 PCR15 applies – Seek further guidance from the Borough Solicitor

### **8.3 Assets for Disposal**

- 8.3.1 Before disposing of surplus assets or goods the procuring Officer must check the provisions of the Scheme of Delegation and the Council's Financial Procedure Rules and ensure that any such disposal complies with these.
- 8.3.2 Surplus assets or goods for disposal may be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations and Tenders. (These may be invited by advertising on the Council's e-tendering portal Proactis). In the latter event, the method of disposal of surplus or obsolete stocks/ stores or assets other than land must be formally agreed with the Borough Treasurer.
- 8.3.3 Care must be taken to ensure that environmental sustainability as well as security and other associated issues and obligations (including those from the Data Protection Act/ UK GDPR and WEEE Regs) are considered and complied with, when disposing of surplus assets.

### **8.4 Providing Services to External Purchasers**

- 8.4.1 The Borough Solicitor and Borough Treasurer must be consulted where contracts to provide services or supply goods for organisations other than the Council are proposed.

### **8.5 Collaborative and Partnership Arrangements**

- 8.5.1 Collaborative and partnership arrangements are subject to Public Procurement legislation and must follow these CPRs. If in doubt, Officers must seek the advice of the Borough Solicitor, Head of Procurement.

## **9. COMMUNICATIONS**

- 9.1 All communications with Suppliers must be managed electronically through the e-tendering portal Proactis (other than pre-market engagement for which please refer to paragraphs 6.1 and 6.2 above).
- 9.2 Any information shared with one Candidate must be shared with all Candidates equally. If a Candidate does not wish for the Council response to any clarification to be shared with other Candidates, they must be advised that the question will have to be withdrawn.
- 9.3 All communications with Suppliers throughout the procurement process must be reflected in the final contract documentation.

## **10. RISK ASSESSMENT AND CONTINGENCY PLANNING**

- 10.1 A Business Case must be prepared for all procurements above £5,000. Provision for resources to manage the contract, for its entirety, must be identified in the Business Case.

10.2 For all contracts with a value of over £50,000, contract managers must:

- maintain a risk register during the contract period
- undertake appropriate risk assessments and
- for identified risks, ensure contingency measures are in place.

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## SECTION 3

### CONDUCTING PROCUREMENT

#### 11. ADVERTISING

11.1 As a default, Officers shall advertise Contracts over £50,000 (unless an exemption applies under the Procurement Regulations or these CPRs, or the Contract is awarded through an existing and compliant contract or Framework Agreement) as follows:

- On the Council's e-tendering portal (Proactis)
- On Contracts Finder (facilitated by the e-tendering portal - Proactis)
- In relevant national/ official journals or trade magazines, where appropriate.

11.2 Based on the nature of the procurement, and subject to the contract value being below the FTS Threshold, Officers may choose to limit participation in the tender process for a contract for services only, to either UK or Hampshire county-based Suppliers and/or Small and Medium sized Enterprises (SMEs)/Voluntary, Community and Social Enterprises (VCSEs), in accordance with Procurement Policy Note 11/20.

11.3 Where the contract value exceeds the FTS Threshold, in addition to the above advertisements requirements, Officers must also first publish a Prior-Information Notice or Contract Notice on Find a Tender Service (FTS).

#### 12. THRESHOLDS & TIMESCALES

12.1 In addition to the minimum timescales for procurement set out in PCR15, the amount of time allowed for a procurement process must be proportionate to the contract value and the complexity of the requirement.

**Table 2**

TYPE OF CONTRACT	THRESHOLD (£)
Works Contracts and Concession Contracts	£5,336,937 including VAT
Supplies and/or (most) Services (for Local Government)	£213,477 including VAT
Social and other specific Services (Light Touch Regime applies)	£663,540 including VAT

12.2. The timescales in Table 3 are minimum calendar days from date the contract notice is despatched. The final date should not end on a weekend or bank holiday, but should be carried forward to the next working day.

Table 3

	SELECTION STAGE	TENDER STAGE	IF ELECTRONIC TENDER ACCEPTED	TENDER FOLLOWING PIN	TENDER BY AGREEMENT	URGENCY
Open Procedure	n/a	35 days	30 days	15 days	n/a	15 days
Restricted Procedure	30 days	30 days	25 days	10 days	At least 10 days	15/10 days
Competitive Procedure with Negotiation	30 days	30 days	25 days	10 days	At least 10 days	15/10 days
Competitive Dialogue	30 days	n/a	n/a	n/a	n/a	n/a

12.3 Where during a Regulated Procedure, the ITT clarification process results in the provision of substantial additional information that requires Candidates/ Tenderers time to review, the Council must ensure that there are at least 6 calendar days after the provision of the final clarification information and the tender deadline. Where this is not the case, the tender deadline should be extended to allow Candidates/ Tenderers at least 6 clear calendar days before they need to submit their response.

12.4 Where the procurement requirement is deemed to be urgent (and provided that the urgency has not been brought about by the Council's own making) and the timescales set out in the Regulations would be prohibitive, an accelerated procedure may be applied with the agreement of the Borough Solicitor and Head of Procurement.

12.5 Where a Prior Information Notice ("PIN") has been published with the purpose of reducing the tender timescales; this can be amended in accordance with the Procurement Legislation. The PIN notice must be published at least 35 days before and less than 12 months prior to when the Contract Notice is issued.

#### 12.6 Summary Financial Thresholds

Officers should carefully estimate the value of the contract. If Officers issue tenders for a below threshold contract and the tender responses indicate that the value of the successful tender will be above the FTS Threshold, Officers **must** stop the process and

re-tender. To avoid this situation it is better to consider tendering for an above FTS Threshold contract in the first instance.

### **13. TYPES OF PROCESSES**

13.1 There are several procurement procedures by which contracts can be procured, the route selected should be based on achieving value for money from open competition. The possible options are set out below.

#### **13.2 Below FTS Threshold Processes**

**Quotes** –3 Quotes to evidence Value for Money from a local/SME or VCSE supplier (where available, and subject to guidelines in Table 1, Para 8.2 and 11.2).

#### **13.3 Above FTS Threshold Procurement**

The default route to market is using an Open or Restricted Tender procedure in accordance with PCR15. This enables all capable and interested Candidates/ Tenderers to submit a tender in response to a call for competition (advertisement).

Other options are available where the requirement is complex and or a High Value/ Risk contract is proposed. The Procurement Team can advise on these options when required.

Where the selected route to market includes a selection/ short listing stage, this must be carried out in accordance with these CPRs and Procurement Legislation and Strategy.

#### **13.4 Framework Agreements**

A Framework Agreement is an ‘umbrella’ agreement negotiated with suppliers whereby at the start of the agreement the exact quantity of goods, services or works required over the period of the agreement cannot be determined.

Framework Agreements contain a list of Suppliers who have been pre-selected/ evaluated on quality and price in accordance with the Procurement Legislation. These suppliers can then be used in accordance with the framework rules; either through Direct Award or with a further mini-competition process.

Before making use of a Framework Agreement, due diligence checks must be carried out by the Procurement Team to demonstrate that the Council can lawfully access them, they are fit for purpose and provide Value for Money.

Where fixed unit prices have not been pre-agreed under a Framework Agreement, the Officer may issue a mini-competition to all suppliers that are capable of fulfilling the requirement within the relevant terms of the Framework Agreement.

### 13.5 Dynamic Purchasing Systems

A DPS is an electronic system which suppliers can join at any time. It gives the Council access to a pool of pre-qualified Suppliers for contracts for goods (supplies), services or works, commonly available on the market. They can be categorised and listed on single or multiple lots, as well as geographic location and contract value to allow the Council to create a shortlist of appropriate suppliers.

### 13.6 Corporate Contracts/ Catalogues

The Council currently operates a number of Catalogues and these **MUST** be used for the following:

- Clothing/PPE
- Stationery

## 14. PROCESS INSTRUCTIONS

14.1 Procurement documentation must be created and submitted via the Council's e-tendering portal – Proactis.

14.2 The Invitation to Tender (ITT) will form part of the procurement documents and this shall set out:

- The procurement procedure to be followed, including:
  - details of the procedure to be used and the stages involved (Standard Selection Questionnaire (SSQ)/ ITT/ competitive dialogue/ negotiations)
  - SSQ criterion for short listing (where permitted in a regulated two stage process)
  - Award Criteria (ITT)
  - process for managing negotiations (where the selected procurement process allows)
  - communications process for tender clarifications
  - Contract award and notification process
- Tenders will be submitted at the Candidate's/Tenderer's own expense;
- The information/ response document to be submitted by the Tenderer;
- The Council is not bound to accept any Quotation or Tender;
- The terms and conditions to be used to award the contract;
- The rules for participation in the tender process;
- The procurement timescales and Tender submission deadline;
- Condition that all Tenders must be submitted electronically via the Council's e-tendering portal (Proactis);
- The method by which any mathematical errors discovered in the submitted Tenders will be considered. In particular, whether the overall price prevails over the rates in the Tender or vice versa.



- 14.3 All Candidates invited to submit a Tender or Quote must be issued with the same information, at the same time and must be subject to the same terms and conditions.
- 14.4 Any supplementary information provided in response to any clarification questions must also be given to all Candidates/ Tenderers at the same time, through the e-tendering portal.

## **15. SELECTION & SHORTLISTING REQUIREMENTS**

- 15.1 Officers are responsible for ensuring that all Candidates/Tenderers for a Relevant Contract, Framework Agreement or DPS are fully assessed. The assessment process shall establish that the potential Candidates/Tenderers have:
- robust financial and economic standing (please refer to the Head of Finance and the Accountancy Team for further advice)
  - Sound technical ability and capacity; and
  - Are able to fulfil the Contract requirements of the Council.
- 15.2 This shall be achieved as follows:
- Below FTS Threshold - due diligence checks regarding applicable turnover and credit checks (the latter for confirmation purposes only)
  - Above FTS Threshold – SSQ checks and ratio analysis either in response to a particular contract or during the application for inclusion on a Dynamic Purchasing System.

## **16. SPECIFICATION AND STANDARDS**

- 16.1 The procuring Officer must create a specification that clearly sets out the objectives of the Contract, and when the requirement is to be delivered in sufficient detail (ensuring it properly takes into account diversity and equality, as well as social value considerations) to enable the submission of competitive offers. Unless there are exceptional factors, which have been prior approved by the Borough Solicitor and Head of Procurement, this must be defined through the inclusion of specific performance requirements rather than by reference to a specific make, source or particular process which would favour a particular Candidate or Tenderer, or trademarks, patents, type or specific origin of production.
- 16.2 Where there are no reasonable alternatives, but to include reference to a specific make, source, particular process trade mark, patent or type, the specification must state that the Council will accept “equivalent” products or solutions with the obligation to prove equivalence being with the Tenderer.

## **17. AWARD CRITERIA**

- 17.1 The Officer must define Award Criteria that is relevant to the Subject Matter of the Contract.

- 17.2 The selected Award Criteria must be designed to secure quality outcomes from suitable Suppliers that delivers Value for Money for the Council. The basic criteria shall be:
- 'lowest price' where seeking a Quote;
  - 'highest price' where the Council is selling assets; or
  - 'Most Economically Advantageous Tender' (MEAT) or Most Economically Advantageous Quote (MEAQ) where considerations other than price also apply.
- 17.3 Where the evaluation process is based on MEAT/MEAQ, there must be a transparent list/breakdown of any sub-criteria and their relative weightings set out in the procurement documents.
- 17.4 This may include:
- Price – either rates or lump sum, running costs, whole life costings
  - Quality:
    - Service delivery methodology,
    - Resources and expertise
    - quality of goods, technical merit, aesthetic and functional characteristics (including security and control features),
    - relevant environmental considerations,
    - Health & safety, Safeguarding
    - after-sales services, technical assistance
    - programme, timescales & deadlines
- 17.5 The price and quality ratio must be set to facilitate achieving Value for Money and a quality outcome; the default position being either:
- 60% quality and 40% price where the price is evaluated from a base line, or
  - Such other quality / price split as is appropriate given the complexity, subject matter and competitiveness of the Contract.
- 17.6 Award Criteria must not include:
- Non-commercial Considerations
  - Matters which discriminate or artificially reduce/ distort competition.
- 18. SUPPLIER SUBMISSIONS**
- 18.1 As part of a tender submission, Suppliers must complete and return a Form of Tender declaration. This requires Tenderers to confirm that:

- the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a valid commercial purpose) **AND**
- they have not participated in any canvassing or collusion.

18.2 Only complete and compliantly submitted tenders may be evaluated; the exception to this being that where a tender is received late and it is the only tender received, it may be accepted at the discretion of the Borough Solicitor and/or Borough Treasurer.

## **19. RECEIPT/ OPENING OF TENDERS**

19.1 All Tenders must be returned via the Council's e-tendering portal, Proactis.

19.2 The Procurement Officer shall be responsible for the safekeeping and release of Tenders after the appointed deadline. The electronic vault software prevents any access to the Tender responses before official opening and provides full auditable records of:

- the date and precise time it was received;
- Date and time of opening, and
- The details of the Officer opening the received tenders.

## **20. EVALUATION & MODERATION**

20.1 An initial check for compliance and completeness must be completed by the Procurement Team before the evaluation process commences.

20.2 All tenders must be evaluated and awarded in accordance with the procurement documentation issued.

20.3 If mathematical errors are discovered, they should be notified to the Tenderer, who should be requested to confirm or withdraw their Tender.

20.4 During the evaluation process, tender clarifications regarding the price or quality information may be requested through the e-tendering portal, subject to this not breaching the obligation of transparency and equal treatment.

20.5 Commercially sensitive information and trade secrets must not be disclosed to competing Tenderers.

20.6 Evaluators must individually score and collate comments that justify those scores, in accordance with the evaluation criteria and scoring matrix, and submit these to the Procurement Team before the tender moderation process commences.

20.7 The tender moderation process requires that the evaluators agree a consensus score for each award criteria along with collating reasonable level of comments that justify and explain the agreed scores.

20.8 A tender report that records the evaluation process and all decisions made and the recommended outcome must be signed by all evaluators at the end of the process. The Procurement Team must moderate all Contracts over £50,000.

## **21. CLARIFICATIONS AND POST-TENDER NEGOTIATION**

21.1 Clarifications may take place throughout the whole of the procurement process; specifically, they may include:

- Clarification by Candidates or Tenderers of the various requirements set out in the procurement documents;
- Clarification by the Council of information submitted by the Tenderer including any missing information;
- Clarification of mathematical errors which are identified as part of the evaluation process;
- Clarification and investigation regarding any tender submission that is deemed to be abnormally low.

21.2 All clarifications and responses regarding the content of the tender documents must be made to all Candidates or Tenderers equally and at the same time.

21.3 Where information is missing from a Candidate or Tenderers response, this may only be provided by the Candidate or Tenderer where it is generic information that existed prior to the deadline, e.g. insurance information or audited accounts. Where the provision of the missing information could amount to providing an unfair advantage to a Candidate or Tenderer, then this information cannot be accepted, e.g. missed pricing/ rates or failure to answer a method statement requirement.

21.4 Where a mathematical error is identified and can be corrected without the need to seek clarity or additional information, this should be done and then the amended price advised to the Tenderer for agreement. Where this has an impact of increasing the total price, Tenderers must either honour the corrected total price or withdraw their offer.

21.5 Where a tenderer's price is significantly lower than anticipated by the Council or in comparison with other tenders received; the Council must seek to investigate the matter and clarify from the Tenderer on how they have priced the tender at that level and to provide assurance that it is commercially viable and sustainable. Where such assurances are either not provided or not to the satisfaction of the Council, the Council must reject the tender submission.

21.6 Post Tender Negotiations shall only be permitted where they are allowed under the Procurement Regulations, for e.g.

- All the received tenders came in over budget, or

- None of the tenders were compliant with the specification

Where permitted, all Tenderers that have submitted a tender shall be given the same opportunity to resubmit against a revised or reduced specification.

- 21.7 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Borough Solicitor and Head of Procurement, who must be consulted whenever 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 the Procurement Team or a Service independent to that leading the negotiations.
- 21.8 Where post-tender negotiation results in a material change to the specification (or contract terms) the Borough Solicitor and Head of Procurement must be consulted before any further action or contract award is made.

## 22. CONTRACT AWARD

- 22.1 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these CPRs and, in respect of proposed contracts that are expected to exceed £50,000, the approval of the relevant Budget Holder has been secured. The process to award Contracts which exceed the FTS Threshold **may only be completed** after seeking advice and approval from the Borough Solicitor and the Head of Procurement.
- 22.2 All contracts above £50,000 **can only be awarded** after a mandatory Standstill Period has concluded. There are strict rules for above FTS Threshold procurements on how to debrief suppliers including a mandatory Standstill Period prior to confirming Contract Award. Under the PCR15 where notification of intention to award is sent by electronic means the Alcatel (Standstill) period must be 10 calendar days (15 days, if sent by post). The Standstill Period will expire at midnight on the 10th day after notification. The Standstill Period must not expire on a non-working day (Saturday, Sunday or bank holiday), and in that event, it should be extended to the next working day. Officers must:
- ensure notification is sent to all Candidates and Tenderers simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer.
  - apply a Standstill Period of at least ten calendar days in which the unsuccessful Tenderers can challenge the decision before the Officer awards the contract.
  - where the decision is challenged by an unsuccessful Tenderer, the Officer shall **not** award the Contract and immediately seek the advice of the Borough Solicitor and Head of Procurement.
- 22.3 The Officer shall debrief, in writing, all those Tenderers who submitted a tender and any unsuccessful Candidates (from the selection stage who have not already been informed of the reasons they were not selected) as part of the Standstill Notification, via the Council's e-tendering portal. The following information must be provided:

- The Award Criteria for the contract.
- The reasons for the decision – including:
  - the “characteristics and relative advantages” of the successful tender.
  - the scores obtained by:
    - the tenderer receiving the letter, and
    - the scores obtained by the successful Tenderer(s).
- The name of the Tenderer to be awarded the contract
- A precise statement of either:
  - the date and time at which the Standstill Period will end, or:
  - the date, before which, the Council will not enter the contract.

22.4 If the Tenderer requests a face to face debrief, this should be agreed after consulting the Borough Solicitor and Head of Procurement.

### **23. CONTRACT AWARD NOTICES**

23.1 Where a contract is awarded, regardless of the procurement process followed or the form of contracting, a Contract Award Notice must be published as follows:

- all contracts over £25,000, whether advertised, directly awarded, awarded under a framework agreement or via a DPS, require a Contract Award Notice to be published on Contracts Finder within 90 days,
- All above FTS Threshold Procurements require a Contract Award Notice to be published via Find a Tender Service within 30 days. This includes the award of a contract, the conclusion of a Framework Agreement or the periodic notification of awards under a DPS (in the latter case, this can be grouped into a single quarterly notice for each DPS). This must be followed up by a Contract Award Notice in Contracts Finder within a reasonable period (within 90 days).

### **24. RECORDS & CONTRACT REGISTER**

24.1 All contracts with a value over £5,000 must be stored on the Contract Register which is a part of the Council’s e-tendering portal.

24.2 Where the Total Value is less than £25,000, the following records must be kept using the Council’s electronic procurement portal:

- invitations to Quote and all Quotations received, and a report that includes the reason for selecting the successful Supplier;
- a copy of any approved exemptions and the reason for them, including records of communications with the successful Supplier.

24.3 Where the Total Value exceeds the FTS Threshold, the Officer must record the following using the Council's e-tendering portal:

- A Tender Report (Regulation 84 PCR15) detailing:
  - tender procedure used;
  - selection and evaluation criteria (and sub-criteria) and the relevant weightings;
  - The number of Candidates and Tenderers;
  - details of any short listing and the reasons for rejection/ acceptance;
  - the final award decision and the reasons .
- Tender documents sent to and received from Candidates/ Tenderers
- Details of any pre-tender market engagement;
- Tender evaluation scores and moderation notes;
- Details of any post-tender clarifications;
- Any exemption under applied under these CPRs, together with the reasons for them;
- Final contract documents;
- Information relating to post-contract performance monitoring;
- All communications with the successful Supplier throughout the period of the contract.

24.4 Records required under this section must be stored on the electronic procurement portal and kept for six years after the end of the contract. Hard copies of signed contracts should be sent to the Borough Solicitor for storage. Any contracts which have been sealed should be retained for 12 years.

25. **[not used]**

## SECTION 4

### CONTRACT AND OTHER FORMALITIES

#### 26. CONTRACT DOCUMENTS

- 26.1 The Contract Award and implementation formalities must be carried out effectively and in accordance with CPRs. Prior to contract award, Officers must ensure that the contract objectives have been fully addressed and all approvals necessary to award have been complied with. The Council's Order Form or Standard form of Contract **MUST** be used in all circumstances, unless prior approval has been obtained from the Borough Solicitor.
- 26.2 The **formal advice** of the Borough Solicitor must be sought for the following contracts:
- where the Total Value exceeds £50,000;
  - agreements involving leasing arrangements (including finance leases);
  - where it is proposed to use a Supplier's terms and conditions.
- 26.3 All Contracts shall be in writing, in the approved format, and signed by an Authorised Signatory.
- 26.4 All Contracts, shall clearly specify:
- what is to be supplied (i.e. the goods (supplies), services or works);
  - provisions relating to payment (i.e. the schedule, frequency and amount of payments);
  - Contract period within which the contract is to be performed;
  - Terms allowing the Council to terminate the contract;
  - obligation that the Supplier cannot assign or novate a contract without prior written consent of the Council;
  - any limitations on subcontracting must be clearly set out and be compliant with the obligations of the Procurement Regulations;
  - details relating to insurance requirements;
  - health and safety requirements;
  - procedure to refer matters to the Local Government Ombudsman, where appropriate;
  - obligation on the Supplier to meet the Council's diversity and equality requirements and operate in accordance with all current Equality Legislation;
  - Freedom of Information Act/EIR 2004 obligations;
  - In the event Agents are commissioned to award contracts, the requirement that Agents must comply with the Council's CPRs
  - a right of access to relevant documentation and records of the Supplier for monitoring and audit purposes, where relevant
  - Data Protection and UK GDPR requirements (see Appendix 3) where relevant;
  - Requirement that charter standards must be met, where relevant;
- 26.5 All Contract documents must be stored on the Council's e-tendering portal.



- 26.6 Contract managers (and others closely involved in managing contracts) must have read and understood the contract documents.
- 26.7 Contract Managers must check valid insurance documents are provided by the Supplier, confirming that annual premiums have been paid, to cover the duration of the Contract, and that copies are stored on the Council's e-tendering portal - Proactis.

## **27 CONTRACT FORMALITIES**

- 27.1 Agreements shall be completed as follows:

Contracts:

- Signature - where the procurement only requires a 6-year limitation period, the Contract can be signed under-hand, and this can include the possibility of using electronic signature software;
- Deed - Where the contract would benefit from a 12-year limitation (enforceability) period, the agreement should be executed as a Deed by way of a common seal. This will be appropriate in the case of construction contracts or for agreements without consideration.

Grants should be executed as a deed unless otherwise agreed by the Borough Solicitor.

### **Method of Completion**

- 27.2 All Contracts must be concluded formally in writing **before** the supply, service or construction work begins and signed by an Authorised Signatory, except in exceptional circumstances, and then only with the written consent of the Borough Solicitor and Borough Treasurer. An award letter is insufficient in these circumstances.
- 27.3 The Officer responsible for securing signature of the Contract (in accordance with the CPRs) must ensure that the person signing for the Supplier or other contracting parties (counterparty) has authority to enter into the Contract.
- 27.4 Where contracts are required to be sealed, the Council's seal must be witnessed in accordance with the Constitution either by physical or electronic sealing.
- 27.5 Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal in accordance with Part 3 Schedule 10 (Appendix 1) of the Council's Constitution.
- 27.6 A contract must be sealed where:
- the Council wish to enforce the contract for more than six years after its expiry;
  - the price paid or received under the contract is a nominal price and does not reflect the value of the goods, services or works;

- in the event of any doubt about the authority of the person signing for the Supplier or other contracting party, or
- the Total Value exceeds £200,000 (two hundred thousand pounds).

## **28. BONDS AND PARENT COMPANY GUARANTEES**

- 28.1 The Officer must consult the Borough Treasurer, Head of Finance and Borough Solicitor whether a Parent Company, Ultimate Company or Holding Company Guarantee is necessary where a Supplier is a subsidiary of a parent company and:
- the total contract value exceeds £1,000,000; or
  - the award is based on the evaluation of the parent company; or
  - there is some concern over the financial stability of the Supplier.
- 28.2 Details of the requirements or potential guarantees a Supplier may need to provide must be set out in the procurement documents.
- 28.3 The Officer must consult the Borough Treasurer and the Borough Solicitor about whether a Performance Bond is needed in respect of relevant Works and some Services contracts:
- the Total Value exceeds £1,000,000, or
  - where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Supplier.
- 28.4 Supplier contracts should be checked carefully for any limitations or liability and advice should be sought from the Borough Solicitor. The foreseeable damage to the Council which might arise from the failure on the part of the Supplier, any limitation on the contract, liability insurance carried by the Supplier (other than public liability cover) and, security for performance, are all interrelated factors and should be considered carefully in their entirety.

## **29. PREVENTION OF CORRUPTION**

- 29.1 Council Members and Officers must comply with the Code of Conduct and the Council's anti-fraud strategy. Members and Officers must not invite or accept any gift or reward in respect of the award or performance of any Contract. It will be for the Member or Officer, to prove that anything received was not received corruptly. Gifts and Hospitality must be recorded on the online register.

### **Canvassing and Collusion**

- 29.2 All Invitations to Tender must include a requirement for Tenderers to fully complete and sign a form of tender including certificates relating to canvassing and non-collusion. Every contract must contain a clause entitling the Council to cancel the contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier or its representative is guilty of collusion in tendering for the contract or any other contract with the Council.

**See the Business Ethics Section for further information (Appendix 2).**

### **30. DECLARATION OF INTERESTS**

30.1 Section 117 of the Local Government Act 1972 provides that, if it comes to the attention of any Officer, that the Council has entered or is proposing to enter into a Contract in which the Officer “pecuniary” interest, the Officer must give notice in writing of that interest to the Council as soon as is practicable. It is a criminal offence not to comply with this provision. Note that:

- The register in which the written notice is to be given is held by the Borough Solicitor.
- “Pecuniary” includes any direct or indirect interest and is defined by reference to Section 95 of the Local Government Act 1972. The Borough Solicitor’s advice should be sought in the event of any uncertainty.
- The requirement to register applies even if the Officer is not involved with the Contract directly.

30.2 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not required to be declared for the purposes of this section.

30.3 The Borough Solicitor shall maintain a record of all declarations of interests notified by Members and Officers.

### **31. PURCHASING CARDS**

31.1 The Council operates a purchase card facility and this is available with the approval of the Finance Team.

31.2 Purchasing cards are to be used for low value or one-off incidental expenditure (during emergencies) where it is not efficient to carry out a competitive process. Purchase cards **MUST NOT** be used to bypass corporate contracts or these CPRs, without the express permission of the Head of Procurement. **Approved users of purchasing cards must agree to adhere to the rules governing purchasing cards which are available from the Purchasing and Procurement Team.**

31.3 It must be noted that the rules relating to disaggregation of contract values applies to any spend using purchasing cards (both in relation to the individual departments and the Council as a whole).

### **32. COMMUNITY RIGHT OF CHALLENGE**

32.1 Section 81 of the Localism Act 2011 permits relevant bodies (charities, community bodies, town and parish Council Services and Staff) to submit Expressions of Interest to provide Council Services. The Procurement Team shall maintain and publish a timetable for the submission of interest. Any such expressions shall be forwarded to the Borough Solicitor.

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## SECTION 5

### **CONTRACT MANAGEMENT**

#### **33. MANAGING CONTRACTS**

- 33.1 Chief Officers in the sponsoring departments are to name contract managers for all new Contracts. All Contracts must have a named Council contract manager for the entire duration of the contract.
- 33.2 Contract managers must follow procedures set out in these CPRs and all contracts must be entered onto the Contract Register held on the Council's e-tendering portal administered by the Procurement Team in the Financial Services Unit. This enables the Council to keep track of budgets and plan for future expenditure. It also supports the Council's obligations to keep Suppliers and local community interested parties aware of upcoming projects (pipelines).

#### **34. CONTRACT MONITORING, EVALUATION AND REVIEW**

- 34.1 All contracts which have a value higher than £50,000, or which are deemed to be of High Risk, will be subject to monthly formal reviews with the Supplier/ Contractor. The review may be conducted quarterly if permitted by the Chief Executive or the Assistant to the Chief Executive.
- 34.2 For all contracts with a value above the FTS Thresholds, or which are deemed to be High Risk will require an annual report to be produced which must be submitted to the Corporate Management Team.
- 34.3 A Council-developed Gateway review process must be applied to all contracts deemed to be High Risk, High Value or High Profile. This process must be applied to all key stages relating to major procurements.
- 34.4 During the life of the contract, the contract manager must monitor it in respect of:
- performance
  - compliance with specification and contract cost
  - Value for Money and Social Value requirements
  - user satisfaction and risk management
  - Compliance with the Council's diversity and equality monitoring requirements (as stated in the Contract) and with all current equality legislation.
- 34.5 Where the Total Value of the contract exceeds the FTS Threshold, the contract manager must make a written report to the relevant Budget Holder evaluating the extent to which the procurement need and the contract objectives (as determined in accordance with these CPRs) have been achieved under the Contract. This should be done normally when the contract is completed. Where the Contract is to be re-tendered, a provisional report

should also be available in sufficient time to inform the approach when re-letting future contracts.

- 34.6 Payments against contracts should be managed efficiently and without detriment to the Suppliers and payment should be made within 30 days of an undisputed invoice in accordance with government guidance. All invoices received by the Council must include a Purchase Order number.
- 34.7 Invoices without a Purchase Order number will be returned to the Supplier. Suppliers must not be paid until it has been confirmed that the requirement has been satisfactorily delivered/ completed. A Purchase Order must be followed by a Goods Receipt Notice before an invoice can be paid.
- 34.8 The Council will endeavour to avoid situations where payments are made late, as it breaches legal obligations and Suppliers will be entitled to claim statutory late payment interest, unless otherwise provided in the contract.
- 34.9 Performance management must be carried out on a periodic basis and clear records must be made to ensure a quality outcome and VFM, and if necessary, to take action against any performance failures.
- 34.10 Where a performance failure is identified, the following actions must be taken:
- Legal Services must be consulted without delay to establish contractual measures required to protect the interests of the Council;
  - Management meetings are held more frequently;
  - A remedial plan is agreed and signed with the Supplier;
  - Revised, intermediate performance targets are set out and monitored to ensure improvement and performance failure resolution within the agreed timescales.

Where the above measures do not deliver the required improvements within the required timescales, Legal Services should be consulted to escalate the remedial requirements or initiate the termination of the contract.

- 34.11 Where performance failure under the contract cannot be remedied to the satisfaction of the Council, or where there has been a case of insolvency or other organisational failure, the contract manager should seek advice from the Borough Solicitor to take steps to terminate the Contract.

## **35. CONTRACT AMENDMENTS**

- 35.1 Where Officers award a Contract/Framework Agreement, they must state the start and end dates and whether there is an option to extend beyond the 'initial term'. If an extension clause has been included in the Contract, then it is permissible to extend, but

this should only be done if it represents Value for Money to extend and if the performance of the Supplier warrants it.

- 35.2 Where no such provision exists in the Contract, a Contract can only be extended or varied in accordance Regulation 72 PCR15. All requests for extensions to existing Contracts must be made in writing to the Borough Solicitor and the Head of Procurement for approval.
- 35.3 In all cases where the extension of a Contract has been approved, the Borough Solicitor shall be requested by the contract manager to undertake formalising the contract extension. Where the total contract value (including the original contract value) exceeds £5,001, details of the contract extension must be entered on the Contracts Register. If a contract record has already been entered on the Contract Register, then this will need to be updated with the contract extension details.

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## Appendix 1 - TABLE OF DEFINITIONS/TERMS

<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another partner organisation.
<b>Area</b>	The administrative area of Gosport
<b>Assistant Chief Executive</b>	As identified in the Constitution
<b>Authorised Signatory</b>	Officer authorised to sign FTS Threshold Contracts – Chief Executive, Assistant Chief Executive, Borough Solicitor and Senior Solicitor Borough Treasurer.
<b>Best Value</b>	The Authority's duty to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness in accordance with section 3(1) of the Local Government Act 1999 and associated statutory guidance
<b>Bond</b>	A bond is a legally enforceable financial guarantee given by a third party (the guarantor) to the Council to guarantee the obligations of a Supplier under a contract. The guarantor agrees to pay the Council a sum of money if the Supplier does not do what has been promised under a contract with the Council (e.g. a bond is often 10% of the total contract value). The purpose of a bond is to help the Council meet the extra expenses to remedy the contract default and/or complete the contract.
<b>Board(s)</b>	The Boards established by the Council to carry out certain aspects of its business. All the powers, duties and functions of the Council as contained, mentioned or referred to in the statutory provisions from time to time in force governing the exercise of those powers, duties and functions is described specifically and generally in the Terms of Reference within the Constitution for each Board appointed by the Authority.
<b>Borough Solicitor</b>	As identified in the Constitution.
<b>Borough Treasurer</b>	As defined by the Constitution.
<b>Business Case</b>	A document that must be presented to the Procurement Team for approval, prior to procuring revenue spend above £5,000.
<b>Candidate</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Chief Executive</b>	As identified in the Constitution.
<b>Chief Officer</b>	The Officers defined as such in the Constitution
<b>Code of Conduct</b>	The code regulating conduct of Officers issued by the Head of Paid Service.
<b>CCR16</b>	The Concession Contracts Regulations 2016
<b>Conflict of Interest</b>	A set of circumstances that creates a risk that an individual's ability to apply judgement or act in one role is or could be, impaired or



		influenced by a secondary interest.
<b>Constitution</b>		The document approved by the Council which: <ul style="list-style-type: none"> <li>• allocates powers and responsibility within the Council and between it and others</li> <li>• delegates authority to act to the Board, Committees and Officers</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li> </ul>
<b>Consultant</b>		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 Authority has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contract</b>		An agreement to supply Goods/Services/Works formed when there is an offer by one party and an acceptance of that offer by a second party. A Contract can be written or verbal.
<b>Contract Award Notice</b>		An advertisement entered by the Council on 'Find a Tender' or Contracts Finder to advise interested parties that a Contract has been awarded by the Council to a named supplier.
<b>Contracts Finder</b>		The UK Government's website on which all opportunities that are advertised for Contracts and Framework Agreements (and call-offs from Framework Agreements) for goods services and works above £50,000 <b>MUST</b> be published. All advertisements on Contracts Finder must be done via Proactis.
<b>Contract Notice</b>		An advertisement entered by a buyer in 'Find A Tender' or Contracts Finder to advise interested parties of the intention of the buyer to go to market to buy goods/services/works. It gives details of the requirements of the Authority.
<b>Contract Register</b>		The Council's repository for all its current Contracts and Framework Agreements, located on Proactis.
<b>Corporate Contract</b>		A contract let by the Council to support the Council's aim of achieving Value for Money.
<b>CPRs</b>		These Contract Procedure Rules (including the Appendices)
<b>Corporate Management Team</b>		a meeting of senior Officers called by the Chief Executive
<b>Estimated Total Value</b>		The calculation of the estimated value of a contract shall be based on the maximum total amount payable, excluding VAT, envisaged for the total term of the agreement (including any option for contract extensions). Contracts must not be artificially separated either in structure or duration so as to avoid having to comply with the requirements of the Council's CPRs or Public Contract Regulations 2015

<b>Financial Regulations</b>	The financial regulations outlining Officer responsibilities for financial matters issued by the Section 151 Officer in accordance with the Constitution.
<b>Find A Tender (FTS)</b>	From 2021, the site where Contracts are advertised in the UK. Replaces the need to publish in Europe.
<b>FOIA</b>	The Freedom of Information Act 2000 and the Environmental Information Regulations 2004
<b>Framework agreements</b>	Framework Agreements are non-binding agreements entered into between a Local Council (or Local Authorities or Consortium) and a number of Suppliers, setting out the terms and conditions (e.g. pricing mechanisms, quantity and scope of services/supplies/works and duration) under which future purchases (or call offs) can be made throughout the term of the agreement.
<b>FTS Threshold</b>	The contract value at which Part 2 of The Public Contracts Regulations 2015 apply.
<b>Gateway</b>	The process which relates to all High Risk, High Value, or High-Profile Contracts and govern the assessment of the Business Case for entering into each Contract and for oversight of the process of awarding the Contract.
<b>Grant</b>	An arrangement will be a grant when the Council gives a donation to an organisation without receiving a benefit in return. The organisation is not obliged to provide the service. It can decide not to provide the service but would then have to repay the donation.
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk</b>	A high-risk procurement is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the EU Threshold values.
<b>Invitation to Tender or ITT</b>	The invitation to tender is sent at the stage of the procurement process when you invite selected bidders to present their tenders in response to the stated requirements and evaluation criteria.
<b>Light Touch Regime</b>	The Light-Touch Regime is a specific set of rules for Contracts for certain services that tend to be of lower interest to cross-border providers. It includes certain social, health and education services.
<b>Member</b>	An elected councillor
<b>Most Economically Advantageous Tender or MEAT</b>	Awarding a Contract for works, goods or services based on a combination of overall cost AND service elements, not just cost alone.
<b>Non-commercial</b>	As defined in Section 17 of the Local Government Act 1988 (as

<b>Considerations</b>	amended).
<b>Officer</b>	The Council Officer designated to deal with the Contract in question.
<b>Parent Company Guarantee</b>	The parent company (or holding company) guarantees the proper performance of a Contract by one of its subsidiaries (the contractor). The conditions of the parent company guarantee will usually give the parent company the opportunity to remedy any default within a period of notice before the guarantee is called. The liability can take several forms including a financial guarantee of completion of the project itself or the employment of another Supplier to complete the project.
<b>Proactis</b>	The Council's e-tendering system for carrying out tender exercises, available through the <a href="https://sebp.due-north.com/portal">https://sebp.due-north.com/portal</a> .
<b>Procurement Legislation</b>	The Public Contracts Regulations 2015, Concession Contracts Regulation 2016 or any successor legislation applying to English law.
<b>PCR15</b>	The Public Contracts Regulations 2015 (as amended)
<b>Quote or Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Regulated Procedure</b>	The procedure required by Procurement Legislation where the Total Value exceeds the stated FTS Threshold.
<b>Relevant Contract</b>	Contracts to which these CPRs apply
<b>Residents</b>	Means Residents of the Area
<b>Scheme of Delegation</b>	The Scheme of Delegation set out in the Council Constitution at Part 3 Schedule 9
<b>Section Head</b>	The Officer's immediate superior or the Officer designated by the Service Unit Manager to exercise the role reserved to the Section Head by these CPRs.
<b>Short listing</b>	Where Suppliers are selected: <ul style="list-style-type: none"> <li>• to Quote or bid or</li> <li>• to proceed to final evaluation</li> </ul>
<b>Social Value</b>	Described in the Public Services (Social) Value Act 2012 as improvements to the economic, social and/or environmental well-being of the Area. The benefits sought could be in the form of social benefits (for example reducing anti-social behaviour), economic benefits (for example increasing local employment), or environmental benefits (for example reducing local congestion).
<b>Standstill Period</b>	A Mandatory 10-day period (which must be applied above all contracts in excess of £50,000 between the notification to tenderers of the decision to award the Contract and the date of signing/ entering into the Contract. The period is intended to give unsuccessful tenderers the opportunity to challenge the award if they wish. The standstill period is longer if notifications are not all

	sent electronically (will be 15 days).
<b>Supplier</b>	Any person, organisation or economic operator who supplies the Council with goods, works or services. For the purpose of CPRs, the term supplier includes contractors, consultants and service providers.
<b>Tender</b>	Request for pricing and/or quality bid from a potential supplier for goods/services/works above £50,000. Similar to a Quote but Tenders require more detailed proposals.
<b>Tenderer</b>	means an economic operator (supplier) that has submitted a tender
<b>Think Local</b>	The Council's policy on local purchasing
<b>TUPE</b> <b>Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No 246)</b>	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.
<b>Value for money</b>	The optimum combination of whole-of-life costs and quality (or fitness for purpose) of the goods, works or services to meet the Council's requirement
<b>VAT</b>	Value Added Tax
<b>VEAT</b>	A voluntary transparency notice (also known as a 'voluntary ex ante transparency notice' or 'VEAT notice') is used in limited circumstances arising under PCR15. It may be published by a contracting authority, where a contract has been awarded without prior publication of a contract notice, but where no specific justification existed for using the Negotiated Procedure.

## Appendix 2 - Business Ethics

### 1. General

Business ethics focuses on what constitutes right or wrong behaviour in the world of business. The following will help you to address ethical dilemmas during the procurement process.

### 2. Code of Conduct

All procurement exercises **must** be carried out with openness and transparency and with integrity and fairness to all Suppliers.

Members and Officers of the Council **must** conduct themselves in line with the Council's HR Code of Conduct including with regards to the receiving of hospitality and gifts and the giving and receiving of sponsorship.

### 3. Separation of Roles during Tendering

Council Members and Officers involved in the tendering process and dealing with contractors **must** be clear on the separation of client and contractor roles within the Council. Senior Officers who have both a client and contractor responsibility **MUST** be aware of the need for accountability and openness.

Council Member and Officers who are privy to confidential information on Tenders or costs for either internal or external contractors **MUST** not disclose that information to any unauthorised party or organisation. For further information, see the Members' Code of Practice guidance.

### 4. Conflicts of Interest

There **must** be no conflict of interest with any suppliers or contractors. Where a conflict is identified, the member of staff concerned **must** not take any further part in the tendering process, to preserve the integrity of the process. For further advice, contact the Borough Solicitor or the Head of Procurement.

### 5. Corruption

Council Members and Officers **must** be aware that it is a serious criminal offence for them corruptly to receive or give any gift, loan, fee, reward or advantage for doing, or not doing, anything or showing favour, or disfavour, to any person in their official capacity. If an allegation is made, it is for the individual to demonstrate that any such rewards have not been corruptly obtained.

### 6. Use of Financial Resources

Council Members and Officers **must** ensure that they use public funds entrusted to them in a responsible and lawful manner and in accordance with the Council's Financial Regulations. They should strive to ensure Value for Money to the Council and to avoid legal challenge to the Council.

### 7. Lobbying

It is recognised that lobbying is a normal and perfectly legitimate element of the process of local governance however it is important that Members protect their impartiality and integrity when dealing with external contractors and suppliers.

Members **MUST NOT** breach the Council's Code of Conduct by listening to or receiving viewpoints from contractors and suppliers or other interested parties unless they make it clear that they are keeping an open mind. Indicating a bias toward a particular product, supplier or contractor would prejudice impartiality and could lead to a legal challenge against the Council.

#### **8. Former Council Employees**

Council Members and Officers should endeavour to ensure that where they contract with a supplier to provide services or works to the Council, that the supplier does not employ a former Council employee when producing and submitting the response to the tender. This will ensure that all suppliers in the tendering process are treated fairly and that no one supplier is given a tendering advantage and respects Council confidentiality.

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## Appendix 3 - Confidentiality, Intellectual Property, Data Protection, Transparency and Redaction

### 1. Confidentiality

- 1.1 The Council has a responsibility to ensure that information provided to suppliers and provided by suppliers is treated confidentially. This is not only good practice, but also gives the suppliers confidence that they are being treated fairly and without discrimination. Information provided by the Council is given to suppliers in confidence and only to those whom they need to consult for the purpose of preparing the Tender, such as professional advisors or joint bidders.
- 1.2 If a Conflict of Interest arises or if at any time during the procurement it is discovered that the tenderer has not acted confidentially, the Council has the right to eliminate them from the procurement exercise.
- 1.3 Tenderers have the right to state what elements of their Tender response they want to remain confidential however under the Freedom of Information Act and Environmental Information Regulation 2004 the Council **MUST** provide information requested with some exceptions such as commercially confidential items (pricing, intellectual property etc.) which can be redacted from the version published in the public domain. Supplier's cooperation may be needed to ensure the Council complies with requests for information.

### 2. Intellectual Property

- 2.1 "Intellectual Property Rights" includes patents, inventions, trademarks, service marks, logos, design rights, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations.
- 2.2 Generally speaking, all intellectual property rights in all works or supplies provided under a Contract which are written or produced on a bespoke or customized basis would be owned by the Council and the contractor should be required to ensure that it allows such ownership.
- 2.3 However, where the Supplier provides existing intellectual property right protected material to the Council under a Contract, it has to warrant it has the right to do so and it fully indemnifies the Council against all loss or liability arising from any third party intellectual property rights claims arising both from such existing material and in relation to any such bespoke work.

### 3. Data Protection Act & GDPR

3.1 The Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (GDPR) define UK law on the processing of data on identifiable living people and are the legislation that govern the protection of personal data in the UK. All Council Officers are legally obliged to comply.

3.2 The Council's Terms and Conditions of Contract contain clauses which state how contractors process and store personal data provided to them under a Contract.

3.3 In certain Contracts, where a supplier is required to process personal data or hold personal information for the purpose of executing the Contract, then Officers **MUST** include an Information Governance questionnaire in the corresponding Invitation to Tender. Further guidance can be obtained from Legal Services.

### 4. Transparency

Under the Local Government Transparency Code the following items **MUST** be published.

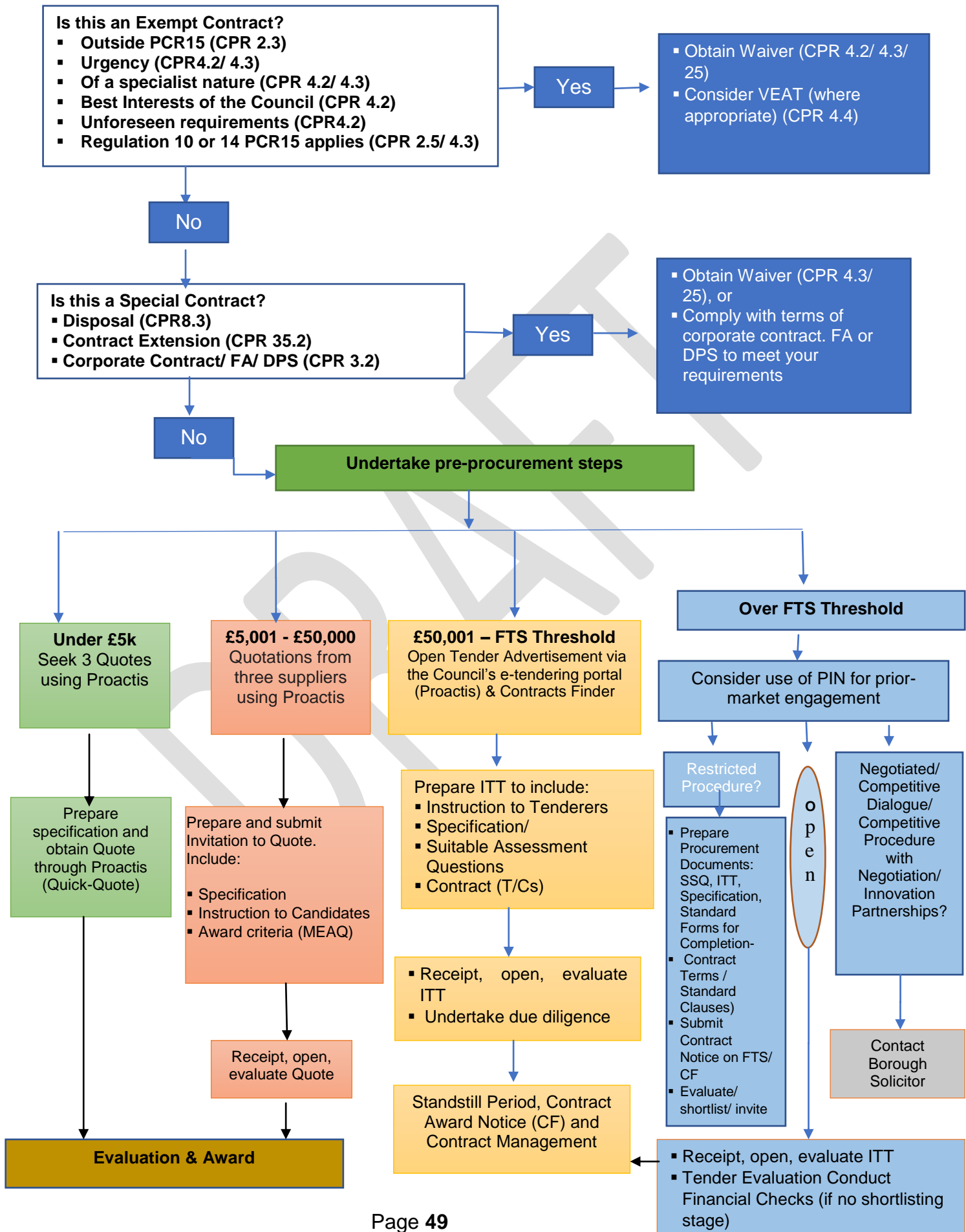
- all individual items of expenditure above £500;
- every transaction made using a Government Procurement (purchasing) Card;
- a list of all Invitations to Tender for goods and services exceeding £5,000;
- a list of all contracts, Framework Agreements, purchase orders and commissioned activity in excess of £5,000.

### 5. Redaction of Data

It is the responsibility of the Budget Holder/Section Head to ensure that the information provided for publication under the transparency code has been cleansed and any personal or sensitive information has been redacted prior to publication.



**Appendix 4 - Flowchart of the Procurement Process**



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