

SLOUGH BOROUGH COUNCIL

CONTRACT PROCEDURE RULES¹

As approved by the Council on **[INSERT DATE]**

Operative with effect from **[INSERT DATE]**

EU Thresholds from 1 January to 31 December 2018²	
Works Contracts	£4,551,413
Light Touch Regime Services	£615,278
Supplies Contracts	£181,302
Services Contracts	£181,302

¹ Legal Status of these Contract Procedure Rules

Slough Borough Council is required by section 135 of the Local Government Act 1972 to maintain Contract Procedure Rules.

The Head of Procurement is the custodian of these Contract Procedure Rules and is responsible for keeping them under review. If the EU Directives or any other Law is changed in a way that affects these Contract Procedure Rules then the Head of Procurement will issue a notice and the change must be observed until the Contract Procedure Rules can be revised.

² The EU Thresholds will need to be updated in line with relevant Crown Commercial Service Procurement Policy Notes.

Document Control

Version	Date	Lead Author	Main Changes
1.0	18 October 2018	Karen King (HB Public Law)	Initial Draft after Meeting with head of Procurement
1.1	13 November 2018	Karen King (HB Public Law)	Revisions following meeting with Procurement Team
1.2	5 February 2019	Karen King	Revised Draft following meeting with F Narmh and C Portsmouth on 29/1/19
1.3	26 February 2019	Karen King	Revised Draft following meeting with C Portsmouth on 26/2/19
1.4	21 March 2019	Karen King	Amendments made to include 16.67 from Constitution.
1.5	14 June 2019	Sushil Thobhani	Amendments made to include 16.74 and 16.75 from Constitution.

Contents

1. SCOPE.....	13
2. APPLICATION.....	14
3. OFFICERS COMPLIANCE WITH CONFIDENTIALITY AND CONFLICTS OF INTEREST REQUIREMENTS.....	15
4. BREXIT.....	15
5. ROLES AND RESPONSIBILITIES.....	16
6. AUTHORISATION.....	17
7. PROCUREMENT METHOD.....	18
8. ENGAGEMENT OF CONSULTANTS.....	19
9. SINGLE TENDER ACTION.....	19
10. CONCESSION CONTRACTS.....	19
11. INFORMATION GOVERNANCE.....	19
12. ACCEPTANCE.....	20
13. CONTRACT SIGNING AND SEALING.....	20
14. EXTENSIONS AND VARIATIONS.....	21
15. EXEMPTIONS.....	22

Slough Borough Council Procurement Application and Authorisation Table³

Total Aggregate Contract Value⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation⁵
Less than £2,500	Obtain and retain a minimum of 3 quotes if possible.	Obtain and retain a minimum of 3 quotes if possible. Authorised Officer to complete Procurement Proforma.	Authorised Officer in the Service Area	No	Purchase Order Standard Terms and Conditions	NO WAIVER REQUIRED Completed Procurement Proforma to be provided to Procurement within 5 Working Days following appointment.	Service Lead

³ All procurements and transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub-committees. No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.

⁴ Contracts should not be artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

⁵ Scheme of Delegation, Part 3.6.2 of the Slough Borough Council Constitution.

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
£2,500 - £49,999	Obtain and retain a minimum of 3 quotes. OR Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.	Obtain and retain a minimum of three quotes. These quotes must be obtained through the SE Shared Services E-portal. The SBC RFQ document should be used for all procurements in this value band. Please seek advice from the Procurement Team.	Authorised Officer in the Service Area	All Contract Values over £2,500 are published on the SE Shared Services E-portal. Contract Values over £25,000 must also be advertised on Contracts Finder.	The Council's Low Value Service Contact. Please seek advice from the Procurement Team. The contract used will depend upon the value and complexity of the procurement.	Short Form Business Case to be approved by Head of Procurement OR WAIVER REQUIRED IT Board Approval required for IT projects with a contract value in this value band. Capital Monitoring Board Approval required for all capital projects that fall within this value band.	Short Form Business Case to be signed by the Service Lead and the Head of Procurement and Reported to the Procurement Review Board at every subsequent meeting.
£50,000 – EU Threshold for supplies and services £181,302 £50,000 – EU Threshold for Works £4,551,413	A minimum of three tenders to be evaluated. Formal tender process using SE Shared Services E-portal required. OR Consider accessing local/national	Most economically advantageous tender must be selected, achieving Best Value and Value for Money for Council. The Procurement Team must be	Authorised Officer in the Service Area	Use of SE Shared Services E-portal procurement system is mandatory. Procurement Must be advertised on Contracts	Services: The Council's Low Value Service Contact for Contracts under £100,000. The Council's High Value Service Contact for Contracts over	Business Case to be Approved by Head of Procurement, Procurement Review Board and Director of Service. OR WAIVER REQUIRED	Service Lead, Procurement Review Board and Director of Service All Contracts to be Sealed.

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
	framework agreements where permitted and running mini competitions or call offs.	contacted for guidance and support. Slough Template Procurement Documents to be Used. Use of SE Shared Services E-portal system is mandatory. Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.		Finder.	£100,000. Please seek advice from the HB Public Law and the Procurement Team. Works For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used. All Contracts to be sealed.	IT Board Approval required for IT projects with a contract value in this value band. Capital Monitoring Board Approval required for all capital projects that fall within this value band.	
Light-Touch Regime	Mandatory for minimum three tenders to be	The Procurement Team must be contacted for	Authorised Officer in the Service Area with	Use of SE Shared Services E-	The Council's Low Value Service Contact for	Business Case to be Approved by Head of	Service Lead, Procurement Review Board and Director of

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
Services ⁶ Value below EU Threshold of £615,278	evaluated. Formal tender process using SE Shared Services E-portal required. OR Consider accessing local/national framework agreements where permitted and running mini competitions or call offs.	guidance and support. Slough Template Procurement Documents to be adapted and used where possible. Use of SE Shared Services E-portal system is mandatory.	support from the Procurement Team.	portal procurement system is mandatory. Procurement must be advertised on Contracts Finder.	Contracts under £100,000. The Council's High Value Service Contact for Contracts over £100,000. The contracts must be adapted and approved by HB Public Law for the Procurement.	Procurement, Procurement Review Board and Director of Service. OR WAIVER REQUIRED IT Board Approval required for IT projects with a contract value in this value band. Capital Monitoring Board Approval required for all capital projects that fall within this value band.	Service All Contracts to be Sealed over £50,000.
Over EU Thresholds ⁷	Formal tender OJEU process	Most economically	Authorised Officer in the	Yes	Services:	Cabinet Approval to be sought prior	Cabinet approval is required.

⁶ *Procurement activity for Contracts for certain health, social, community, educational and cultural related services, "Light-Touch Regime Services", whose value is equal to or over the threshold of £615,278 must be tendered and awarded in compliance with the Public Procurement Regulations 2015. For the avoidance of doubt, procurements for such Light-Touch Regime Services below the threshold of £615,278 must still be conducted in accordance with the principles of these Contract Procedure Rules. The Procurement Team must be contacted for guidance and support on such procurements.

⁷ The EU Thresholds will need to be updated annually in line with the relevant Crown Commercial Service Procurement Policy Note.

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
<p>For supplies and services over £181,302</p> <p>For Works £4,551,413</p>	<p>required and tendered in accordance with PCRs.</p> <p>Most economically advantageous tender must be selected, achieving Best Value and value for money for Council.</p> <p>OR</p> <p>Consider accessing national framework agreements where permitted and running mini competitions or call offs.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>advantageous tender must be selected, achieving Best Value and value for money for Council.</p> <p>The Procurement Team must be contacted for guidance and support. Slough Template Procurement Documents to be Used.</p> <p>Use of SE Shared Services E-portal system is mandatory.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	Service Area with support from the Procurement Team.	<p>Formal OJEU tender process required.</p> <p>Use of SE Shared Services E-portal system is mandatory.</p> <p>Procurement must also be advertised on Contracts Finder.</p>	<p>The Council's High Value Service Contact must be used. The contract must be adapted and approved by HB Public Law for the Procurement.</p> <p>Works</p> <p>For Construction / Works Contracts, please seek advice from the HB Public Law and the Procurement Team. An appropriate model form contract such as JCT or NEC should be used.</p> <p>All Contracts to be sealed.</p>	<p>to going to the market and post tender report with recommendation to award.</p> <p>For contracts over £180,000 - Cabinet approval in April prior to tender.</p> <p>Significant decision to be declared to cabinet on award.</p> <p>IT Board Approval required for IT projects with a contract values in this value band.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	<p>Service Lead, Procurement Review Board and Director of Service.</p> <p>All contracts to be sealed.</p>
Light-Touch Regime	Formal OJEU tender process required and	The Procurement Team must be contacted for	Authorised Officer in the Service Area with	Yes Formal OJEU	The Council's High Value Service Contact must be	Cabinet Approval to be sought prior to going to the	Cabinet approval is required.

Total Aggregate Contract Value ⁴	How many quotes are required?	How should SBC approach the market?	Who leads the procurement?	Should the Contract be formally advertised?	What type of Contract is required?	Governance Process	Who must approve contract award? This is in line with the Governance Scheme of Delegation ⁵
<p>Services⁸</p> <p>Value equal to or over the EU threshold of £615,278</p>	<p>tendered in accordance with PCR's Light Tough Regime.</p> <p>OR</p> <p>Consider accessing national framework agreements where permitted and running mini competitions or call offs.</p> <p>Principles of fair access to public contracts must be followed, ensuring that local, SME and other suppliers have opportunity to compete.</p>	<p>guidance and support.</p> <p>Slough Template Procurement Documents should be adapted and used where possible.</p> <p>Use of SE Shared Services E-portal system is mandatory.</p>	<p>support from the Procurement Team.</p>	<p>tender process required.</p> <p>Use of SE Shared Services E-portal system is mandatory.</p> <p>Procurement must also be advertised on Contracts Finder.</p>	<p>used. The contract must be adapted and approved by HB Public Law for the Procurement.</p>	<p>market and post tender report with recommendation to award.</p> <p>For contracts over £180,000 - Cabinet approval in April prior to tender.</p> <p>Significant decision to be declared to cabinet on award.</p> <p>IT Board Approval required for IT projects with a contract value in this value band.</p> <p>Capital Monitoring Board Approval required for all capital projects that fall within this value band.</p>	<p>Service Lead, Procurement Review Board and Director of Service.</p> <p>All contracts to be sealed.</p>

⁸ See footnote 7 above.

1. SCOPE

- 1.1 These Contract Procedure Rules provide the governance structure for the Council to procure works, goods and services.
- 1.2 The Contract Procedure Rules are designed to ensure that Authorised Officers obtain Best Value Services and Value for Money from purchasing arrangements. The Council has a responsibility to do this in a transparent way that offers best value for residents.
- 1.3 These **mandatory** Contract Procedure Rules apply to everyone who commissions or procures contracts on behalf of the Council, including external consultants and third party providers.
- 1.4 These Contract Procedure Rules should be read in conjunction with the Council's Financial Procedure Rules which set out mandatory financial procedures to be followed. These can be found by following the link.
- 1.5 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant provisions of the ethical framework contained in Part 5 of the Council's Constitution.
- 1.6 All Officers must ensure that the Council's approved processes and standards for Procurement, as set out in these Contract Procedure Rules and the accompanying Procurement Operating Procedures are adhered to. Failure to comply with the requirements in these Contract Procedure Rules may result in disciplinary action in accordance with the Officers Code of Conduct.
- 1.7 All information governance, insurance, safeguarding, social value, conflict of interest and business continuity requirements must also be adhered to in line with the Procurement Operating Procedures and the Council's Information Governance Policies.
- 1.8 These Contract Procedure Rules are designed to ensure compliance with the Council's Constitution, the Council's Financial Procedure Rules, Council policies, the Public Procurement Regulations 2015 (PCR15) and English law.
- 1.9 The Procurement Application and Authorisation Table set out within these Contract Procedure Rules provides a summary of the key requirements that must be adhered to for all procurements. However, all Council Officers are strongly advised to read the rest of these Contract Procedure Rules for further guidance and to seek the advice and support of the Procurement Team and HB Public Law as appropriate.
- 1.10 Where the Council is entering into a Contract as an agent and/or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the organisation with whom the Council is collaborating. Where the Council is acting as principal in such collaboration, then these Contract Procedure Rules will take precedence.
- 1.11 Framework Agreements that have been established by other Public Sector Bodies that are lawfully accessible to the Council should be used strictly in accordance with the terms and conditions of the relevant Framework Agreement. Please consult with the Procurement Team when procuring from a Framework Agreement.

1.12 The following are out of scope of the Contract Procedure Rules:

- 1.12.1 Any purchase or sale of a property, interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution;
- 1.12.2 Inter-authority and Inter-agency payments;
- 1.12.3 Subscriptions/memberships;
- 1.12.4 Emergency temporary accommodation for vulnerable people;
- 1.12.5 Procurement of Services from other public bodies where it can be evidenced that the body is the only supplier of the goods or service; and
- 1.12.6 The awarding of grants. However, Council Officers should always ensure the principles of openness, fairness, non discrimination and Value for Money applies.

2. APPLICATION

- 2.1 The Contract Procedure Rules provide the governance structure within which the Council may procure Supplies, Services and Works. The aims of these Contract Procedure Rules are to ensure:
 - 2.1.1 Commitment to the principles of transparency, fairness, proportionality and equal treatment within the procurement process;
 - 2.1.2 Value for Money and propriety in the spending of public money;
 - 2.1.3 Supplies, services and works are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;
 - 2.1.4 The Council is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;
 - 2.1.5 Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Crown Commercial Service; and
 - 2.1.6 The delivery of economic, environmental and social value through Procurement.
- 2.2 Changes to the Council's financial thresholds set out in these Contract Procedure Rules which are below the EU Thresholds may, from time to time, be recommended by the Head of Procurement to the Monitoring Officer. Following consideration by the Monitoring Officer, such changes would need approval from (1) the Senior Leadership Team; and (2) the Constitution Committee.
- 2.3 These Contract Procedure Rules should be subject to an annual refresh to ensure the appropriateness of the financial thresholds, any changes required as a result of a change in law and all non material changes. Minor changes to these Contract Procedure Rules can be considered and approved by the Director of Finance and Resources. For the avoidance of doubt, "Minor Changes" include the annual

adjustment to EU Thresholds for Works, Supplies, Services and Light Touch Regime Services as issued annually by the Crown Commercial Service in a Procurement Policy Note.

- 2.4 Should the annual refresh result in material changes being required, then such material changes shall be presented for approval to (1) the Senior Leadership Team; and (2) the Constitution Committee
- 2.5 The Head of Procurement and the Monitoring Officer shall maintain and issue the Contract Procedure Rules and the Procurement Operating Procedures. The Contract Procedure Rules take precedence over the Procurement Operating Procedures. Please report any inconsistencies in writing to the Head of Procurement.
- 2.6 The Procurement Operating Procedures provides a more detailed explanation of Procurement best practice, procedures, processes, associated Council policies and required Contract terms.
- 2.7 Unrestricted and full direct on line access free of charge to the procurement documents must be available from the date of the publication in the Official Journal of a Contract Notice or the date on which an invitation to confirm interest is sent.
- 2.8 Where there is inconsistency between these Contract Procedure Rules and the Financial Procedure Rules, the latter take precedence. Please report any inconsistencies in writing to the Monitoring Officer.

3. COMPLIANCE WITH CONFIDENTIALITY AND CONFLICTS OF INTEREST REQUIREMENTS

- 3.1 All officers must take appropriate measures to protect confidentiality and effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all suppliers. They should also comply with the Code of Conduct for Officers. If a conflict of interest is suspected or identified, such conflict should be immediately notified to the Monitoring Officer.
- 3.2 If an Officer is involved in procurement project estimated at £180,000 and above, all such officers must ensure they sign a confidentiality agreement and a declaration of interest. This must then be returned to the Head of Procurement prior to commencement of the procurement. A declaration does not automatically exclude anyone from the procurement process; it alerts the procurement lead and allows them to manage the procurement accordingly.
- 3.3 Should an Officer identify any actual or potential breach of the requirements of the Officers Code of Conduct in connection with the formulation, procurement or administration of a contract (whether in relation to that of their own role or that of any other Officer) the Officer shall immediately notify the Monitoring Officer in writing. The Monitoring Officer will investigate the matter and recommend what action should be taken in consequence in connection with the contract concerned.
- 3.4 Where a Supplier or an undertaking related to a Supplier, has advised the Council, or has otherwise been involved in the preparation of the procurement process, the Council must take appropriate measures to ensure that competition is not distorted by the participation of that Supplier in the Procurement.

4. BREXIT

When these Contract Procedure Rules were published, the outcome of Brexit was still unclear. In the event that these Contract Procedure Rules need to change post-Brexit, the Head of Procurement will issue a notification to all Departments.

5. ROLES AND RESPONSIBILITIES

Each Director of Service and Service Lead is accountable for all Procurement activity in their respective departments. **Their role is to ensure:**

- 5.1 Compliance with the Constitution, Financial Procedure Rules, Contract Procedure Rules and the Procurement Operating Procedures;
- 5.2 Compliance with the Public Contract Regulations 2015 (the “**PCR**”);
- 5.3 Compliance with the Local Government Transparency Code October 2015 issued by the Department for Communities and Local Government;
- 5.4 That no commitment to enter into a Contract with a Supplier over £2,500 is made without the required Authorisation as set out in the Procurement Application and Authorisation Table in these Contract Procedure Rules;
- 5.5 That the 10 day Standstill Period between the Contract award decision and Contract signature/sealing is observed where required to do so. Please seek advice from the Procurement Team;
- 5.6 That the appropriate Council template contract has been used in the Procurement, or where such template contract is not applicable, that the alternative terms and conditions have been approved by the Monitoring Officer. If it is deemed necessary to sign up to third party terms and conditions of contract the prior approval of the Monitoring Officer must be received in writing. Input from Procurement must be sought for contracts over £2,500 to determine if legal advice is required from HB Public Law. (For the avoidance of doubt, the proper use of Framework Agreements is permitted under the Contract Procedure Rules in accordance with the Procurement Application and Authorisation Table.)
- 5.7 That no contract commences prior to the terms and conditions of contract being signed and, where necessary, sealed;
- 5.8 That all master copies of Contracts are delivered to the Monitoring Officer for safekeeping;
- 5.9 That all Key Decisions as defined in the Constitution are minuted and published on the Council’s website;
- 5.10 That all Contracts are awarded on the basis of the *Most Economically Advantageous Tender (MEAT)*. The MEAT shall be assessed from the Council’s point of view, namely that a tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as Life-Cycle Costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the Contract;
- 5.11 All risks have been identified, evaluated, recorded and appropriately mitigated (e.g. provision of performance bond, parent company guarantee and appropriate payment provisions and termination clauses within Contracts);

- 5.12 That all Invitation to Tender documents clearly describe the Evaluation Criteria, sub criteria and weighting and that the tender evaluation is based strictly on the published criteria and weighting;
- 5.13 That Evaluation Criteria require the bidders to state how they will meet social value considerations which are clearly linked to the subject matter of the contract (i.e. employment, training, apprenticeships, use of SME's and local Suppliers);
- 5.14 Immediate corrective action is taken in the event of a breach of the Contract Procedure Rules and that any such breach is reported immediately to the Procurement Team; and
- 5.15 That Contracts are not artificially underestimated or disaggregated into two or more separate Contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

6. AUTHORISATION

- 6.1 Please refer to the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.
- 6.2 Any planned procurements with an anticipated value in excess of £180,000, must be submitted for approval to the April Cabinet each year. In the event that a procurement with an anticipated value in excess of £180,000 arises which was not submitted for approval to the April Cabinet, such procurement will need to obtain separate Cabinet approval before proceeding.
- 6.3 For procurements with an anticipated value above £50,000, a detailed business case should be prepared and submitted for approval to the Procurement Review Board.
- 6.4 All transactions must fall within the powers delegated to the relevant officer and must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, the Council or one of its committees or sub- committees.
- 6.5 No contract, agreement or other document shall be signed or sealed unless it gives effect to a decision or resolution (in accordance with the Council's Constitution) of the Cabinet, or one of its committees or sub committees or in accordance with the Scheme of Delegation.
- 6.6 The Procurement Team should be involved and engaged on the Procurement strategy/approach to be adopted for all purchases over £2,500.
- 6.7 Any Procurement must be authorised in accordance with the Scheme of Delegation as published within Part 3.6.2 of the Constitution.
- 6.8 A Member shall not enter, either orally or in writing, into any contract on behalf of the Council
- 6.9 A member shall not negotiate personally on behalf of the Council for the purchase of goods or services or the sale of any land, property, plant rights, or commodities or for any lease or tenancy. All such negotiations shall be conducted by an Officer authorised by the Council except that, at the request of the Leader or Deputy Leader a Cabinet Lead Member and, at the request of the Scrutiny and Overview Committee, a Scrutiny Member may attend any personal interview in the course of negotiations. In matters of special importance, the cabinet may instruct one or more of its members together with the Officer concerned to conduct negotiations.

- 6.10 Where appropriate, an Equalities Impact Assessment should be completed. Please refer to the Procurement Team for guidance.
- 6.11 The Council is a Regulated Activity Provider. The Council has ultimate responsibility for the management and control of Regulated Activities provided under Contracts procured pursuant to these Contract Procedure Rules for the purposes of the Safeguarding Vulnerable Groups Act 2006. The Relevant Officer must consider whether there are any Safeguarding aspects to their procurement and, if so, consult with the Safeguarding Lead for input.
- 6.12 A partnership arrangement must not be used as a means of avoiding the Contract Procedure Rules or Public Procurement Regulations. All new partnership arrangements are required to be reported as required by the Financial Procedure Rules. This clause is not applicable to the award of grant payments.

7. PROCUREMENT METHOD

- 7.1 Authorised Officers must treat Suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 7.2 Before commencing a Procurement procedure Authorised Officers may conduct market consultations with a view to preparing the Procurement and informing Suppliers of their Procurement plans and requirements provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants. Please consult with the Procurement Team before commencing market consultation.
- 7.3 The default position in acquiring Supplies, Services and Works should always be open competition through competitive tendering. Please refer to the Procurement Application and Authorisation Table set out within these Contract Procedure Rules to determine the Procurement process that should be used.
- 7.4 The Procurement Team must be consulted on promoting opportunities to local companies through Business Newsletters and Supplier Events.
- 7.5 All tender opportunities for Supplies, Services and Works over £2,500 will be advertised on the SE Shared Services E-portal system in accordance with the Procurement Application and Authorisation Table. In addition, all tender opportunities for Supplies, Services and Works over £25,000 must be advertised on Contracts Finder. Procurement over the EU financial threshold must be advertised in the OJEU and on Contracts Finder. A Contract Award Notice must also be published on Contracts Finder. Please consult with the Procurement Team.
- 7.6 The use of Selection Questionnaires (“**SQs**”) can only be used for contract values above the EU Threshold. Suitability Assessment Questions may be asked as appropriate for contract values below the EU Threshold. Please contact the Procurement Team for the appropriate procurement document template.
- 7.7 The Procurement Team must approve accessing externally established Framework Agreements. Approval for subsequent call-offs from the approved Framework Agreements will be subject to the requirements of these Contract Procedure Rules and compliance with the rules for call-off set out in the Framework Agreement.
- 7.8 Procurement activity for Contracts for certain health, social, community, educational

and cultural related services, “Light-Touch Regime Services”, whose value is equal to or over the threshold of £615,278 must be tendered and awarded in compliance with the PCR. Please seek input from the Procurement Team in connection with the procurement and award of Light-Touch Regime Services Contracts. For the avoidance of doubt, procurements for such Light-Touch Regime Services below the threshold of £615,278 must still be conducted in accordance with the principles of these Contract Procedure Rules. The Procurement Team must be contacted for guidance and support on such procurements.

- 7.9 Authorised Officers may decide to award a Contract in the form of separate lots and may determine the size and subject-matter of such lots. The Authorised Officer must document the main reasons for their decision not to subdivide into lots.

8. ENGAGEMENT OF CONSULTANTS

- 8.1 An Authorised Officer may only appoint an external consultancy or advisory firm providing professional or consulting services if such services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the service.
- 8.2 Appointment of individual consultants and individual advisors must be procured through the Council’s corporate contract for temporary agency resources where appropriate.
- 8.3 Subject to the corporate contract not meeting the service needs, and the resources not being available across the Council, the Authorised Officer shall seek to procure an external consultancy or advisory firm providing professional or consulting services. Such procurement shall comply with the appropriate threshold/process as set out in the Procurement Application and Authorisation Table contained within these Contract Procedure Rules.

9. SINGLE TENDER ACTION

- 9.1 A Single Tender Action is the awarding of a Contract to a Supplier without undertaking a competitive tendering exercise. This is permitted only in exceptional circumstances and should be approved in advance by Cabinet and the Procurement Review Board. Procurement advice should be sought in all cases from the Procurement Team. Exceptional circumstances may include where the works, supplies or services can only be supplied by a particular Supplier.
- 9.2 Where a competition has been undertaken and only a single bid has been received the Procurement Review Board can approve the award of a Contract, subject to an appropriate review being undertaken and an audit trail being available for inspection.

10. CONCESSION CONTRACTS

- 10.1 Concession Contracts are contracts under which the Council outsources works or services to a Supplier, 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 Supplier bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs.
- 10.2 Concession Contracts must meet certain requirements and advice should be sought

from the Procurement Team and HB Public Law.

11. INFORMATION GOVERNANCE

- 11.1 When procuring, the responsible Officer must ensure Due Diligence checks are carried out to provide sufficient guarantees that the Supplier's technical and organisational security measures for handling and protecting information and data are appropriate, suitable and lawful. This is a requirement under Data Protection Legislation⁹.
- 11.2 Evidence of these checks, copies of policies and guarantees provided by the Supplier must be retained by the Officer responsible for management of the Contract and be regularly reviewed throughout the life of the Contract. Please refer to the Procurement Operating Procedures for more detailed guidance or contact the Information Governance Officer.
- 11.3 Contract managers must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.
- 11.4 Officers must ensure that contracts with providers that involve the processing of personal data contain clauses as required by the Data Protection Legislation. The Council's Standard Contracts contain these clauses.

12. ACCEPTANCE

- 12.1 Acceptance of Contracts must be in accordance with the Constitution, and in all cases is subject to:
 - 12.1.1 Confirmation of budgetary provision as initially identified and allocated prior to any Procurement activity;
 - 12.1.2 A compliant Procurement process having been carried out; and
 - 12.1.3 Confirmation of the acceptable financial status of the contractor.
- 12.2 All contracts entered into by the Council must be in writing in a form approved by HB Public Law. Where a Council template contract is used, or such template contract is to be amended, this shall be prepared and/or ratified by HB Public Law.
- 12.3 The Monitoring Officer shall retain all relevant contract documents.
- 12.4 Acceptance thresholds for Contract extensions and variations of all values are subject to further conditions as set out in Section 14 (Extensions and Variations) of these Contract Procedure Rules.

13. CONTRACT SIGNING AND SEALING

- 13.1 Every Contract must be in the contract form specified in the Procurement Application and Authorisation Table set out within these Contract Procedure Rules.
- 13.2 Every contract novation, contract extension or contract variation must use the

⁹ Data Protection Legislation means (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time; and (iii) all applicable Law about the processing of Personal Data and privacy.

appropriate SBC template. Please refer to the Procurement Team for such templates and seek advice from HB Public Law.

- 13.3 Contracts with an Estimated Procurement Value greater than £50,000 must be sealed on behalf of the Council, unless the Monitoring Officer or delegated officer directs otherwise. Legal input from HB Public Law should be sought on such Contracts.
- 13.4 In exceptional circumstances, where an IT Contract term is not fixed, the Estimated Procurement Value is calculated by multiplying the monthly spend value by 48 in accordance with Regulation 6 of the Public Contracts Regulations 2015. Please refer to the Procurement Team for advice on any such IT Contracts.
- 13.5 In the case of Framework Agreements or Dynamic Purchasing Systems the Estimated Procurement Value is calculated to include the total estimated value, net of VAT, of all the individual contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.
- 13.6 Where the Monitoring Officer or delegated officer considers it desirable that a Contract should be sealed other than as specified above, then such Contract must be sealed.
- 13.7 All Contracts should have a clear start and end date and detail any extension options permissible.

14. EXTENSIONS AND VARIATIONS

- 14.1 Contracts may only be extended if the following provisions are met:
 - 14.1.1 The original Contract was awarded on a Contract Procedure Rules compliant competitive tender or quotation process and includes an option to extend ;
 - 14.1.2 The extension or variation is in accordance with the terms and conditions of the existing Contract. Input from the Procurement Team should be sought to confirm this is the case and to support the drafting of the extension and/or variation documents;
 - 14.1.3 If the initial Contract was subject to the EU tender procedure, that the extension option was declared within the OJEU Contract Notice;
 - 14.1.4 The Contract has not been extended beyond the approved extension period; and
 - 14.1.5 Approval has been sought and obtained from the Procurement Review Board following submission of a Business Case detailing the Contract Extension requirements.
- 14.2 In the event that the provisions of 14.1.1 to 14.1.5 are not met then an Exemption must be sought in accordance with section 15 (Exemptions) or alternatively a new Procurement must commence.
- 14.3 Regulation 72 of the Public Contracts Regulations 2015 permits an amendment, extension or renewal of an existing Contract without triggering a new Procurement exercise in the following cases:
 - 14.3.1 The original Contract includes a “clear, precise and unequivocal review clause”. The overall nature of the Contract must not be altered as a result of

the change;

- 14.3.2 New Services, Supplies and Works need to be purchased from the Supplier and a change of Supplier cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the Council's costs. This is subject to the provision that each change does not increase the Contract's value by more than 50 per cent as a result;
- 14.3.3 Circumstances have arisen that the Council could not reasonably have foreseen and that require an amendment to the existing Contract. The Contract's overall nature must not be altered and the Contract's value must not increase by more than 50 per cent as a result of any change;
- 14.3.4 A new Supplier is required to replace the Supplier originally party to the Contract, either because this is the result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original Supplier, or because this change was envisaged in a review clause in the original Contract. This provision cannot be relied on if the Supplier is being replaced for a different reason;
- 14.3.5 The value of the modification is both below the EU Procurement Thresholds and is less than 10 per cent of the initial Contract value (where the contract is for Supplies or Services) or less than 15 per cent of the initial Contract value, in the case of a Works Contract. More than one change can be made under this provision provided the cumulative value of the modifications does not exceed EU Procurement Thresholds.
- 14.3.6 The proposed modifications are insubstantial. This does not include any modifications that result in any of the following:
 - i. The Contract would become materially different;
 - ii. The scope of the Contract would extend considerably;
 - iii. The outcome of the initial Procurement procedure would have been different had the modification been implemented at that time. For example, other tenders would have been accepted or other candidates would have been admitted;
 - iv. The economic balance would shift in favour of the Supplier; or
 - v. A new Supplier would replace the original Supplier in a circumstance not provided for in paragraph 14.3.4 above.
- 14.4 Officers must consult with the Procurement Team to confirm if any of the circumstances set out in section 14.3 above apply, permitting a Contract amendment, extension or renewal and must also comply with the Procurement Application and Authorisation Table.
- 14.5 A Contract Variation Notice needs to be sent to OJEU in the case of Contract variations permitted and made in accordance with paragraphs 14.3.2 and 14.3.3 above.

- 14.6 In the event that the provisions of paragraph 14.3 are not met then an exemption must be sought in accordance with section 15 (Exemptions) or alternatively a new Procurement must commence.

15. EXEMPTIONS

- 15.1 Circumstances may arise where permission is required to waive one or more of the Contract Procedure Rules. Exemptions are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. An Exemption will not be granted simply on the grounds of convenience or because of inadequate forward planning.
- 15.2 The Council can only waive the rules established by the Council. The Council cannot waive UK law or EU Procurement Regulations.
- 15.3 Exemptions (in whole or in part) from the requirements set out in these Contract Procedure Rules may only be obtained by completing an Exemption Business Case which is available from the Procurement Team.
- 15.4 The Exemption Business Case must be submitted to the Procurement Team for initial consideration. If the Procurement Team is satisfied that the Exemption Business Case meets the requirements of this section of the Contract Procedure Rules, the Exemption Business Case shall be submitted to the Procurement Review Board for review.
- 15.5 The Procurement Review Board must be satisfied that special circumstances exist which warrant an exemption being permitted. Such Exemption Business Case must set out in detail the terms of any exemption from the requirements set out in these Contract Procedure Rules.
- 15.6 Exemptions to any of the Council's rules must be sought in advance of any contractual agreement, order placement, use of Works, Services or purchase of Supplies.
- 15.7 Any Exemption can only be granted for a maximum period of 12 (twelve) months unless it can be demonstrated that any longer period is in the best interest of the Council.
- 15.8 Any Exemption can only be granted where the value of the exemption is below the relevant EU Threshold.
- 15.9 The circumstances under which an Exemption can be agreed are limited to the following circumstances:
- a) **Sole Supplier:** It can be proven that there is only one Supplier who can deliver the Supplies or Services. (It is considered better practice to issue a tender to evidence that there is only one Supplier capable of delivering such Supplies or Services);
 - b) **Demonstrable Best Interest:** It can be demonstrated that it is in the Council's

best interest and this is clearly demonstrated in the Exemption report. (For example, the Council is seeking to redesign service provision or exploring internal / external collaboration opportunities and therefore direct award to the incumbent provider is required for intervening period only);

- c) **Emergency:** There is a clear need to provide a service or a product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment (for example, Natural Disaster; Civil Unrest; Provider going into administration);
- d) **Service Imperative: Demonstrable circumstance that is exceptional:** For example, an unanticipated delay during the tender process or Strategy and / or Spec and service design not completed when tender needed to begin for unforeseen reasons. For the avoidance of doubt, an Exemption will not be granted simply on the grounds of convenience or because of inadequate forward planning; and/or
- e) **Extension as an Exemption:** Where an extension to a Contract is being sought but it is not possible under the current terms and conditions of the Contract.

For any queries not covered within these Contract Procedure Rules, please contact the Procurement Team.

14 June 2019