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Town Hall
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Date: 10 April 2014
Our Ref: A&G Cttee
Your Ref:

TO: All Member of the Audit and
Governance Committee

Please contact: Mike Morris

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Dear Councillor

AUDIT AND GOVERNANCE COMMITTEE - WEDNESDAY 16TH APRIL, 2014

I refer to the agenda for the above meeting and now enclose the following report and Annexe which were unavailable when the agenda was printed.

Agenda No.	Item
6.	Contracts Procedure Rules (Pages 25 - 82) Report of the Director of Corporate Services

Yours sincerely,

G. BAYLISS

Director of Corporate Services

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Agenda Item 6

Report to: Audit and Governance Committee **Date of Meeting:** 16th April 2014

Council **24th April 2014**

Subject: Contract Procedure Rules **Wards Affected:** All Wards

Report of: Director of Corporate Services

Is this a Key Decision? No **Is it included in the Forward Plan?** No

Exempt/Confidential No

Purpose/Summary

To present the amended Contracts Procedure Rules to the Committee

Recommendations

That the Audit and Governance Committee

- (1) note the results of the pilot process for changes to the Council's procurement process; and
- (2) approve the amended Contract Procedure Rules.

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		x	
2	Jobs and Prosperity	x		
3	Environmental Sustainability		x	
4	Health and Well-Being		x	
5	Children and Young People		x	
6	Creating Safe Communities		x	
7	Creating Inclusive Communities		x	
8	Improving the Quality of Council Services and Strengthening Local Democracy	x		

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Reasons for the Recommendations:

To allow the changes to the procurement processes to be rolled out across the Council

Alternative Options Considered and Rejected:

The Contracts Procedure Rules could remain unchanged.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no revenue costs involved in the implementation of these changes.

(B) Capital Costs

There are no capital costs involved in the implementation of these changes.

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial
Legal A further rule change may be necessary to accommodate variations to contracts as well as extensions and this will be referred back to the committee as this would not rank as a minor change.
Human Resources
Equality 1. No Equality Implication <input checked="" type="checkbox"/> 2. Equality Implications identified and mitigated <input type="checkbox"/> 3. Equality Implication identified and risk remains <input type="checkbox"/>

Impact of the Proposals on Service Delivery:

There will be no impact on service delivery.

What consultations have taken place on the proposals and when?

The Head of Corporate Finance and ICT (FD2937/14.) and the Head of Corporate Legal Services (LD2242/14) have been consulted and any comments have been incorporated into the report.

Implementation Date for the Decision

Immediately following the Committee/Council meeting.

Contact Officer: Andrea Watts

Tel: 0151 934 2030

Email: andrea.watts@sefton.gov.uk

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 In May 2013, the Council began working in partnership with Halton Council to review the existing procurement processes and to look at making the systems more streamlined, reduce the administrative burden on those suppliers that wish to do business with the Council and increase transparency of the procurement process. Halton Council has been recognised by the Government as one of the top 10 Councils for firms to do business with, and the Council was keen to learn from Halton how its processes could be improved.
- 1.2 Over the last several months, changes to the procurement processes have been identified, and where it was possible within the existing rules, these changes have been tested to ensure they meet Sefton's needs.
- 1.3 This report now seeks approval of new Contracts Procedure Rules which will underpin a new Procurement Strategy and enable the new process to be rolled-out fully across the Council.

2. Aims of the new procurement approach

- 2.1 A Commercial Procurement approach will support the delivery of Council priorities by implementing the following key objectives:
 - Avoid spending on things we want rather than on what we need
 - Achieve excellent value for money whilst maintaining quality
 - Support the local economy, business and voluntary sector through transparency of opportunity support and education
 - Collaborate with other public sector organisations to ensure maximum benefit for Sefton and the wider region from joint procurement.
- 2.2 This marks a new approach for Sefton and responds to the growing challenges faced by the Council. It represents a significant departure from the more traditional public sector procurement approaches, to a more commercial approach embracing the Social Value agenda, and aims to make Sefton a good Council to do business with.
- 2.3 As part of a review of our processes, we have challenged our rules, processes, practices and compliance in order to improve efficiencies through a more efficient

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approach and removing all unnecessary activities. Subject to the approval of these Rules, and a revised Procurement Strategy which will be considered by the Cabinet Member for Corporate Services and Performance, this will result in:

- publishing all procurement opportunities via The Chest (The Councils e-tendering system) from £1000 upwards;
- Removing Pre-Qualification Questionnaire (PQQ) for all procurement below EU value thresholds
- Implementing a risk based sourcing approach for all procurement below EU value thresholds which significantly simplifies the process, thus leading to time and cost efficiencies throughout the whole organisation and for businesses
- Delivering a strong range of engagement with SME's to show we are 'Open for Business' in order to encourage and support businesses leading to successful contract awards
- Social Value consideration being placed at the heart of our procurement planning as we aim to gain added value from procurement through securing employment, learning and skills outcomes as well as local supply chain engagement by our larger contractors
- Commencing a journey to develop aligned procurement processes with public sector partners in order to secure joint planning with the aim of delivering further significant savings by using the economies of scale this brings.

3.0 Results of the pilot

3.1 There were 2 main parts to the pilot process: publication of the Council's Contract Register and publication of all procurement opportunities over £1000 (where a corporate contract doesn't already exist) on The Chest.

3.2 The Contract Register has now been published and allows the team to proactively engage with service departments in a timely fashion to ensure contracts are reviewed and procurement exercises undertaken in a reasonable timescale and avoids requests for contract extensions. It also opens up the Council's Contract Register to potential suppliers and demonstrates transparency.

3.3 Secondly, where no contract framework already exists, procurement opportunities over £1000 and under the formal tender threshold have been advertised on the Chest to try to drive down the spend. Savings of 10% of the original budgets have been made (a saving of just over £35k on a spend of £355k) from 1 November 2013 to 1 March 2014.

4.0 Next step

4.1 The next step, which could not be piloted under the existing rules, was to cease formal tenders under the EU threshold. The formal tender process is not required under the EU threshold but has traditionally been used for all spend over £75k. This enabled compliance with other EU principles applicable to procurements. Substantial officer time is required to run a formal tender process and it places unnecessary burdens on suppliers and SME's in particular. The new process will require a risk assessment of each procurement opportunity and this will result in either a simple or complex request for quotation. The more risk involved, then the more information will be required from potential suppliers. All this activity will take

place on The Chest to enable compliance with other EU principles including transparency and equality of opportunity. The approval of the new Contracts Procedure Rules will facilitate this implementation.

- 4.2 Lastly, colleagues from Sefton@work will engage with the business community on our behalf, inform them of the new processes and train them to be able to identify potential opportunities to do business with the Council.

5.0 Consultation

- 5.1 Colleagues across the Council have been consulted on these proposed changes and their comments have been incorporated where possible. Inevitably, there will be some changes required as the new processes are implemented and The Head of Corporate Finance and ICT will report the changes as appropriate.

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CPR	Proposed	Change	Notes
PART 1: CONTRACTS PROCEDURE RULES WHICH APPLY TO ALL CONTRACTS			
1.1 BASIC PRINCIPLES			
<p>1.1.1 Introduction</p>	<p>These Contracts Procedure Rules are Standing Orders made under section 135 of the Local Government Act 1972.</p> <p>These rules apply to all officers of the Council.</p> <p>A Contract for the purposes of these Contracts Procedure Rules shall be any agreement between the Council and one or more parties in respect of :</p> <ul style="list-style-type: none"> · The carrying out of works for the Council · The purchase, leasing, or hiring of goods or materials by the Council · The supply of consultancy, agency workers and other services to the Council <p>For the avoidance of doubt these Contracts Procedure Rules shall not apply to :-</p> <ul style="list-style-type: none"> - The sale, leasing or purchase of land, or of any interest in land : or - Any Contract of Employment 	<p>Defines a contract</p>	

- These contract procedure rules are intended to promote good procurement and commissioning practice, transparency, public accountability, and deter corruption. The best defence against allegations that expenditure has been committed incorrectly or fraudulently is by following the Contracts Procedure Rules.

- Officers responsible for procurement or commissioning must comply with these contract procedure rules. They lay down minimum requirements and a more detailed procedure may be appropriate for a particular contract.

All values specified in these rules shall be **exclusive** of Value Added Tax.

These Contracts Procedure Rules should be read in conjunction with the relevant parts of the Council's Constitution (and Financial Procedure Rules therein).

[Link to the Constitution](#)

If an officer is in any doubt as to if and how the Contracts Procedure Rules are applicable to a prospective procurement then the Corporate Procurement Unit should be contacted for advice and guidance.

These Contracts Procedure Rules shall be reviewed periodically by the Head of Corporate Finance & ICT in consultation with the Head of Governance

1.1.2 Legal Compliance	<p>All tendering procedures and contracts shall comply with all legal requirements and no officer or Committee or Board of the Council may seek to avoid them.</p> <p>If in doubt advice should be sought from Corporate legal Services</p>		
1.1.3 Public Contracts Regulations 2006	All contracts must comply fully with the requirements of Public Contracts Regulations 2006 (as amended)		
1.1.4 EU Principles - Transparency and Non-Discrimination etc.	The award process and structure of all contracts shall comply with the EU Principles of Openness, Fairness, Transparency, Non-Distortion of Competition, Non-Discrimination, Equal Treatment, Proportionality and Mutual Recognition		
1.1.5 Procurement Documentation	All contracts and contractual processes shall be consistent with the Council's Procurement Guides (intranet), Procurement Strategy, and these Contract Procedure Rules.		
1.1.6 Contracts where the Council acts as Agent	Where the Council acts as the Agent for any other Local Authority or Public Body or company these Contracts Procedure Rules shall apply unless the Principal in question instructs otherwise in writing		
1.1.7 Calculating the Financial Value of a contract	<p>In deciding the value of contracts for the purposes of applying the requirements of these Contracts Procedure Rules the commissioner / procurer should take into account:</p> <ul style="list-style-type: none"> • The total cost for the lifetime of the contract 	Aggregation is not covered in the current CPR's	

(including any proposed optional periods)

- That the value of contracts of like nature shall be aggregated and that aggregate value shall be applied.
- In the case of joint purchasing arrangements the value shall be the value of both parties purchases under the contract.

No officer or Committee or Board of the Council may seek to divide potential contracts in order to avoid the requirements of these Contracts Procedure Rules or Public Contracts Regulations 2006 (as amended).

Officers must not actively seek to disaggregate or fragment prospective spend amounts for the purpose of avoiding specific procurement activity.

The Public Contracts Regulations apply where the estimated contract value exceeds predetermined spend thresholds. The current EU Public Procurement Thresholds (for the whole of the contract including any optional years) are:

Goods / Services	£172,514
Works	£4,322,012

Note : Spend threshold figures correct as at January 2014, but subject to ongoing change, ordinarily on a two year cycle.

'Works' means any of the activities specified in schedule 2 of the Public Contracts Regulations 2006

Current CPR's do not address active disaggregation

	<p><i>The contents of schedule 2 can be viewed here :-</i></p> <p><u>Public Contracts Regulations 2006 (as amended)</u></p>		
<p>1.1.8 Forfeiture in Case of Bribery of Corruption</p>	<p>There shall be inserted in every contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or having forborne to do any action in relation to the obtaining or execution of the contract or any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Council the contractor or any person employed by the contractor or acting on the contractor's behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward, the receipt of which is an offence under Section 117 of the Local Government Act 1972.</p>		
<p>1.1.9 Contract sealing</p>	<p>Every contract which exceeds £100,000 in value with any individual contractor (for the whole of the contract as opposed to the annual value) shall be sealed with the Council's Seal and shall be executed by the Contractor as a</p>		

	<p>Deed.</p> <p>In order that a contract can be sealed the following package of documents should be forwarded to the Head of Corporate Legal Services :</p> <ul style="list-style-type: none"> i) One blank copy of the Invitation To Tender (ITT), or Request for Quotation (RFQ) document ii) Two copies of the successful bidder's ITT or RFQ iii) A copy of the Internal Authorisation to award a contract iv) Copies of the award & acceptance correspondence v) A copy of the bidder's in-date insurance cover. 		
<p>OFFICER RESPONSIBILITIES</p>			
<p>1.2.1 Adequate Budget Provision</p>	<p>No Officer should seek to enter into a contract, or purport to enter into a contract, for the supply of goods, works or services unless there is adequate provision in the agreed Capital Programme and/or agreed Revenue Budgets.</p>		
<p>1.2.2 Corporate Contracts</p>	<p>A corporate contract exists where the council has entered into a contract for the provision of goods, services, or works, and agreed a base rate for such.</p> <p>Before procuring goods, works or services, an Officer shall ascertain whether any corporate contract has been entered into in</p>		

	<p>relation to those goods, works or services.</p> <p>This requirement is mandated on all Council officers. Any requirement to purchase such goods/services from alternative non contracted suppliers must first be agreed by the Head of Corporate Finance & ICT through the Corporate Procurement Unit (CPU), supported by a business case for such a request. .</p>		
<p>1.2.3 Surety</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 37</p>	<p><u>Construction Related Contracts</u></p> <ul style="list-style-type: none"> • £250,000 - £1,000,000 Provided that a risk assessment based on financial and technical criteria is satisfactory, construction-related contracts over £250,000 and up to £1,000,000 do not require a Performance Bond. However, such contracts will require a contribution to the Contracts Indemnity Fund. The Contribution is calculated as 0.2% of the Contract Value, and this is administered by the Head of Corporate Finance & ICT • Above £1,000,000 For all construction related contracts over £1,000,000, a Performance Bond will be required. A formal risk assessment shall be carried out as part of the Tender Evaluation/Acceptance Procedure, and a recommendation on the requirement for a Performance Bond shall be included in the post procurement report. <p><u>Non Construction Related Contracts</u></p>		

- Below £1,000,000

For contracts in respect of Social Care Packages, Information Technology Products/Services, the Service Director shall have discretion following consultation with the Head of Corporate Legal Services, to apply one of the following options:-

- 1) Require a Performance Bond;
- 2) Require a Parent Company Guarantee;
- 3) Require a Deposited Cash Bond;
- 4) Require a Contract Payment Profile Retention;

Contracts for those goods and services below the value of £1,000,000, not mentioned above, will not generally be subject to a Performance Bond.

- Above £1,000,000

Non Construction Related Contracts above the value of £1,000,000 will normally require a Performance Bond.

Waiver of Surety Requirements

Whilst under normal circumstances the above values will apply, it is recognised that some high value contracts (construction or non construction related) may be low risk and vice versa. Dependent on the outcome of a risk assessment, a recommendation may be made in the pre-procurement report to waive application of the limits referred to above and/or to approve a more appropriate form of surety.

	<p><u>Inclusion of Surety Requirements in Invitation to Tender Documents</u></p> <p>The requirement/or possible requirement of a bond or other form of surety must be specified in the Invitation to Tender documentation. A copy of the Council's Standard Form of Bond should be included in such documentation.</p> <p>For guidance on calculating the value of a contract then refer to Rule 1.1.7</p>		
<p>1.2.4 Contracts – Delay and liquidated damages</p> <p>Page 39</p>	<p>In the case of Works contracts over the total value of £100,000 and, in any other case where a risk assessment considers it necessary, a clause shall be inserted in the contract providing for the payment of liquidated damages (calculated as a genuine pre-estimated of loss) in circumstances where the contract is not completed within the time specified.</p> <p>Where completion of the contract is delayed it shall be the duty of the relevant Officer under the contract to take appropriate action in respect of any claim for liquidated damages as may be provided for within the terms and conditions of the contract.</p>		
<p>1.2.5 Breach of Contracts Procedure Rules</p>	<p>Any breach or non-compliance with these Contracts Procedure Rules must, on discovery, be reported immediately to the Head of Corporate Finance & ICT and the Risk and Audit Services Manager.</p>		

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 40</p> <p>6 Conditions of Contract</p>	<p>The Head of Corporate Finance & ICT and the Risk and Audit Services Manager shall consider whether each reported breach or non-compliance presents a significant risk of harm to the Council's interests and if satisfied that such risk exists shall undertake any necessary investigation and report the findings to the relevant Service Director, Head of Corporate Finance & ICT, Director of Corporate Services, and Chief Executive, as appropriate.</p> <p>Officers must be aware any non compliance with Contract Procedure Rules could result in disciplinary action.</p> <p>In every written contract for the execution of works or the supply of goods or services , the following clauses shall be inserted:-</p> <p>a) The Contractor should comply with the provisions of the Employment and the Trade Union and Labour Relations (Consolidation) Act, 1992, and in particular shall ensure that all persons employed by him or her in relation to the execution of the contract are afforded the rights and facilities specified in those Acts regarding trade union Membership.</p> <p>b) The Contractor should comply with national equality legislation to deliver services fairly and without unlawful discrimination.</p> <p>c) The attention of the Contractor should be drawn to the importance of complying in all respects with :</p> <p style="padding-left: 40px;">(i) The provisions of the Equality Act 2010.</p>		
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The Contractor shall have regard to the nine protected characteristics within the Act and must not discriminate either directly or indirectly on the grounds of:-

Age

Disability

Gender Re-assignment

Marriage and Civil Partnership

Pregnancy and Maternity

Race

Religion

Sex

Sexual Orientation

(ii) The requirements of the Public Interest Disclosure Act, 1998:

(iii) The requirements of the Freedom of Information Act 2000 and Regulations made thereunder. The Council's obligations in respect of the said Act are also drawn to the attention of the Contractor.

(iv) the requirements of the Bribery Act 2010

(v) The Contractor shall be responsible for the observance of clauses a–c (i)–(iv)

<p>Page 42</p> <p>1.7 Assignment of contracts without consent</p> <p>1.2.8 Contract Extensions</p>	<p>above by Sub Contractors employed in the execution of the contract, and shall notify the Council of the names and addresses of all such Sub-Contractors.</p> <p><u>Health and Safety Conditions of Contract</u></p> <p>The Contractor must comply with the 1974 Health and Safety at Work etc. Act (HASWA), Health and Safety Regulations, and Codes of Practice that are approved by the Health and Safety Executive</p> <p>The Contractor must comply with the Councils Health and Safety Guidance</p> <p>There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have transferred or assigned, whether directly or indirectly, the benefit of the contract without the written consent of the Council, or if the contractor shall have sub-let the contract (except so far as the sub-letting relates to the supply of patent or proprietary articles, raw materials or natural products) without the written consent of the Council.</p> <p>Officers must consider a contractor's performance throughout the period of contract when considering a contract extension. Officers should question not only the financial aspects of any potential extension, negotiating</p>		
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with the contractor where possible to achieve an improved financial offering, but should also give thought to whether the quality of goods or service being provided to the Council would continue to offer best value to the Council should an extension be offered. Officers should be aware that markets, the providers within those markets, and the level of competition for Council business will change over periods of time. Officers should consider alongside the award of any optional extension period, what other alternatives may be available to the Council and should offer reasoning as to why such alternatives are not proposed. Officers must ensure that prior to seeking approval of any proposed contract extension, consultation is undertaken with Head of Governance in order to secure a Procurement perspective.

An extension requires the approval of Cabinet Member or Cabinet according to the financial thresholds.

The value of any contract extension should be calculated in line with Rule 1.1.7

In terms of compliant process

Contracts may be extended beyond the stated core contract period, where provision for such extension was included in the original Invitation To Tender (ITT), or Request for Quotation documents (RFQ), and in respect of EU Procurements, in the OJEU Contract Notice

In cases where an extension period was not provided for within original ITT, or RFQ documents and in respect of EU

<p style="text-align: center;">Page 44</p> <p>1.2.9 Monitoring of Contracts</p>	<p><u>Procurements, in the OJEU Contract Notice</u> Extension of contracts with a value below the applicable EU Spend Threshold will require the written approval of the Cabinet Member following consideration of a written report from the Service Director setting out a justifying business case. Variations shall only be granted in exceptional circumstances if it can be established that this will achieve Best Value for the Council.</p> <p>Where the value of expenditure is such that an EU Spend Threshold would be exceeded then it is not possible to award a long term contract Extension. Extension on a short term basis will only be authorised in exceptional circumstances. In circumstances where a short term extension is granted, an EU compliant procurement process should be carried out as a matter of urgency in order to secure a replacement contract. Such action should be considered in consultation with the Head of Corporate Finance & ICT and the Head fo Legal.</p> <p>Wherever possible officers should endeavour to plan the necessary pre-procurement reporting, and subsequent procurement activity, in ample time to allow a replacement contract to be secured negating the need for an extension.</p> <p>All contracts should be monitored throughout the period of the contract, and the performance of contractors should be reviewed regularly.</p>		
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1.3 COLLABORATIVE ARRANGEMENTS

<p>1.3.1 Framework Agreements</p>	<p>Contract Procedure Rules 2.1 to 2.3, and 3.1 will not apply where the goods, works or services in question are to be procured by using a framework agreement which has itself been procured through compliance with these Contract Procedure Rules or from a Central Purchasing Body for the purposes of the Public Contracts Regulations 2006. Where a Central Purchasing Body's framework agreement is used the relevant Service Director shall obtain copies of that Body's Contract and Award notices and shall seek verification from the Head of Governance of the Body's compliance with the Public Contracts Regulations 2006 (as amended).</p>		
<p>1.3.2 Joint or Partnering Arrangements, Procurement of Consultants</p>	<p><u>1.3.2.1 Partnering Arrangements</u> A single contract may be delivered by several providers. Partnering involves an integrated team working together to deliver better services to citizens through agreeing mutual objectives, devising a way for resolving any disputes and committing themselves to continuous improvement, measuring progress and sharing the gains. All parties have a shared goal of delivering services in a cost-effective and timely way that is mutually beneficial.</p> <p>Partnering arrangements are likely to be contractually based and will need to comply with these Contracts Procedure Rules.</p> <p>Partnering Arrangements will be entered into</p>		

	<p>ONLY after an appropriate competitive procurement process has identified potential partners and they have been evaluated from a competitive and best value perspective. Partnering Arrangements will need to identify the following:</p> <ul style="list-style-type: none"> (a) responsibility for each function to be performed, (b) the element of risk undertaken by each party, (c) the mutual benefits derived from the partnership, (d) the individual targets and objectives of the partnership, (e) the procedure for reviewing the performance of the partnership, (f) the procedure for remedying disputes and the settlement of grievances (including arbitration - if required), (g) the period for maintaining the partnership, (h) the exit procedure at termination of the partnership, which should include, the responsibility for staff, premises, service provision, and any other relevant matters. <p>1.3.2.2. <u>Joint Procurement</u> Any joint procurement activity with other local authorities or public bodies, including Membership or use of Purchasing Consortia, shall be agreed by the Head of Corporate Finance and ICT prior to the commencement of any procurement on behalf of the Council.</p> <p>The Council may also enter into existing public sector framework arrangements, where it is evident that such frameworks represent the</p>		
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optimum solution to the Council in terms of service and cost. Approval to enter into such a framework shall be sought from the officer to whom delegated authority has been granted within the related Pre Procurement Report.

Where any expenditure is committed using standard arrangements such as an accessible framework contract with another local authority, government department, statutory undertaker, public service purchasing consortium or government approved catalogue of procurement sourcing, officers must be reasonably satisfied that the appropriate tender procedures have been followed by the body concerned, and consider appropriate use of the facility i.e. straight forward call-off or mini competition.

(a) Where the Council is working in a joint or partnering arrangement with another body or bodies and, under that arrangement, is the commissioning body, Sefton Council's Contracts Procedure Rules shall apply to contracts entered into under that arrangement.

(b) Where the Council is working in a joint or partnering arrangement with another body or bodies and, under that arrangement, another body is the commissioning body, the Contracts Procedure Rules, or equivalent, of that other body shall apply to contracts entered into under the arrangement subject to the approval of a waiver by the Cabinet Member (Corporate Services & Performance). Where the body has no such Contracts Procedure Rules, the procedures applied by the other body shall

comply with the principles and safeguards contained in Sefton Council's Contracts Procedure Rules, and this must be documented in the Terms and Conditions of the Contract.

(c) Where the Council is working in a joint or partnering arrangement with another body or bodies, the Terms and Conditions for the arrangement shall include powers for the Council to have access to the records, assets, site, employees and sub-contractors of that other body for the purposes of investigating or auditing compliance with the terms of the arrangement and with the relevant procurement rules.

1.3.2.3 Procurement of Consultancy Services
Establishment Control Panel approval must be sought prior to commencement of any procurement activity to secure consultancy.

Officers are reminded that the procurement of any consultancy services is ultimately subject to scrutiny by the 'Establishment Control Panel'. Officers procuring Consultancy Services should comply with all aspects of these Contract Procedure Rules in first sourcing any consultant through a competitive process to ensure best value.

Advice should be sought from CPU as to an appropriate competitive process in respect of these contract procedure rules

1.4 E-PROCUREMENT

1.4.1 Electronic Tendering

Officers must employ an electronic tendering method and shall use only the Council's electronic tendering portal approved by the Head of Corporate Finance & ICT, and accessible through the Corporate Procurement Unit (CPU).

The CPU should be contacted for assistance in this task.

1.5 RECORDS

1.5.1 Contracts Register

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As part of the Government's Transparency Agenda the Council is required to compile a Contracts register to capture details of all contracts let by the Council.

All tender opportunities published on the Council's approved electronic tendering portal will have the contract award details automatically promoted to the online contracts register.

1.6 INTENTION & AWARD OF CONTRACT AND DEBRIEFING OF CONTRACTORS

1.6.1 Award Criteria

Contracts will generally be awarded on the basis of either :

- a) MEAT (*Most Economically Advantageous Tender*) taking into consideration a balance between

	<p>Quality and Whole life cycle cost, or</p> <p>b) Lowest Whole life cycle cost only.</p> <p>c) Quality only <i>(*Quality only evaluation is only permissible in below-EU Spend Threshold procurements, <u>NOT</u> permissible in over EU Spend Threshold procurements)</i></p> <p>The Service Director, or their representative, must define Award Criteria appropriate to the procurement or commission. Award criteria must be designed to secure an outcome giving best value for money for the Council. If further defined within sub criteria then these must refer only to relevant considerations, and importantly such sub criteria must be openly published within Invitations To Tender / Requests for Quotation</p> <p>The Commissioning / Procuring Officer is advised to consider the desired outcome of a Commissioning / Procurement exercise, in order to determine a suitable method of evaluation.</p> <p>Options entail :</p> <p>(a) Whole Life Cost / Quality – In this method 100% is divided across price and quality. The commissioner/Procurer should determine an appropriate split commensurate with available budget and desired quality levels (quality meaning , product quality, or service quality, or a combination of the two)</p>		
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Examples could include:

- (i) 50% Whole life cost, 50% Quality
- (ii) 40% Whole life cost, 60% Quality
- (iii) 70% Whole life cost, 30% Quality

Or any other derivative the Commissioner/ Procurer deems appropriate.

- (b) Whole life cost only – In this method, evaluation is carried out on the basis of 100% whole life cost, where the bidder meets a pre-determined minimum standard of quality. Only the bidder's whole life cost will be evaluated, i.e. an increased quality specification above the pre-determined minimum is not acknowledged as providing any additional value because the minimum specification is sufficient for the Council's needs.
- (c) Quality only - In this method, evaluation is carried out on the basis of 100% quality, where the Commissioner/ Procurer identifies and publishes a specific budget that will be committed in full, irrespective of which bidder is awarded the work. Only the bid quality will be evaluated with an award being made to the bidder demonstrating the highest quality submission for the budget that the Council intends to commit.

<p>Page 52</p>	<p>Bids with whole life costs exceeding the published budget would be regarded as non compliant, and so not evaluated. (<i>*Again, officers are reminded that Quality only evaluations are <u>ONLY</u> permissible in below-EU Spend Threshold procurements</i>)</p> <p>Evaluation criteria and respective weightings shall be predetermined and clearly indicated in the Pre-Procurement Report and Invitation To Tender (ITT) or Request For Quotation (RFQ) documentation. In addition, the criteria shall be strictly observed at all times throughout the procurement exercise by any officer involved in the evaluation process, so as not to expose the Council to risk of challenge through deviation from the published criteria and weightings.</p>		
<p>1.6.2 Acceptance of Tenders / Quotations</p>	<p>It shall be clearly stated in all tender / quotation documents that the Council reserves the right:</p> <ul style="list-style-type: none"> (a) to accept a tender / quotation other than the lowest (b) to decline to accept any tender / quotation (c) not to award a contract 		
<p>1.6.3 Debrief – Intention & Award</p>	<p><u>Mandatory Standstill Period (historically known as the 'Alcatel' process)</u></p> <p>It is a requirement under the Public Contracts Regulations that any procurement exercise carried out under an EU Procurement Procedure must be concluded with a Mandatory Standstill Period. The purpose of the standstill period is to inform all bidders of</p>		

the outcome of the procurement exercise, and, if they think that the contract award decision is wrong, to provide bidders with an opportunity to challenge the decision before contract has been signed and sealed.

The applicable legislation allows bidders to question the procurement exercise and evaluation process within the standstill period of 10 calendar days (where electronic communication has been employed) following despatch of the award decision letter, and commence a formal legal challenge to prevent the contract from being awarded should they have grounds to do so.

Once the contract award decision has been approved by the officer with appropriate delegated authority, as authorised in any pre-procurement report, a letter should be sent to all bidders, providing written feedback to all unsuccessful bidders as to why their bid was unsuccessful and the relevant characteristics of the successful bid compared to the unsuccessful bidder.

Guidance on the Mandatory Standstill Period, and templates for correspondence, can be found on the Council's intranet, within the Procurement section. If in any doubt as to the application of the Mandatory Standstill Period then the Corporate Procurement Unit should be contacted for guidance.

In respect of contracts established via Non European Union Procurement Procedures, i.e. where expenditure falls below EU Spend

	<p>Thresholds, mindful of the EU Procurement principles of Openness, Fairness and Transparency, officers should use discretion as to what degree of debrief is provided, but should endeavour to provide meaningful feedback that enables bidders to understand where a submission could have been stronger, in order that future proposals may be improved.</p>		
<p>1.7 CONTRACT PAYMENTS</p>			
<p>1.7.1 Contract payments/settlements</p>	<p>Contract payments/settlements shall be made in accordance with procedures referred to in the Financial Procedure Rules.</p>		
<p>1.7.2 Instalment payments</p>	<p>Where contracts provide for payment to be made by instalments the appropriate Service Director shall maintain suitable records to show the state of account on each contract.</p>		
<p>1.7.3 Authorisation of Payments</p>	<p>Payment to contractors shall be authorised by an authorised certifying officer in accordance with the Department's Scheme of Delegation</p>		
<p>1.7.4 Authorisation of Variations</p>	<p>Variations to a contract shall be in writing and shall be authorised in writing by the appropriate Service Director or on their behalf by an authorised certifying officer.</p>		
<p>1.7.5 Works Contracts – Final Certificate control</p>	<p>In the case of Works contracts a final certificate shall not be issued until the Service Director has, to the extent that it is felt necessary, examined all matters relating to the final account.</p>		

1.7.6 Payments before Completion of Formal Contract	<p>No payment shall be made by the Council to the contractor without a formal purchase order / formal agreement in place and will only happen following the provision of goods, services, or works.</p> <p>Advance payments are <u>not</u> permitted.</p>		
1.7.7 Signed Contracts	<p>Contracts shall be signed on behalf of the Council by a duly authorised officer in accordance with the Scheme of Delegation for Officers</p>		
1.8 WAIVER OF CONTRACTS PROCEDURE RULES			
<p>1.8.1 - Waiver – Supplementary Page 55</p>	<p>(a) In any report seeking waiver of Contracts Procedure Rules the relevant Officer shall state:</p> <ul style="list-style-type: none"> · the particular Contracts Procedure Rule/s to be waived · the period of time during which the waiver shall be effective and value for this period · Budget Approval – include Budget, Funding and Cost Centre Code · Business Case in support of the waiver which must include details of how the following would be achieved despite the waiver: <ol style="list-style-type: none"> i. Value for Money ii. Transparency, propriety and accountability iii. Position of the contract under the Public Contracts Regulations 2006 iv. How the contractor was selected v. Identification of potential project risks 		

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 56:</p>	<p>and controls</p> <ul style="list-style-type: none"> vi. How the project links with departmental and corporate objectives vii. Whole life costs of the project including the revenue costs associated with the project <p>(b) In cases where formal tendering requirements are waived the relevant Officer shall seek advice and guidance from the Head of Governance before submission to SLT.</p> <p>(c) The waiver of Contracts Procedure Rules and the reason(s) for waiver shall be clearly recorded in the minutes of SLT Meetings.</p> <p>(d) Where certain Contracts Procedure Rules are waived the relevant Officer shall comply with the remaining Contracts Procedure Rules.</p>		
<p>EXPENDITURE APPROVAL PROCESS – PRE PROCUREMENT REPORTING</p>			
<p>1.9.1 Pre-Procurement reporting</p>	<p>All officers requiring to commit expenditure in order to acquire Goods, Services or Works on behalf of the Council must first consider Approval to Commit Expenditure and so to commence the procurement process. In doing this officers should consider Financial Procedure Rules and any relevant budget approval process and should refer to the Head of Finance & ICT where necessary.</p> <p>It is a requirement of the Chief Executive Officer and the Elected Members that approval to commit expenditure be considered, <u>prior</u> to commencement of any Procurement activity as follows :</p>	<p>The current CPR's aren't clear on pre procurement reporting in place of reporting at the back end of a procurement process.</p>	

(a) Expenditure of upto £150,000 - a Pre Procurement report is to be taken to the Officer's Service Director, or as determined by a scheme of delegation already approved by the Head of Corporate Finance & ICT to seek approval to commence Procurement activity and so commit expenditure.

(b) Expenditure of £150,001 upto :

i) 3 x the OJEU Spend Threshold for Goods & Services (i.e. £517,542.00 as at January 2014),

Or

ii) The OJEU Spend Threshold for Works (i.e. £4,322,012.00 as at January 2014)

– a Pre Procurement report is to be taken to the Officer's Cabinet Member to seek approval to commence Procurement activity and so commit expenditure.

(c) Expenditure of :

i) Over 3 x the OJEU Spend Threshold for Goods & Services (i.e. £517,542.00 as at January 2014),

Or

ii) Over the OJEU Spend Threshold for Works (i.e. £4,322,012.00 as at January 2014)

NOTE : The **ONLY** exception to this rule shall be where a prospective procurement satisfies the requirements of a 'Key Decision'. The following information is reproduced from the Council's Constitution to aid officers in determining whether a prospective procurement qualifies as a Key Decision :-

"A KEY DECISION is:

a) any executive decision that is not in the Annual Revenue Budget and Capital Programme approved by the Council and which requires a gross budget expenditure, saving or virement of more than £100,000 or more than 2% of a Departmental budget, whichever is the greater;

b) any executive decision where the outcome will have a significant impact on a significant number of people living or working in two or more Wards."

Where a prospective procurement is determined to be a Key Decision then this will need to be entered onto the Forward Plan via liaison with the Democratic Services Team.

A Key Decision relating to a prospective procurement will be considered by Cabinet within a Pre Procurement report.

Pre Procurement reports should set out :-

- i) The brief details of the Procurement exercise and the Procurement method to be employed

- ii) The basis of evaluation, i.e.
 - MEAT (*Most Economically Advantageous Tender*) taking into consideration a balance between Quality and Whole life cycle cost, for example :

50% Whole life cost, 50% Quality
40% Whole life cost, 60% Quality
70% Whole life cost, 30% Quality

Or any other derivative the Officer deems appropriate to the requirement,

or
 - 100% Lowest Whole life cycle cost,

or
 - 100% Quality (***only permissible in below EU Spend Threshold procurements, NOT permissible on over EU spend threshold procurements***)

iii) A request that authority be delegated to a

The current CPR's don't set out the desired content of pre-procurement reports

	<p>nominated officer, to approve the resulting post procurement contract award.</p> <p>The following illustration summarises the Pre Procurement expenditure approval process, that these Contracts Procedure Rules detail.</p>	<p>The current CPR's don't feature an illustration of the Approval steps</p>	
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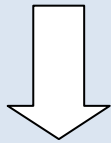
What level of pre-approval is required in respect of Contract Value?

(Officers must ensure that you read and understand The Contract Procedure Rules and do not simply refer to this illustration alone)

FOR EXPENDITURE OVER £50,000 - DECISION PUBLISHED ONLINE

(by Democratic Services via Intranet and Internet)

upto £150,000



**Service Director Responsibility
& Accountability**

As determined by a Scheme of
Delegation already approved by
the Head of Corporate Finance &
ICT

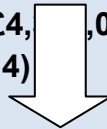
Pre Procurement Report

£150,001 upto :

i) 3 x the OJEU Spend Threshold for
Goods & Services (i.e.
£517,542.00 as at January 2014),

or

ii) The OJEU Spend Threshold for
Works (i.e. £4,2012.00 as at
January 2014)



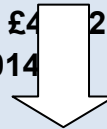
Cabinet Member Responsibility

Expenditure Over :

i) 3 x the OJEU Spend Threshold
for Goods & Services (i.e.
£517,542.00 as at January 2014),

or

ii) The OJEU Spend Threshold for
Works (i.e. £4,2012.00 as at
January 2014)



Cabinet Responsibility

KEY DECISION

Cabinet Responsibility - Pre Procurement Report (as determined by Key Decision definition)

PART 2: STANDING ORDERS CONCERNING CONTRACTS EXCEEDING THE APPLICABLE EUROPEAN UNION SPEND THRESHOLD

Page 62

<p>2.0 Application</p>	<p>Part 2 of these Contracts Procedure Rules shall apply to all contracts <u>exceeding</u> applicable European Union spend thresholds in value, and officers must adhere to the Public Contracts Regulations 2006 (as amended)</p> <p>European Union spend thresholds (for the whole value of the contract including any optional periods) are as follows :-</p> <p style="padding-left: 40px;">a) Goods / Services - £172,514.00 b) Works – £4,322,012.00</p> <p><i>Note : Spend threshold figures correct as at January 2014, but subject to ongoing change, ordinarily on a two year cycle.</i></p> <p><i>‘Works’ means any of the activities specified in <u>schedule 2 of the Public Contracts Regulations 2006</u></i></p> <p><i>The contents of schedule 2 can be viewed here :-</i></p> <p><u>Public Contracts Regulations 2006 (as amended)</u></p>		
<p>2.1 Forms of Procurement</p>	<p>2.1.1 There are four main forms of procurement available for contracts exceeding European Union Spend Thresholds :-</p> <p style="padding-left: 40px;">(a) Open Procedure Tendering</p>		

	<p>(b) Restricted Procedure Tendering (c) Direct Call Off from a framework (d) Mini competition within a framework</p> <p>2.1.2 Procurement of services which are classified as falling within Part A of the Public Contracts Act 2006 (as amended) shall follow one of the above procedures. The Service Director in consultation with the Head of Governance, or their respective representatives, shall select the most appropriate procedure</p> <p>2.1.3 This process shall not remove or modify the responsibility of the relevant Service Director to take such steps as may be reasonably necessary to safeguard the Council's interest.</p> <p>2.1.4 In order to determine a suitable procurement approach to a specific market, officers may first choose to carry out non-committal soft market testing in order appreciate the level of interest, and numbers of providers that exist in a particular market</p>		
<p>2.2 Open Procedure Tendering</p>	<p>2.2.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced, and where the applicable European Union spend thresholds detailed in Contracts Procedure rule 2.0 are exceeded.</p> <p>Commissioners and/or Procurement Officers shall follow an Open Procedure specifically where the market for the requirement is identified as limited in terms of supplier</p>		

	<p>numbers, and so the number of submitted bids is likely to be low.</p> <p>2.2.2 The Council shall give public Contract Notice of its intention to enter into such arrangements. Such Contract Notice shall be published electronically, within the Official Journal of the European Union (OJEU), via its electronic tendering portal.</p> <p>2.2.3 The Contract Notice shall state the nature and purpose of the proposed contract, it shall provide interested providers with an electronic Invitation to Tender (ITT) document setting out particulars of the contract into which the Council wish to enter, together with specification, standard and special terms and conditions, the award criteria, the closing date for tenders, the Council’s requirements as to the procedures for submission of tenders, and invite providers to submit a completed ITT proposal within the specified period stated in the public notice (not being less than 40 calendar days).</p> <p>2.2.4 The Service Director’s evaluation panel shall evaluate all submissions using the award criteria and weightings in the published tender documents and shall maintain a copy of the marked evaluation matrix</p>		
<p>2.3 Restricted Procedure Tendering</p>	<p>2.3.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced, and where the applicable European Union spend thresholds detailed in Contracts Procedure Rule 2.0 are exceeded</p>		

Commissioners and/or Procurement Officers shall follow a Restricted Procedure specifically where there is likely to be a substantial number of providers in the marketplace and so a high number of responses would be expected, or the goods, works or services are of a specialist nature.

The procedure is a two stage process. The first stage is a Selection stage and allows the Commissioner / Procurer to restrict the marketplace. A shortlist of providers is created at selection stage by using a Pre-Qualification Questionnaire (PQQ) to evaluate and score minimum requirements that contractors must meet.

2.3.2 The Council shall give public Contract Notice of its intention to enter into such arrangements. Such notice shall be published electronically, in the Official Journal of the European Union (OJEU), via its electronic tendering portal.

2.3.3 The Contract Notice shall state the nature and purpose of the proposed contract, it shall provide interested providers with an electronic Pre Qualification Questionnaire (PQQ) document setting out particulars of the contract into which the Council wish to enter, together with the selection criteria, the closing date for PQQ's and the Council's requirements as to the procedures for submission of PQQ's, and invite providers to submit a completed PQQ proposal within the specified period stated in the public notice (not being less than

	<p>30 calendar days).</p> <p>2.3.4 In consultation with the Head of Governance or their representative, the relevant Service Director’s evaluation panel shall evaluate all submissions using the selection criteria and weightings in the published PQQ document and shall maintain a copy of the marked evaluation matrix.</p> <p>2.3.5 At the second stage of the procedure, the <u>Award</u> stage, Invitations To Tender (ITT) for the contract shall ideally be sent to not less than five of the highest scoring providers who expressed an interest in tendering and submitted a PQQ within the specified time-scale, and that have met the minimum requirements.</p> <p>2.3.6 The ITT documents must state the particulars of the contract into which the Council wish to enter, together with specification, standard and special terms and conditions, the award criteria and weightings, the closing date for tenders, the Council’s requirements as to the procedures for submission of tenders, and invite providers to submit a completed ITT proposal within a specified period (not being less than 35 calendar days).</p>		
<p>2.4 Direct call off from a framework</p>	<p>2.4.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced.</p> <p>Where an officer identifies a pre-tendered compliant framework, whether that be owned</p>		

	<p>by Sefton Council, or owned by an external organisation but available to the Council, then where such a framework allows, and in line with the requirements laid down above, a direct call off may be made and a purchase order placed with an organisation that represents best value against the requirement, negating the need for a tender exercise.</p>		
<p>2.5 Mini competition within a framework</p>	<p>2.5.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced.</p> <p>Where an officer identifies a pre-tendered compliant framework, whether that be owned by Sefton Council, or owned by an external organisation but available to the Council, and such a framework has a requirement to further compete for an award of business, a mini competition should be carried out. This will require the creation of an Invitation To Tender (ITT) document which is issued to all framework providers. setting out particulars of the contract into which the Council wish to enter, together with the award criteria and weightings, the closing date for tenders, the Council's requirements as to the procedures for submission of tenders, and invite providers to submit a completed ITT proposal within a appropriate period as defined by the client officer</p>		
<p>2.6 Invitations to Tender and Interim Custody of Tenders</p>	<p>2.6.1 All Invitations to Tender shall include the following:</p> <p>(i) The Council will only be issuing and receiving Invitations To Tender electronically. Tenders submitted by any other means shall</p>		

not be considered.

(ii) A requirement for tenderers to complete fully and sign or otherwise authorise the Form of Tender,

(iii) All electronic responses will be held within a secure online sealed tender box that is only accessible by the appointed Verifier after the specified fixed time and date.

(iv) All Invitations to Tender must specify the goods, works or services that are required in sufficient detail to enable the submission of competitive offers, together with the terms and conditions of the contract that will apply.

(v) A description of the Award Procedure and a definition of the Award Criteria in objective terms and in descending order of importance with weightings.

(vi) Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's risk and expense

(vii) Notification that amendments must not be made to the contract documents by the tenderer

2.6.2 A register of tenders received in pursuance of these Contracts Procedure Rules shall be maintained by the Head of Governance or an Officer designated for that purpose.

2.6.3 An electronic contract register will be

	maintained by the Head of Governance		
2.7 Closing Date for Receipt of Tenders	2.7.1. No tenders received at the specified place, and by the specified method, after the fixed date and appointed time, shall be opened or considered.		
2.8 Method of Opening Tenders	2.8.1 In respect of tender submissions received electronically, <u>ONLY</u> a Verifying officer as designated within the Council's electronic tendering portal will have permission to open online sealed tender submissions.		

<p>2.9 Evaluation of Tenders</p>	<p>2.9.1 Evaluation and Award <i>(for above EU spend threshold procurements)</i></p> <p>(a) Tenders shall be evaluated and awarded on the basis of the value for money they offer to the Council in line with either :-</p> <ul style="list-style-type: none"> i) MEAT <i>(Most Economically Advantageous Tender)</i> Principles. Criteria must be relevant to the contract and apportioned between Whole life cost and Quality in a ratio reflecting the risk and value of the contract <p style="text-align: center;">or</p> ii) Lowest Whole Life Cost. Costs involved with the Council acquiring, owning, maintaining and disposal associated with the contract. <p>as determined and documented in advance of Tenders being invited.</p> <p>(b)Tenders shall be evaluated and awarded in accordance with criteria and weightings determined, and documented in an evaluation matrix, and must not be changed at any time during the process.</p> <p>2.9.2 Evaluation Panel</p>		

(a) Evaluation Panels should be established prior to the issue of the Invitation to Tender documents, to ensure that they are engaged with the process and understand the evaluation criteria and weightings.

(b) Evaluation Panels should include representation from the client department/key Stakeholders, and should consist of a minimum of two officers.

2.9.3 Evaluation Matrix

(a) The Evaluation Matrix will consist of defined evaluation criteria and weightings. Marks and scores should be brought through from the ITT document to reflect what is material to the award of a particular contract.

(b) criteria shall have a number of marks allocated to signify to tenderers the relative importance of each criterion.

(c) Scores – All bids must be scored consistently against a scoring model which must be included in the Invitation to Tender.

(d) All scores and notes made by the evaluation panel must be recorded in writing and used for reference if further moderation is required.

2.9.4 Moderation

(a) The Evaluation Panel will discuss their individual scores and must reach agreement on a moderated panel score and justifying

comments.

(b) Any moderated scores and applicable justifying comments must be recorded in the Evaluation Matrix accompanying the procurement.

(c) All notes may be the subject of information requests or legal challenge against award of a contract. It is crucial that accurate notes justifying awarded scores are maintained throughout and relate solely to the relevant award criteria.

2.9.5 Post Tender Clarification

(a) Post Tender Clarification is to be requested and returned via the Council's electronic tendering portal. Importantly, post tender clarification may only be sought in relation to an element of the bidder's submission that has been provided, and which needs further understanding.

Post Tender Clarification however cannot be used to seek from the bidder some element of the submission which has been omitted, and as such seeking provision of such omission would provide the bidder with an unfair advantage.

(b) Evaluation scores can only be amended where specific clarification has been requested relating to the award criteria.

(d) All clarification questions and returns must be noted and any amended scores which

	<p>result from clarification are to be updated in the Evaluation Matrix.</p> <p>2.9.6 Best and Final Offer (BAFO)</p> <p>Officers are informed that in respect of procurements exceeding the applicable EU Spend Threshold, there is NO provision within the Public Contracts Regulations for a BAFO stage to be employed in any procurement procedure other than the very specialised Competitive Dialogue Procedure.</p>		
<p>2.10 Method of Acceptance of Tender</p> <p>Page 73</p>	<p>2.10.1 Tenders may be accepted by the relevant Officer to whom delegated authority to approve a contract award was sought in a related pre-procurement report provided that all of the following apply:-</p> <p>(i) where possible, five or more tenders have been invited in accordance with contracts procedure rules</p> <p>(ii) the tender proposed to be accepted is either:</p> <ul style="list-style-type: none"> - the highest score if Whole life Cost and Quality in line with MEAT principles have been stated as the basis for award, or - the Lowest Whole Life Cost if Whole Life Cost has been stated as the 100% basis for award <p>Where an officer proposes to reject a tender despite meeting the stated criteria officers should seek Service Director Approval</p>		

	following advice from CPU		
2.11 Errors in Tenders	<p>2.11.1 If before the date of entry into a contract it is discovered that an error has been made in the tender it shall be dealt with as follows:-</p> <p>(a) Building Contracts – in accordance with the National Building Specification (NBS) Guide, Alternative 1 or Alternative 2.</p> <p>(b) Other Contracts – the Tenderer should be given the opportunity of confirming the offer or of amending it to correct genuine and obvious arithmetical errors.</p> <p>Clarification surrounding such errors shall be sought in writing via the Post Tender Clarification facility within the Council’s Electronic Tendering Portal</p> <p>Should a bidder, in amending an arithmetical error, reflect a change in the bid that directly relates to the determined award criteria, then the bid should be re-scored as necessary. If a bidder opts to formally withdraw a bid altogether then it shall receive no further consideration</p> <p>2.11.2 The above action by the relevant Service Director in consultation with the Head of Governance shall take place before the date of entry into a contract.</p>	This re-draft specifically details how errors in bids for Building contracts are dealt with in addition to all other tender topics, as officers operating in those areas use specific industry guidance	
2.12 Indemnity and Health & Safety’	<p>2.12.1 Every contract shall contain clauses (i) requiring the contractor to observe and perform in relation to the work to be carried out under the contract the requirements of the</p>		

Health & Safety at Work etc. Act 1974 or of any Regulations or Codes of Practice made under the authority of that Act and to comply with any lawful requirements of the Health and Safety Executive in relation to such work; and there shall be reserved to any duly authorised Officer of the Council the right of access to the site for the purpose of ensuring compliance with the requirements of this Clause
(ii) that have regard to Sustainability and to the requirements of the Equality Act 2010.

2.12.2 In every contract the contractor shall be required to indemnify the Council against:

(i) any claim which may be made in respect of Employers' Liability against the Council or the contractor by any workmen employed by the contractor or any sub-contractor in the execution of the works or the provision of goods and services;

(ii) any claim for Public Liability, i.e. for bodily injury, or damage to, property of third parties;

(iii) any claim which may be made under the Health and Safety at Work etc. Act, 1974 (HASWA) against the Council or the contractor/sub-contractor unless such claim is substantially due to the neglect of the Council or any of its Officers; and the contractor shall when required by the Service Director and Head of Corporate Legal Services produce satisfactory evidence that it is insured against any such claims.

Levels of indemnity cover, should be

2.13 Funding Availability

considered for topics such as Employers Liability, Public Liability, and professional indemnity as appropriate to the topic in question

The responsibility rests with the client officer, to assess the risk surrounding the prospective procurement and settle upon levels of indemnity appropriate and proportional to the requirement. Where required, guidance in respect of Indemnity and assessing risk should be sought from the Council's Insurance section.

Where the appropriate levels of indemnity are determined through risk assessment supported by appropriate guidance from the Insurance section, bidders through a procurement process should confirm that such indemnity will be in place should a contract be awarded.

Officers are advised that Contract conditions should state :

“The price agreed for the contract is subject to the ongoing availability of sufficient funding. In the event that during the contract period the Council does not have sufficient funds to cover the price of the contract the Contractor will develop and agree a contract variation with the Commissioner / Procurer such that the contract price remains within the funding available.

In the event that agreement cannot be reached the dispute resolution procedure set

	out within the contract will be followed.”		
2.14 Transfer of Undertakings (Protection of Employment) <i>TUPE</i> Regulations 2006	<p>2.14.1 The Regulations apply to a business transfer but more regularly within the Authority it applies to service provision changes. This means that Officers commissioning / procuring Services should be aware of the impact of the TUPE Regulations. The Regulations impose a number of obligations on relevant parties and a failure to address the demands of TUPE could result in significant penalties, decisions and awards being made against the Authority which we clearly want to avoid. An outsourcing will likely carry TUPE implications and even if TUPE is deemed not to apply the potential implications should be considered as early as possible.</p> <p>Another purpose of the Regulations is to ensure that in a situation where contractual delivery of a service is moving from one provider to another, i.e. by way of a procurement exercise, then affected workers’ employment rights and entitlements are protected. This can include pension rights. In such circumstances the Authority may be deemed to be the client however the Council should be aware of the potential implications and requirements of the legislation and acknowledge these appropriately within Tender/outsourcing documentation and contracts.</p> <p>The Council’s Procurement and Legal department should be consulted in order to fully understand any potential impact on a procurement in order to protect the Council’s</p>	TUPE is not covered in the current CPR’s and so this can lead to client officers not considering TUPE in commissioning / procurement exercises, creating serious issues later into procurement processes	

	<p>position and address TUPE in writing, where appropriate.</p> <p>Additionally clauses within any contract where TUPE is likely to apply should be included relating to ensuring that the Council can request staffing information at any point throughout the duration of the contract</p>		
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PART 3: CONTRACTS UP TO BUT NOT EXCEEDING THE EUROPEAN UNION SPEND THRESHOLDS

<p>3.1 Competition Requirements</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 78</p>	<p>3.1.1 European Union spend thresholds (for the whole value of the contract including any optional periods) are as follows :-</p> <p style="padding-left: 40px;">a) Goods / Services - £172,514.00 b) Works - £4,322,012.00</p> <p><i>Note : Spend threshold figures correct as at January 2014, but subject to ongoing change, ordinarily on a two year cycle.</i></p> <p><i>‘Works’ means any of the activities specified in schedule 2 of the Public Contracts Regulations 2006</i></p> <p><i>The contents of schedule 2 can be viewed here :-</i></p> <p><u>Public Contracts Regulations 2006 (as amended)</u></p> <p>Where the estimated costs of any goods, works or services to be ordered on behalf of the Council is less than the applicable</p>	<p>Key change here in that the re-written CPR’s propose that no formal tendering activity is carried out for requirements below the applicable EU spend threshold, i.e. below £172,514 for Goods or Services, or below £4,322,012 for Works.</p> <p>Instead, a Risk Based Sourcing approach will be undertaken whereby competition is still created in order to seek best value, but the Commissioner / Procurer has freedom to choose the number of bidders to submit proposals for a requirement, the number being no less than three. This will make procurement of sub-EU requirements more efficient</p>	
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European Union Spend Threshold shown above then proposals shall be invited as outlined below:

(a) Between £1000 and the applicable EU Spend Threshold : a minimum of three electronic invitations via the Council's electronic tendering portal, subject to a procurement risk assessment being carried out with the Head of Governance or their representative, which will determine the route to market using a Request for Quotation (RFQ) (identified risk):

(b) Less than £1000 : proof of two written quotations is necessary in order to satisfy that best value is achieved.

3.1.2 Best and Final Offer (BAFO)
For below-EU Spend Threshold procurements only, these Contracts Procedure Rules facilitate officers employing a BAFO stage within a procurement exercise.

The purpose of the BAFO stage, is to enable the Commissioning / Procuring Officer to afford an opportunity to all bidders in a procurement exercise, that have not failed any pass/fail element of the evaluation, a final opportunity to improve their overall offer to the Council. This should enable the Council to seek best value.

The BAFO stage should be conducted through the Council's electronic tendering portal, it should be provided to all 'compliant' bidders equally (i.e. those bidders that have passed all pass/fail elements of the evaluation), and

should set a deadline for submission of BAFO's, to be returned via the Council's electronic tendering portal.

Upon receipt of any number of BAFO's within a below-EU procurement exercise the Commissioning / Procuring officer will examine the contents of each BAFO.

A BAFO can be an improvement of any element of the bidder's 'offer' i.e. it may contain, for example ;

- i) A lower price
- ii) An improvement in the quality offering
- iii) A value added element (such as an extended warranty on goods)

Or any combination of these.

Where a BAFO is submitted Commissioning / Procuring officers should ensure that any improvements in a bidder's offer are reflected in the applicable evaluation matrix, rescoring bidder's submissions only where appropriate.

The following illustration summarises Procurement Process that these Contracts Procedure Rules detail.

The current CPR's don't feature an illustration of the Process steps

What level of Procurement Activity is required in respect of Contract Value ?

(Officers must ensure that you read and understand The Contract Procedure Rules and do not simply refer to this illustration alone)

£1 to £1,000

Proof of 2 Written Quotes

Client Officer Responsibility

£1,001 to EU Spend Threshold

Electronic Tendering Portal
Minimum of 3 electronic invitations
Best and Final Offer (BAFO)

Procurement Team

**Risk Based
Request for Quotation**

Above EU Spend Threshold

Electronic Tendering Portal
In line with Public Contracts Regulations

Procurement Team

Formal Tender Exercise

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