

Report to: Council **Date of Meeting:** 13th July 2017

Subject: Contract Procedure Rules

Report of: Head of Commissioning
Support and Business Intelligence **Wards Affected:** All Wards

Cabinet Portfolio: Regulatory, Compliance & Corporate Services

Is this a Key Decision: No **Included in Forward Plan:** No
Exempt / Confidential Report: No

Summary:

Following a review of procurement processes, rules and guidance, the progress of which has been reported regularly to Audit and Governance Committee, Audit and Governance Committee is now referring the revised and updated Contract Procedure Rules (CPR), produced as part of that review, to Council for approval.

Recommendation(s):

That Council:

(1) Approve the revised Contract Procedure Rules enclosed with this report.

Reasons for the Recommendation(s):

To enable the Council to adopt the revised Contract Procedure Rules (CPR).

Alternative Options Considered and Rejected: (including any Risk Implications)

The Constitution requires that “*Contract Procedure Rules shall be reviewed and updated as appropriate in line with review of the Constitution and shall be presented to Council, at least annually, for approval*” (Chapter 11, paragraph 131). Over the past 9 months the Council has undertaken a Review of Procurement Processes, Rules and Guidance, including CPR. Updates on progress of this review and revisions to CPR have been considered by Audit and Governance Committee on 7th December 2016, 22nd March 2017 and 28th June 2017, under their delegated responsibility to “*maintain an overview of the Council’s constitution of contract procedure rules, financial regulations and codes of conduct and behaviour*” and it is now considered timely to for the amended CPR to be presented to Council for formal approval. Consequently no alternative option has been considered.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no additional costs arising directly from this report.

(B) Capital Costs

N/A

Implications of the Proposals:

<p>Resource Implications (Financial, IT, Staffing and Assets):</p> <p>There are no additional resource implications associated with this report. Existing staffing resources will be involved in procurement and contract management exercises and will be required to comply with the CPR. Officers will need to allocate time to completion of compulsory training.</p>
<p>Legal Implications:</p> <p>The revised contract procedure rules fully reflect the Public Contract Regulations 2015//102.</p>
<p>Equality Implications:</p> <p>There are no equality implications.</p>

Contribution to the Council’s Core Purpose:

<p>Protect the most vulnerable: The proposed amendment to the Constitution and Contract Procedure Rules enables the Council to protect the most vulnerable by timely approval of care packages and placements whilst ensuring appropriate oversight.</p>
<p>Facilitate confident and resilient communities: Not applicable</p>
<p>Commission, broker and provide core services: Effective, efficient and legally compliant procurement and contract management processes are key components of the effective commissioning and procurement of services.</p>
<p>Place – leadership and influencer: Not applicable</p>
<p>Drivers of change and reform: Improved procurement processes, rules, and guidance are key enabling components of delivering change and reform.</p>
<p>Facilitate sustainable economic prosperity: Effective procurement of goods, works and services from the external market supports economic prosperity. Increased local</p>

supply chain development and social value from procurement will improve the contribution to local sustainable economic prosperity.
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Greater income for social investment: Not applicable
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What consultations have taken place on the proposals and when?

(A) Internal Consultations

The review of procurement processes, rules and guidance, and the proposed amendment to the Constitution and Contract Procedure Rules (CPR) have been developed by a multi-disciplinary team that includes officers from Procurement, Commissioning Support, Legal, Finance, Strategic Support and Learning & Development.

Consultation has been undertaken across the Council, through the Strategic Leadership Board and nominated representatives of Heads of Service, on the proposed amendments. Where appropriate, comments made have been reflected within the document attached. In particular, details comments were received from colleagues in Legal and Internal Audit and these are reflected in the attached CPR.

The Head of Corporate Resources (FD 4723/17) and Head of Regulation and Compliance (LD 4007/17) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

Not applicable.

Implementation Date for the Decision

Immediately following the Council meeting

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Appendices:

The following appendices are attached to this report:

Appendix 1 – Proposed Contract Procedure Rules

Background Papers:

There are no background papers available for inspection.

Introduction/Background

1. In September 2016 the Council established a project to review and revise existing procurement processes, rules (including the published Contract Procedure Rules) and guidance, to:
 - Ensure full compliance with Public Sector Contract Regulations 2015;
 - Address the issues identified by audit of recent procurement exercises;
 - Address any other gaps separately identified; and
 - Generally improve the effectiveness of procurement by Sefton Council.
2. This review has been undertaken by a multi-disciplinary team led by the Head of Commissioning Support & Business Intelligence and including representatives from Procurement; Commissioning Support; Finance; Legal, Strategic Support and Learning & Development. Other officers were included within the Project Team as necessary.
3. Audit and Governance Committee considered updates on progress of this review and revisions to CPR on 7th December 2016, 22nd March 2017 and 28th June 2017, in accordance with their delegated responsibility to “*maintain an overview of the Council's constitution of contract procedure rules, financial regulations and codes of conduct and behaviour*”. A description of the changes made and reasons for those changes were included within the reports to Audit and Governance Committee.
4. The Council’s Constitution requires that “*Contract Procedure Rules shall be reviewed and updated as appropriate in line with review of the Constitution and shall be presented to Council, at least annually, for approval*” (Chapter 11, paragraph 131). As the Action Plans associated with the Review of Contract Processes, Rules and Guidance are effectively completed, with the exception of post-implementation internal and external audit work, it is considered timely to for the amended CPR to now be presented to Council for formal approval. The revised CPR are duly included at Appendix 1 to this report for consideration and approval.



CONTRACT PROCEDURE RULES

Document owner:	Peter Moore, Head of Commissioning Support & Business Intelligence
Version:	5.0
Effective Date:	28 th June 2017
Review Date:	1 January 2018

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GLOSSARY OF TERMS

Advanced Request for Quotation (ARFQ)

Initiating step of a procurement process in which providers are invited to submit quotations for the supply of specific and clearly defined supplies, services, or works during a specified timeframe, the value of which falls below the applicable European Union Spend Threshold. ARFQ's are evaluated on a percentage split across Cost and Quality.

Aggregate

A whole procurement formed by combining several separate elements

Assignment

The transfer of the benefits and obligations of a contract from one Contractor to another.

BAFO (Best and Final Offer)

The step of inviting providers that have submitted compliant proposals within a procurement process to refine their offering, either by an improvement of the Cost, the Quality, Value Added benefits, or a combination of these factors.

Whilst the use of a BAFO step is permitted and encouraged in procurement exercises with a value below the applicable EU spend threshold, it is forbidden in the majority of over EU spend threshold exercises.

Central Purchasing Body

A Central Purchasing Body is a contracting authority that:

- i) acquires supplies or services intended for one or more contracting authorities; or
- ii) awards public contracts for works, supplies or services intended for one or more contracting authorities; or
- iii) concludes framework agreements for works, supplies or services intended for one or more contracting authorities.

Commissioning

Commissioning is process by which we decide how to use and prioritise the total resources available in order to improve outcomes for citizens in the most efficient, effective and sustainable way. The process covers the entire cycle of assessing the needs of people, designing and securing a cost-effective approach in order to deliver better outcomes, and monitoring performance to determine whether the approach commissioned is fit for purpose, or needs to be replaced with a more effective redesigned approach. This may include the procurement of goods, works or services.

Contracting Authority

The State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities.

Contract Payment Profile Retention

Amounts are deducted from payments due to the contractor (retention) over the course of the contract, the value of such deductions may be dependent on the achievement of performance milestones; at the end of the contract, any such retentions are released to the contractor on satisfactory completion (including any relevant defects period).

Deposited Cash Bond

A payment made by a contractor 'up-front' (or deducted from a first payment due) that is held by the Council as security until the contract is satisfactorily complete

Dynamic Purchasing System (DPS)

A completely electronic system for commonly used purchases the characteristics of which, as generally available on the market, meet the requirements of the Contracting Authority and is open throughout its duration to any Contractor which satisfies the selection criteria.

E-Procurement

A method of carrying out a procurement exercise using an electronic internet based tool such as the Council electronic opportunities portal.

Economic Operator

Any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market.

Evaluation Matrix

A Microsoft Excel based document which sets out the evaluation criteria and weightings detailed within a procurement document and against which bidders' submissions and scores are recorded.

Framework Agreement

An agreement which establishes the terms under which a Contractor will enter into Contracts with the Contracting Authority throughout the duration of the Framework. A Contractor may be awarded a Contract which extends beyond the termination of the framework, provided the Contract is entered into before the framework expires and it is proportionate. Contracts awarded at the end of framework that have a disproportionate duration may amount to an abuse of the Public Contracts Regulations.

Invitation to Tender (ITT)

Initiating step of a competitive tendering process in which providers are invited to submit sealed bids for the supply of specific and clearly defined supplies, services, or works during a specified timeframe

Light Touch Regime (LTR)

A specific set of rules for certain service contracts including certain social, health and education services as set out in Schedule 3 of the Public Contracts Regulations 2015.

Liquidated Damages

A pre-determined level of damages (calculated as a genuine pre-estimate of loss) , which the Council shall be entitled to deduct from the Contractor in the event of his failure to complete the contract within a specified time.

OJEU (Official Journal of the European Union)

The Europe-wide publication where Contract Notices are published in relation to procurement processes, the value of which exceed the applicable spend threshold as determined within the applicable Public Contracts Regulations

Open Procedure

A procurement procedure which makes the opportunity available to the marketplace as a whole.

Parent Company Guarantee

A parent company guarantee is a declaration provided by the parent company of the main contractor which commits the parent to stepping in and honouring the terms of the contract if the Contractor must fail to do so and /or paying compensation (up to a stated maximum) in respect of loss incurred by the Council as a result of non-performance.

Performance Bond

A performance bond is a guarantee provided by a surety (usually a bank or insurance co. to pay compensation (up to a stated maximum sum) in respect of loss suffered by the Council must a contractor fail to fulfil its contractual obligations.

Public Contracts Regulations (PCR)

The Public Contract Regulations 2015(as amended), set out the procedures that must be followed when certain public sector contracts are to be offered to the marketplace.

Procurement

Procurement , in the terms of the Public Contracts Regulations 2015, is defined as the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

Restricted Procurement

A procurement process that first narrows the marketplace in order that Quotations or tenders are sought from a limited group of providers

Request for Quotation (RFQ)

Initiating step of a procurement process in which providers are invited to submit quotations for the supply of specific and clearly defined supplies, services, or works during a specified timeframe, the value of which falls below the applicable European Union Spend Threshold. RFQ's are generally evaluated on 100% Cost.

Selection Questionnaire (SQ) (formerly Pre-Qualification Questionnaire PQQ)

The first stage in a two stage restricted tendering procedure where interested providers complete a questionnaire compiled by the Council for the purpose of selecting a short list of interested providers to whom Invitations to Tender are to be issued.

NOTE: Use of a Selection Questionnaire is ONLY permissible in EU Procurement Procedures. The 2015 Public Contract Regulations prohibit the use of Pre-Qualification Questionnaires in 'below EU' Procurement procedures

SME

Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ less than a given number of employees. The most frequent upper limit designating an SME is 250 employees, as in the European Union.

Social Value

Seeks to maximise the additional benefits that can be created by providing benefits above and beyond the core services. Award criteria can include social, economic, and environmental matters, although these must be linked to the subject matter of the contract.

Surety

A person or organisation who takes responsibility for another's performance of an undertaking.

Part 1: CONTRACTS PROCEDURE RULES WHICH APPLY TO ALL CONTRACTS

1.1 BASIC PRINCIPLES

1.1.1 Introduction

Officers responsible for, or involved in, procurement, commissioning, contract administration or contract management must comply with these contract procedure rules. They lay down **minimum requirements** and a more detailed procedure may be appropriate for a particular contract.

These Contracts Procedure Rules are Standing Orders made under section 135 of the Local Government Act 1972. These rules apply to all officers of the Council. 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:

- The carrying out of works for the Council
- The purchase, leasing, or hiring of supplies or materials by the Council
- The supply of consultancy, agency workers and other services to the Council

For the avoidance of doubt these Contracts Procedure Rules shall not apply to :-

- The sale, leasing or purchase of land, or of any interest in land (Officers are requested to note that land transactions are generally subject to best value considerations under Local Government legislation and some property transactions e.g. long building leases etc. may need to take account of Procurement legislation. Advice in respect of land and property transactions must be sought from the Head of Regulation and Compliance on a case by case basis): or
- Any Contract of Employment

There are certain circumstances where the public can access a service of their choice and the Local authority is obliged by regulation to pay the associated costs. This is mainly in regard to Adult Social Care Nursing and Residential Care homes, and Open Access Sexual Health services. In these circumstances client officers must work with Commissioning Support to ensure that relevant guidance, risk, invoicing and cost is clearly understood, managed and adhered to.

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.

All values specified in these rules shall be **exclusive of value added tax.**

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

[Link to the Constitution](#)

External Funding – external funders (for example, but not limited to, European Regional Development Fund) may impose additional requirements in respect of advertising, tendering, scoring and record keeping. In such cases it may be necessary to modify the approach to procurement in specific circumstances.

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 must be contacted for advice and guidance.

These rules will apply to all Sefton Council maintained schools, in accordance with "Fair Funding Guidance: Scheme for Financing Schools

The Public Contracts Regulations, bolstered by the Lord Young Reforms, seek to afford greater opportunity of supply to Small and Medium Enterprises (SME's). Regulation 46 of the 2015 regulations in particular encourages procuring authorities to considering dividing requirements into Lots for which providers can bid, or formally documenting reasons why dividing of Lots has not taken place.

These Contracts Procedure Rules shall be reviewed periodically by the Head of Commissioning Support & Business Intelligence, in consultation with the Head of Corporate Resources and the Head of Regulation and Compliance. The frequency of review shall, as a maximum, be bi-annually in order to incorporate any change in EU spend thresholds as directed by the European Commission.

1.1.2 Legal Compliance

All procurement procedures and contracts shall comply with all legal requirements and no officer or Committee or Board of the Council may seek to avoid them. If in doubt advice must be sought from Head of Regulation & Compliance.

1.1.3 Public Contracts Regulations

All contracts must comply fully with the requirements of Public Contracts Regulations 2015, including Regulation 57, which outlines grounds for mandatory exclusion of bidders from a procurement process.

In particular Regulation 57 (e) (i) addresses the Council's ability to exclude a bidder for non-payment of taxes by way of a bidder being convicted of :

"the common law offence of cheating the Revenue"

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 these Contract Procedure Rules and any all relevant Council Procurement Guidance, Commissioning and or Procurement Strategy.

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

In deciding the value of contracts for the purposes of applying the requirements of these Contracts Procedure Rules the commissioner / procurer must take into account:

- The total cost for the lifetime of the contract (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 procurement arrangements the value shall be the value of all parties' purchases under the contract.
- In the case of long term adults and childrens social care contracts which have no defined end date, the total cost will be valued at 4 years for the purpose of applying the Public Contracts Regulations.

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 2015.

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

The Public Contracts Regulations require particular procurement processes to be utilised 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:

Supplies / Services	£164,176
Works	£4,104,394

<i>(as detailed within Schedule 2 of the Public Contracts Regulations 2015)</i>	
Social and Other specific Services	£589,148
<i>(as detailed within Schedule 3 of the Public Contracts Regulations 2015)</i>	

Note: Spend threshold figures correct as at January 2016, but subject to ongoing change, ordinarily on a two year cycle.

Both Schedules 2 and 3 of the Regulations can be viewed here :-

[**2015 Public Contracts Regulations**](#)

1.1.8 Public Services (Social Value) Act 2012

Contracting Authorities are under a statutory duty to consider economic, social and environmental well-being issues at the pre-procurement stage of a public service contract:-

- How the economic, social and environmental well-being of the Local Authority Area might be improved by the proposed contract;
- How in conducting the procurement process, the Council might act with a view to securing that improvement (NB. Only matters that are relevant to what is to be procured can be taken into account and those matters must be proportionate);
- Whether any consultation must be undertaken in relation to social value matters.

Officers must consider this when formulating the Procurement Project Management Plan detailed herein.

1.1.9 Forfeiture in Case of Bribery or Corruption

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.

1.1.10 Contract sealing

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 Deed. In order that a contract can be sealed the following package of documents must be forwarded to Corporate Legal Services:

- i) One blank copy of the Invitation To Tender (ITT), or Request for Quotation (RFQ) document (as applicable)
- ii) Two copies of the successful bidder's ITT or RFQ
- iii) A copy of the Internal Authorisation to award a contract as per delegated authority (Cabinet / Cabinet member etc.)
- iv) Copies of the award & acceptance correspondence
- v) A copy of the bidder's in-date insurance cover.

1.2 OFFICER RESPONSIBILITIES

1.2.1 Roles and Responsibilities

Ahead of any procurement exercise commencing the roles of all Officers to be involved in the exercise must be determined and responsibilities for undertaking all aspects of the procurement process shall be set out and clearly assigned, in order that the process is properly controlled and undertaken and there is a clear understanding of the requirements of each member of the team throughout the process. The assignment of roles and responsibilities shall be kept under review throughout the course of the procurement and, in terms of contract management and contract performance management, throughout the term of the contract.

The assignment of roles and responsibilities, including any changes in the assignment of those roles and responsibilities during the course of the procurement, shall be documented within a suitable Procurement Roles and responsibilities Plan. Corporate template documentation will be produced and regularly reviewed to meet this need.

<http://intranet.smbc.loc/our-council/procurement.aspx>

1.2.2 Adequate Budget Provision

No Officer should seek to enter into a contract, or purport to enter into a contract, for the provision of supplies, works or services unless there is adequate provision in the agreed Capital Programme and/or agreed Revenue Budgets.

If in doubt Head of Corporate Resources must be consulted.

1.2.3 Disciplines

Ahead of commencing any procurement exercise Officers must give thought to the question of which disciplines need to be considered for either operational involvement in the process or within an advisory support role. For instance whilst the need for the involvement of Operational and Procurement Officers is apparent, in addition consideration must be given to the value of other disciplines, which as examples may include but not be limited to :

- a) Legal
- b) Audit
- c) Contribution from Commissioning Support Officers
- d) Finance
- e) Human Resources
- f) Investment and Employment Service
- g) External Advice/Consultancy – Private or another Local Authority

1.2.4 Information Management

Officers must be mindful that throughout any Procurement exercise the governance, management and security of information is vital to both the integrity of the work to be conducted, and potentially the reputation of the Council. Officers must therefore ensure:

- i) Storage and handling of Procurement or any supporting information or documentation, whether digital, paper or another format is carried out securely.
- ii) Where the information and documentation is in a digital format this may involve using an encrypted fixed or digital device or other suitable and secure mechanism to ensure that access is restricted only to those Officers involved in the procurement project and in accordance with their assigned roles and responsibilities. It may involve Officers using their allocated personal drive within the Council's ICT system, to which access is limited, or creation of a shared folder secured through controlled access rights, password or some other means to prevent unauthorised access.
- iii) All documents forming part of a tender / request for quotation process, (including specifications, tender / RFQ documents, evaluation documents etc) must be subject to effective document management, including version control, review and sign-off and shall be held in a readily identifiable folder titled: '**Procurement of [INSERT PROJECT TITLE HERE]**'.

As a guiding principle, Officers must be mindful that other people, including fellow Officers, not involved in a procurement exercise must not have access to information that relates to it.

- iv) Diligence is employed when conducting discussions that relate to a Procurement exercise. Officers must be mindful of both topics discussed, and the environment within which they are discussed. Consideration must

be given to holding discussions in a controlled area, such as an individual's personal office, or a meeting room, in order to ensure that only an invited group of officers are privy to information discussed. Officers must also be mindful of the content of telephone conversations held in an uncontrolled environment, if in any doubt that the content of a proposed conversation is sensitive then arrangements must be made to hold that discussion in a controlled area

- v) Control is employed when communicating with bidders or potential bidders within a procurement exercise. Officers must ensure that no direct verbal or email communication is entered into with a bidder, bidders or potential bidders, or their representatives. Officers must ensure that all communication with any bidder or their representative, within any procurement exercise must be carried out in written form, through the Council's electronic opportunities portal, via the Procurement Officer holding responsibility for that.
- vi) Procurement Officers must ensure that the Council's Electronic Opportunities portal is utilised to store documents created throughout the procurement process in order to build a comprehensive audit trail. Such documents will include, but not be limited to:

- Evaluation Panel members' individual scores and scoring notes
- Moderated scores
- Moderation notes
- Finalised Master Evaluation Matrix
- Versions of Invitation to Tender (ITT) documents
- Versions of Advanced Request for Quotation (ARFQ) documents
- Versions of Selection Questionnaires
- Responses to questions raised by bidders
- Copies of correspondence (for example Mandatory Standstill)

1.2.5 Corporate Contracts

A corporate contract exists where the Council has entered into a contract for the provision of supplies, services, or works, and agreed rates for such.

Before procuring supplies, services or works, an Officer shall ascertain whether any corporate contract has been entered into in relation to those supplies, Services or works.

This requirement is mandated on all Council officers. Any requirement to purchase such supplies, services or works from alternative non-contracted suppliers must first be agreed in accordance with the Waiver Procedure set out in these Contract Procedure Rules.

1.2.6 Surety

Construction Related Contracts

- £250,000 - £1,000,000

Provided that a risk assessment based on financial and technical criteria is satisfactory, construction-related contracts up to £1,000,000 do not require a Performance Bond. However, such contracts over £250,000 and up to £1,000,000 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 Resources

- Above £1,000,000

For all construction related contracts over £1,000,000, a Performance Bond will normally be required. A formal risk assessment shall be carried out by the Head of Service prior to commencing the exercise and a recommendation on the requirement for a Performance Bond and its value shall be included in the Pre-Procurement report. The minimum value of the bond should be 10% of the total contract price.

Non Construction Related Contracts

- Below £1,000,000

For contracts in respect of Social Care Packages, Information Technology Products/Services, the Head of Service shall have discretion following consultation with the Head of Regulation and Compliance and the Head of Finance, 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 supplies 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. A formal risk assessment shall be carried out by the Head of Service prior to commencing the exercise and a recommendation on the requirement for a Performance Bond and its value shall be included in the pre-procurement report. The value of the bond should be:

- a) a minimum of 10% of the total contract price, where an asset is being procured , or
- b) 10% of the whole annual value of a contract for goods or services over a period of time

Parent Company Guarantee

Where the contractor is a limited company which is part of a larger group the ultimate holding company may be required to provide a parent company guarantee in addition to a performance bond. The Head of Service shall determine following consultation with the Head of Regulation and Compliance whether a parent company guarantee is necessary as an additional form of surety.

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.

Inclusion of Surety Requirements in Procurement Documents

The requirement or possible requirement of a bond or other form of surety must be specified in the Procurement documentation. A copy of the Council's Standard Form of Bond must be included in such documentation.

For guidance on calculating the value of a contract then refer to Rule 1.1.7.

1.2.7 Contracts – Delay and liquidated damages

In the case of Works contracts over the total value of £100,000 and, in any other case where a risk assessment, undertaken at pre procurement stage, 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.

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.

1.2.8 Breach of Contracts Procedure Rules

Any breach or non-compliance with these Contracts Procedure Rules must, on discovery, be reported immediately to the Head of Commissioning Support & Business Intelligence, Head of Corporate Resources, and the Chief Internal Auditor.

The Head of Commissioning Support & Business Intelligence, Head of Corporate Resources, and the Chief Internal Auditor 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 Head of Service, and Chief Executive, as appropriate.

Officers must be aware that any non-compliance with Contract Procedure Rules could result in disciplinary action.

1.2.9 Conditions of Contract

In every written contract for the execution of works or the supply of supplies or services, the following clauses shall be inserted (unless Industry Standard Conditions are being used e.g. NEC, JCLI, JCT, Public Health Standard Form etc. in which case they must be checked to see if similar clauses are already included in the standard to avoid any confusion and/or duplication):-

- a) The Contractor must 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.
- b) The Contractor must comply with national equality legislation to deliver services fairly and without unlawful discrimination.
- c) The attention of the Contractor must be drawn to the importance of complying in all respects with :
 - (i) The provisions of the Equality Act 2010. 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) 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.
- (vi) The requirements of the Social Value Act 2012

Health and Safety Conditions of Contract

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

The Contractor must comply with the Councils Health and Safety Guidance

Data Protection

The Supplier shall (and shall procure that any of its employees and agents involved in the provision of the Contract shall) comply with any notification requirements under the Data Protection Act 1998 (“DPA”) and shall duly observe all its obligations under the DPA which arise in connection with the Contract.

Where the Supplier is processing Personal Data as a Data Processor for the Council, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the DPA: and

- a. provide the Council with such information as the Council may reasonably require to satisfy itself that the Supplier is complying with its obligations under the DPA;
- b. promptly notify the Council of any breach of the security measures required to be put in place pursuant to this clause; and
- c. ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council’s obligations under the DPA.

The provisions of this clause shall apply during the continuance of the contract and indefinitely after its expiry or termination.

The Service Provider shall and shall ensure that its Sub-contractors shall notify the Council within five Working Days if it receives:

- a. a request from a Data Subject to have access to that person's Personal Data; or
- b. a complaint or request relating to the Council's obligations under the DPA or any other data protection legislation.

1.2.10 Assignment of Contracts without Consent

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.

1.2.11 Contract Extensions

Officers must consider a contractor's performance throughout the period of contract when considering a contract extension. Officers must question not only the financial aspects of any potential extension, negotiating with the contractor where possible to achieve a competitive financial offering, but must also give thought to whether the quality of supplies or service being provided to the Council would continue to offer best value to the Council should an extension be offered. Officers must be aware that markets, the providers within those markets, and the level of competition for Council business will change over periods of time. Officers must consider alongside the award of any optional extension period, what other alternatives may be available to the Council and must 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 Commissioning Support & Business Intelligence in order to secure a Procurement perspective.

An extension requires the approval of a Head of Service, Cabinet Member or Cabinet according to the applicable financial thresholds detailed herein.

The value of any contract extension must 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 Procurements, in the OJEU Contract Notice

Extension of contracts with a value below the applicable EU Spend Threshold will require the written approval of the appropriate Head of Service, Cabinet Member, or Cabinet, following consideration of a written report setting out a justifying business case. Variations shall only be granted in exceptional circumstances if it can be established that this will be in the best interests of the Council.

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 must be carried out as a matter of urgency in order to secure a replacement contract. Such action must be considered in consultation with the Head of Corporate Resources and the Head of Regulation and Compliance.

Wherever possible officers must 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. Consideration must be given to the mobilization period and obtaining TUPE related information where relevant.

1.2.12 Monitoring of Contracts

All contracts must be monitored throughout the period of the contract, and the performance of contractors must be reviewed regularly. Appropriate records of contract monitoring and contractor performance shall be maintained.

1.3 COLLABORATIVE ARRANGEMENTS

1.3.1 Framework Agreements / Dynamic Purchasing System (DPS)

Contract Procedure Rules 2.1 to 2.3, and 3.1 will not apply where the supplies, works or services in question are to be procured by using a framework agreement or DPS 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 2015. Where a Central Purchasing Body's framework agreement is used a Procurement Officer shall obtain copies of that Body's Contract and Award notices and shall seek verification from the Head of Commissioning Support & Business Intelligence of the Body's compliance with the Public Contracts Regulations 2015.

1.3.2 Joint or Partnering Arrangements, Procurement of Consultants

1.3.2.1. Partnering Arrangements

A memorandum of understanding must be developed with partners to ensure that resources, support and delivery will be available throughout the development and lifetime of the proposed contract.

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.

Partnering arrangements are likely to be contractually based and will need to comply with these Contracts Procedure Rules.

Partnering Arrangements will be entered into 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:

- (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 must include, the responsibility for staff, premises, service provision, and any other relevant matters.

(i) Implications for Social Value, in terms of local supply, employment

1.3.2.2. Joint Procurement

Any joint procurement activity with other local authorities or public bodies, including Membership or use of Purchasing Consortia, shall be agreed via Pre-Procurement Reporting requirements as outlined within 1.10.1 herein.

The Council may also enter into existing public sector framework arrangements, where it is evident that such frameworks represent the 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 procurement 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 (Regulatory, Compliance & Corporate Services). 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.

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

Advice must 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 Procurement

Officers must employ an electronic procurement method and shall use only the Council's electronic opportunities portal approved by the Head of Commissioning Support & Business Intelligence in consultation with the Head of Corporate Services.

1.5 RECORDS

1.5.1 Contracts Register

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 procurement opportunities published on the Council's approved electronic opportunities portal will have the contract award details automatically promoted to the online contracts register, where the contract is valued at £5,000 or above, in line with the Government's transparency agenda.

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 percentage balance between Cost and Quality, or
- b) **Lowest Cost**
(*NOTE: Whilst 100% Lowest Cost evaluation is permitted in below-EU procurement exercises, Lowest Cost evaluation is only permissible in EU procurement exercises, where the bidders are first required to meet a minimum specification of Supplies, Services or Works)
- c) **Highest Quality**
(NOTE: within EU Procurements 100% Quality Evaluation is only permissible where the Council publishes a fixed cost that it will pay to any successful bidder, and so the competition is carried out on Quality only)

The Head of Service, 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 all award and award sub criteria must be openly published within Invitations to Tender (ITT) or Requests for Quotation (RFQ), documentation, as applicable. If award or award sub-criteria, and applicable weightings are not openly published within the Procurement documentation then they **cannot** be employed within the evaluation process.

The Client, Commissioning, and Procuring Officer are advised to consider the desired outcome of a Commissioning / Procurement exercise, in order to determine a suitable method of evaluation.

Options entail:

- (a) Cost / Quality – In this method 100% is divided across cost and quality. The Commissioner/Procurer must 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)

Examples could include:

- (i) 50% Cost, 50% Quality
- (ii) 40% Cost, 60% Quality
- (iii) 70% Cost, 30% Quality

Or any other derivative the Commissioner/ Procurer deems appropriate.

- (b) Cost only – In this method, evaluation is carried out on the basis of 100% Cost, where the bidder meets a pre-determined minimum standard of quality. Only the bidder's Cost will be evaluated, i.e. an increased quality offering 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 fixed cost that will be committed in full, irrespective of which bidder is awarded the contract. 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. Bids with Costs exceeding the published budget would be regarded as non-compliant, and so not evaluated.

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.

If in an exceptional case, prior to the receipt of bidder's proposals, this is changed, this must be duly approved (i.e. as per the original pre-procurement approval path). In no circumstance must the award / evaluation criteria be changed post receipt of bidder's proposals.

1.6.2 Acceptance of Tenders / Quotations

It shall be clearly stated in all tender / quotation documents that the Council reserves the right:

- (a) to accept a tender / quotation other than the lowest
- (b) to decline to accept any tender / quotation
- (c) not to award a contract
- (d) the Council will not be liable for any costs or expenses incurred by Tenderers during the procurement process

Where a bidder's tender / quotation are not accepted then a formal written record must be made detailing the reason/s why.

1.6.3 Debrief – Intention & Award

Mandatory Standstill Period (historically known as the 'Alcatel' process)

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 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 awarded, 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 dispatch 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 must be sent to all bidders, providing written feedback to all unsuccessful bidders as to why their bid was unsuccessful and the relevant advantages and characteristics of the successful bid compared to the unsuccessful bidder.

If in any doubt as to the application of the Mandatory Standstill Period then the Corporate Procurement Unit must be contacted for guidance.

IMPORTANTLY:

Officers must be mindful of a challenge to an award decision and the implications that can result must that not be handled appropriately, specifically in relation to areas such as increased cost and workload to the Council and its Officers, alongside potential for reputational damage must the Council mishandle such a situation

Where a challenge to an award decision arises Officers must at the very least ensure that:

- i) Verbal communication with challenging bidder/s or their representative/s is not entered into. This includes avoidance of face to face debrief meetings that can become emotionally driven, and result in 'on the spot' responses being given to questions asked without such a response being correctly researched, quality checked and considered.
- ii) Communication with the challenging bidder/s or their representative/s is only carried out in writing via the Council's electronic opportunities portal
- iii) Written responses are quality checked for accuracy and content
- iv) Opinion is sought from the Council's Legal team
- v) The issue is escalated to an appropriate Senior Officer for opinion

In respect of contracts established via Non-European Union Procurement Procedures, i.e. where expenditure falls below EU Spend Thresholds, mindful of the EU Procurement principles of Openness, Fairness and Transparency, officers must use discretion as to what degree of debrief is provided, but must 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.

1.7 CONTRACT PAYMENTS

1.7.1 Contract payments/settlements

Contract payments/settlements shall be made in accordance with procedures referred to in the Financial Procedure Rules.

[Financial Procedure Rules \(within the Council's Constitution\)](#)

The terms upon which the Council will make payments to a contractor must be detailed within the applicable contract.

1.7.2 Prompt Payment within 30 days

The Public Contracts Regulations require a Contracting Authority to include a clause in all public contracts providing that invoices submitted by the contractor shall be verified in a timely manner and payment of undisputed invoices shall be made within 30 days. Where the contractor enters into a sub-contract the prompt payment provisions must be replicated down the supply chain.

Where a contract contains terms requiring payment more quickly than 30 days (for example because of statutory requirements, or because the parties choose a shorter payment period) then these shorter payment periods will apply to that contract

1.7.3 Instalment Payments

Where contracts provide for payment to be made by instalments the appropriate Head of Service shall maintain suitable records to show the state of account on each contract.

1.7.4 Authorisation of Payments

Payment to contractors shall be authorised by an authorised certifying officer in accordance with the Department's Scheme of Delegation

1.7.5 Authorisation of Variations

Officers must consult the Legal Team in respect of any proposed variation, as consideration will need to be given as to whether a proposed variation would constitute a 'material change' to the original contract. , necessitating a new procurement. If changes are 'material' then this can put the entire agreement at risk of cancellation, if challenged.

Viable variations to a contract shall be made in writing and shall require prior written authorisation by the appropriate Head of Service or on their behalf by an authorised certifying officer.

Where the contract in question has been formally sealed by the Legal team, then in respect of such variation the sealed contract copy will need to be updated to account for the variation. Usually a deed of variation will need to be drafted by Corporate Legal Services and executed by the parties to the contract.

1.7.6 Works Contracts – Final Certificate control

No payment shall be made by the Council to the contractor without formal purchase order/formal agreement in place. This must be facilitated by processing a purchase order onto primarily the Councils financial system, Agresso, or the relevant operational system, against which invoices and payments can be processed and monitored

In the case of Works contracts a final certificate shall not be issued until the Head of Service has, to the extent that it is felt necessary, examined all matters relating to the final account.

1.7.7 Payments before Completion of Formal Contract

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 supplies, services, or works.

Advance payments are not permitted, except small emergency payments in exceptional circumstances with prior authorisation through the Waiver Process set out in these Contract Procedure Rules.

1.7.8 Signed Contracts

Contracts shall be signed on behalf of the Council by a duly authorised officer in accordance with the Scheme of Delegation for Officers

1.8 WAIVER OF CONTRACTS PROCEDURE RULES

1.8.1 Waiver – Supplementary

Link to electronic waiver form: <https://forms.sefton.gov.uk/contractswaiver/>

- (a) Where any operational officer is seeking a waiver of any of the Council's Contract Procedure Rules, approval for that waiver must first be secured from the Head of Service within whose remit the procurement or contract sits
- (b) Where a Head of Service is seeking a waiver then this application should be submitted to an Executive Director.
- (c) Where an Executive Director is seeking a waiver then this application should be submitted to the Chief Executive Officer
- (d) When seeking a waiver of any of the Council's Contract Procedure Rules, the relevant officer shall complete a formal Waiver Request Report in accordance with the procedure set out below and shall submit that report to the Head of Service within whose remit the procurement or contract sits. This Waiver Request Report shall clearly state:
 - the particular Contracts Procedure Rule/s to be waived
 - the period of time during which the waiver shall be effective and related value of expenditure 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:
 - i. Value for Money
 - ii Transparency, propriety and accountability
 - iii. Position of the contract under the Public Contracts Regulations
2015
 - iv. How the contractor was selected
 - v. Identification of potential project risks and controls
 - 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
 - viii Social Value Benefit
- (e) When considering any request for a waiver of any of the Contract Procedure Rules the relevant Head of Service shall seek any necessary advice and

guidance from the Procurement service, Legal service, Finance service or any other specialist team before determining the waiver request.

- (f) The Head of Service **MUST** e-mail a copy of the signed waiver form to central.procurement@sefton.gov.uk to be archived.
- (g) Where any Contracts Procedure Rules are waived the relevant Officer shall comply with the remaining Contracts Procedure Rules

1.9 PROCUREMENT RISK ASSESSMENT

Early engagement of the Procurement Team within any procurement process is essential as that enables a member of the team to be allocated to a project a foundation stage.

Procurement Officer/s allocated is able to support the development of the Pre Procurement Report that a Client Officer needs to compile and submit in order to secure approval to commence a procurement exercise

The Procurement Risk Assessment enables the Client Officer to set out the building blocks of the requirement which will enable the Procurement Officer to contribute appropriate documentation. This can be found on the Intranet here, and is an online submission:

[PROCUREMENT RISK ASSESSMENT](#)

Procurement Officers are required to upload a copy of the Procurement Risk Assessment to the Council's opportunities Portal as a supporting document for that specific procurement exercise

1.10 EXPENDITURE APPROVAL PROCESS – PRE PROCUREMENT REPORTING

1.10.1 Pre-Procurement Reporting

All officers requiring to commit expenditure in order to acquire Supplies, Services or Works on behalf of the Council, or a Collaborative group of Councils if in the lead role, must first consider Approval to Commit Expenditure and so to commence the procurement process. In doing this officers must consider Financial Procedure Rules and any relevant budget approval process and must refer to the Head of Corporate Resources where necessary.

It is a requirement of the Chief Executive Officer and the Elected Members that approval to commit expenditure be considered, prior to commencement of any Procurement activity as follows:

- (a) Expenditure of £5000 up to £150,000 - a Pre Procurement report is to be taken to the Officer's Head of Service
- (b) Expenditure of £150,001 up to:
 - i) 3 x the OJEU Spend Threshold for Supplies & Services (i.e. £492,528.00 as at January 2016), or
 - ii) The OJEU Spend Threshold for Works (i.e. £4,104,394.00 as at January 2016)

– 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 Supplies & Services (i.e. £492,528.00 as at January 2016), or
- ii) Over the OJEU Spend Threshold for Works (i.e. £4,104,394.00 as at January 2016)

– A Pre Procurement report is to be taken to Cabinet to seek approval to commence Procurement activity and so commit expenditure.

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 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. Officers must be mindful in such circumstances to plan additional time into the procurement process.

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

Pre Procurement reports must 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 Cost

or

100% Lowest Cost,

*(*NOTE : Whilst 100% Lowest Cost evaluation is permitted in below-EU procurement exercises, Cost only evaluation is only permissible in EU procurement exercises, where the bidders are first required to meet a minimum specification of Supplies, Services or Works.*

or

100% Quality

(NOTE: within EU Procurements 100% Quality Evaluation is only permissible where the Council publishes a fixed cost that it will pay to any successful bidder, and so the competition is carried out on Quality only)

- iii) A request that authority be delegated to a nominated officer, such as a Head of Service, or one of their officers, to approve the resulting post procurement contract award.

The following illustration summarises the Pre Procurement expenditure approval process that these Contracts Procedure Rules detail.

1.10.2 Pre-Procurement Approval specifically in respect of Adult's or Children's Social Care support packages and placements

It is recognised that some individual adult and child care or support packages and placements cannot be fulfilled using existing Framework Agreements or Dynamic Purchasing systems and on these occasions will need to be procured from the open market, via the Council's e-procurement portal.

It is also recognised that in many cases, due to ongoing care requirements, the end date of such contracts cannot be identified at the point of procurement. In such circumstances, and in accordance with the Public Contract Regulations 2015, a period of 4 years should be used to calculate the contract value.

On occasion the anticipated value of these contracts may exceed the normal delegated authority of Head of Service, and in certain circumstances Cabinet Member too, however due to the restricted amount of time available to procure these often urgent individual care or support service packages, it would not be possible or desirable to always obtain Cabinet Member or Cabinet Pre-Procurement approval.

Consequently, specific provision is made herein and within the Council's Constitution to delegate authority in such circumstances to the relevant Head of Service, currently :

- i) Head of Adult Social Care,
- ii) Head of Children's Social Care,

iii) Head of Schools & Families

to:

- a) approve the commencement of a procurement process for Adult or Children's social care contracts which are outside the scope of an existing Framework, Dynamic Purchasing System or other budgetary agreement;

and

- b) to award contracts following a procurement exercise, and so commit expenditure.

To ensure that such procurement is effectively monitored, a report of Adult and /or Children's delegated procurement approvals will be submitted to the relevant Cabinet Member on a monthly basis.

What level of pre-approval is required in respect of Contract Value?

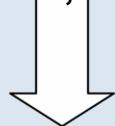
(Officers must ensure that you read and understand The Contract Procedure Rules and do not simply refer to this illustration alone)

FOR EXPENDITURE OVER £50,000 - DECISION PUBLISHED ONLINE

(by Democratic Services via Intranet and Internet)

Approval to Commit Expenditure

£5000 up to
£150,000



Head of Service
Responsibility &
Accountability

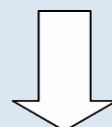
Pre Procurement Report

£150,001 up to:

i) 3 x the OJEU Spend Threshold
for Supplies & Services (i.e.
£492,528.00 as at January 2016),

or

ii) The OJEU Spend Threshold for
Works (i.e. £4,104,394.00 as at
January 2016)



Cabinet Member Responsibility

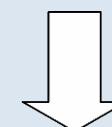
Pre Procurement Report

Expenditure Over:

i) 3 x the OJEU Spend Threshold
for Supplies & Services (i.e.
£492,528.00 as at January 2016),

or

ii) The OJEU Spend Threshold for
Works (i.e. £4,104,394.00 as at
January 2016)



Cabinet Responsibility

Pre Procurement Report

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

2.0 Application

Part 2 of these Contracts Procedure Rules shall apply to all contracts exceeding applicable European Union spend thresholds in value, and officers must adhere to the Public Contracts Regulations 2015

European Union spend thresholds (for the whole value of the contract including any optional periods) are as follows:-

- a) Supplies / Services - **£164,176.00**
- b) Works – **£4,104,394.00**

Note: Spend threshold figures correct as at January 2016, 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 2015

The contents of schedule 2 can be viewed here:-

[2015 Public Contracts Regulations](#)

2.1 Forms of Procurement

2.1.1 There are four main forms of procurement available for contracts exceeding European Union Spend Thresholds:-

- (a) Open Procedure Tendering
- (b) Restricted Procedure Tendering
- (c) Direct Call Off from a Framework
- (d) Mini competition within a Framework or a Dynamic purchasing System

Other procurement procedures include Competitive Procedure with Negotiation, Competitive Dialogue and Innovation Partnership. These other procedures are for use in complex contracts or limited circumstances where a solution is not readily available in the market.

2.1.2 Procurement of services which are classified as falling within Schedule 3 – 'Social and Other Specific Services' of the Public Contracts Regulations 2015, must be considered against a higher European Union spend threshold (for the whole value of the contract including any optional periods) of:

£589,148.00

Note: Spend threshold figure correct as at January 2016, but subject to ongoing change, ordinarily on a two year cycle.

Where this spend threshold is exceeded officers shall follow the applicable, and Schedule 3 specific, 'Light Touch Regime' with the assistance of Officers of the Corporate Procurement Unit

2.1.3 This process shall not remove or modify the responsibility of the relevant Head of Service to take such steps as may be reasonably necessary to safeguard the Council's interest.

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. This must be conducted in a way that competition isn't distorted. If a Procurement process is then required, a level playing field between bidders MUST be maintained.

2.2 Open Procedure Tendering

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.

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 numbers, and so the number of submitted bids is likely to be low.

Within an Open procedure, the opportunity must be made available to the marketplace for a minimum of 30 calendar days

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 opportunities portal.

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 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 the specified period stated in the public notice.

2.2.4 The Head of Service'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

2.3 Restricted Procedure Tendering

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

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 supplies, 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. Within a Restricted procedure the opportunity must be made available to the marketplace for a minimum of 30 calendar days.

A shortlist of providers is created at selection stage by using a standard Selection Questionnaire (SQ) to evaluate and score minimum requirements that contractors must meet. Importantly such requirements must be relevant and proportional to the contract in question. The minimum period of time that must be afforded to shortlisted bidders, within a restricted procedure, at Invitation to Tender (ITT) stage is 25 calendar days.

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 opportunities 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 Selection Questionnaire (SQ) document setting out particulars of the contract into which the Council wish to enter, together with the selection criteria and weightings, the closing date for submission of SQ's and the Council's requirements as to the procedures for submission of PQQ's, and invite providers to submit a completed SQ proposal within the specified period stated in the public notice.

2.3.4 In consultation with the Head of Commissioning Support & Business Intelligence or their representative, the relevant Head of Service's evaluation panel, consisting of a minimum of two officers, shall evaluate all submissions using the selection criteria and weightings in the published SQ document and shall maintain a copy of the marked evaluation matrix.

2.3.5 At the second stage of the procedure, the Award stage, Invitations to Tender (ITT) for the contract shall, where possible, be sent to not less than five of the highest scoring providers who expressed an interest in tendering and submitted a SQ within the specified time-scale, and that have met the minimum requirements.

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

NOTE : *All tender opportunities that exceed the applicable EU Spend Threshold shall, in addition to being managed on the Council's Electronic Opportunities Portal, also be advertised on the Government's 'Contracts Finder' Facility. Officers of the Procurement Unit will assist with this task.*

2.4 Direct call off from a Framework

2.4.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced.

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, 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 procurement exercise.

2.5 Mini competition within a Framework / Dynamic Purchasing System (DPS)

2.5.1 This Rule shall apply where the Cabinet or Cabinet Member has agreed that procurement activity be commenced.

Where an officer identifies a pre-tendered compliant framework or DPS, whether that be owned by Sefton Council, or owned by an external organisation but available to the Council, and such a framework or DPS has a requirement to further compete for an award of business, a mini competition must be carried out. This will require the creation of an Invitation to Tender (ITT) document which is issued to all Framework or DPS providers. setting out particulars of the contract into which the Council wishes 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 an appropriate period as defined by the client officer

2.6 Invitations to Tender and Interim Custody of Tenders

2.6.1 All Invitations to Tender shall include the following:

- (i) The Council will only be issuing and receiving Invitations To Tender electronically. Tenders submitted by any other means shall 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 supplies, 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 record of tenders received in pursuance of these Contracts Procedure Rules shall be recorded within the Council's electronic opportunities portal, maintained by the Head of Commissioning Support & Business Intelligence or an Officer designated for that purpose.

2.6.3 An electronic contract register will be maintained by the Head of Commissioning Support & Business Intelligence

2.7 Closing Date for Receipt of Tenders

2.7.1. Tenders received within the Council's electronic opportunities portal, after the predetermined close date and time, will not be considered.

2.8 Method of Opening Tenders

2.8.1 In respect of tender submissions received electronically, ONLY a Verifying officer as designated within the Council's electronic opportunities portal will have permission to open online sealed tender submissions.

2.9 Evaluation of Tenders

2.9.1 Evaluation and Award (for above EU spend threshold procurements)

(a) Tenders shall be evaluated and awarded on the basis of the value for money they offer to the Council in line with either :-

i) MEAT (*Most Economically Advantageous Tender*) Principles. Criteria must be relevant to the contract and apportioned between Cost and Quality in a ratio reflecting the risk and value of the contract

or

ii) Lowest Cost. The Council must publish a minimum specification of Supplies, Services or Works which bidders are required to meet

or

iii) Highest Quality . The Council must publish a fixed cost that it will pay to any successful bidder, and so bidders are evaluated on the highest quality that can be provided for that fixed cost

as determined and documented in advance of Tenders being invited.

(b)Tenders shall be evaluated and awarded in accordance with criteria and weightings determined, and documented in:

- i) The Pre Procurement Report,
- ii) The OJEU Contract Notice, and
- iii) An evaluation matrix,

and must not be changed at any time during the process.

Should the Cost element of a tender evaluation involve a Cost Model, Basket of Goods, or Basket of Works, then consideration must be given, ahead of commencing the procurement exercise, to publishing that detail within the procurement document. Where it is felt inappropriate to publish the detail then officers must consider lodging that detail with the Legal team for the duration of the bidding period and only access the detail once the bidding period has closed.

Where a Cost Model, Basket of Goods or Basket of Works is employed in the Cost Element of an Evaluation, the content **MUST NOT** be changed once bids are received.

2.9.2 Evaluation Panel

- (a) Evaluation Panels must 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 must include representation from the client department/key Stakeholders, and must consist of a minimum of two operational officers in addition to any procurement officer.
- (c) Where an Interview / Presentation session has been planned into an evaluation, the evaluation panel members must be consistent with the panel members that have undertaken other elements of the evaluation.

Ahead of any Interview / Presentation session, evaluation panel members must ensure that they are familiar with the content of the tender submissions of the bidders invited to that session.

2.9.3 Evaluation Matrix

- (a) The Evaluation Matrix will consist of defined evaluation criteria and weightings. Marks and scores must 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 scheme which must be included in the Invitation to Tender. IMPORTANTLY evaluation panel members cannot employ any scoring scheme which differs from the scoring scheme published in the ITT document. For example panel members must not introduce half marks where these do not exist within the published scoring scheme, and for which there is no published narrative.
- (d) All scores and notes made by the evaluation panel must be recorded in writing and used for reference if further moderation is required.
- (e) Section 2.9.4 of these rules advises on the need for moderation, and this is essentially to manage out subjectivity in an evaluation process. Where an evaluation contains an Interview / Presentation stage then quality scores attributed upto that point must be moderated in order to ensure that any decision taken to invite a shortlist of bidders to Interview / Presentation is based on correct and accurate scoring.
- (f) Where an Interview / Presentation stage is employed within an evaluation then officers must seek to manage this stage incorporating the following advice:

- i) Should a Presentation be required from a shortlist of invited bidders, then all shortlisted bidders must equally be informed, ahead of the Presentation, via the Council's electronic opportunities portal, of:
 - the theme that the bidder must base their presentation on (and this must be relevant to the subject of the procurement).
 - the time limit applied to the Presentation
- ii) Where Interview questions are to be asked then all shortlisted bidders must equally be informed, ahead of the Interview session, via the Council's electronic opportunities portal:
 - the number of questions that will be asked
 - the marks that will be allocated to each question

However bidders invited to an Interview session must **NOT** be informed, ahead of the session, of the content of the questions to be asked as this will simply result in pre-refined question responses which will make it difficult to distinguish the bidders.
- iii) Comprehensive notes of all Interview / Presentation Sessions must be recorded and fed into the evaluation matrix as these will be required to support the scoring allocated, and enable feedback to be given to unsuccessful bidders.

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 opportunities 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.

(c) All clarification questions and returns must be noted and any amended scores which result from clarification are to be updated in the Evaluation Matrix.

2.9.6 Best and Final Offer (BAFO)

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 much specialised Competitive Dialogue Procedure.

2.10 Method of Acceptance of Tender

2.10.1 Tenders may be accepted by the relevant Officer to who delegated authority to approve a contract award was sought in a related pre-procurement report provided that all of the following apply:-

(i) In the case of an Open procedure, bids have been sought from the marketplace as a whole. Or, in the case of a restricted procedure, where possible, five or more tenders have been invited following a selection stage, in accordance with contracts procedure rules

(ii) the tender proposed to be accepted is either:

- the highest score if Cost and Quality in line with MEAT principles have been stated as the basis for award, or

- the Lowest Cost if Cost has been stated as the basis for award where a published minimum specification is met

- The Highest Quality if Quality has been stated as the basis for award where the bid meets the fixed cost that the Council has set.

2.10.2 There may be instances where due to the dynamics of a marketplace, or the specifics of the Council's requirements, only 1 tender bid is received. The Council is able to consider a single bid however Officers will naturally be concerned as to maintaining a competitive position for the Council where there is an apparent lack of competition within a marketplace. In support of this there is provision within the 2015 Public Contracts Regulations that allow an EU Procurement to be switched to a Negotiated Procedure in certain circumstances. Regulation 32 (the link to which is detailed below) sets out the circumstances under which this process variation can be employed, but importantly the regulation includes the ability to switch to a Negotiation where '*Competition is absent for technical reasons*'

The Public Contracts Regulations 2015 - Regulation 32

Where an Officer proposes to utilise the provisions under Regulation 32, and vary the procurement process, then a report will need to be taken to the level to which Pre Procurement Approval was originally secured, in order to gain further approval to the process variation.

Any subsequent Negotiation which takes place must be carried out in writing via the Council's electronic opportunities portal.

2.10.3 Where an officer proposes to reject a tender despite meeting the stated criteria officers must seek Head of Service Approval following advice from CPU

2.11 Errors in Tenders

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:-

(a) Building Contracts – in accordance with the National Building Specification (NBS) Guide, Alternative 1 or Alternative 2.

(b) Other Contracts – the Tenderer must be given the opportunity of confirming the offer or of amending it to correct genuine and obvious arithmetical errors.

Clarification surrounding such errors shall be sought in writing via the Messaging facility within the Council's Electronic Opportunities Portal

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 must be re-scored as necessary. If a bidder opts to formally withdraw a bid altogether then it shall receive no further consideration

The above action by the relevant Head of Service in consultation with the Head of Commissioning Support & Business Intelligence shall take place before the date of entry into a contract.

2.12 Indemnity and Health & Safety

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 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 supplies 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 Head of Service and Head of Regulation and Compliance produce satisfactory evidence that it is insured against any such claims.

Levels of indemnity cover, must be 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 must be sought from relevant officers of the Council (i.e. Insurance, Health & Safety, Legal).

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

2.13 Funding Availability

Officers are advised that Contract conditions must 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) TUPE Regulations 2006

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 must 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 must be considered as early as possible.

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 must be aware of the potential implications and requirements of the legislation and acknowledge these appropriately within Tender/outsourcing documentation and contracts.

The Council's Procurement and Legal teams and HR must be consulted in order to fully understand any potential impact on a procurement in order to protect the Council's position and address TUPE in writing, where appropriate.

Additionally clauses within any contract where TUPE is likely to apply must be included relating to ensuring that the Council can request staffing information at any point throughout the duration of the contract.

2.14.2 Pensions issues when transferring out staff

This is a high-level summary of the pensions issues that Sefton MBC must consider when looking to outsource a function where that outsource may potentially involve a TUPE transfer of staff and where those staff are / or may be members of the Local Government Pension Scheme ("LGPS").

There is an obligation placed upon employers to ensure that current LGPS members retain the right to continue to pay into the LGPS, and eligible members retain the right to join.

This is very likely to be an issue where a service of function is outsourced for the first time from Sefton MBC to a new service provider (a first generation transfer). However, it can and does regularly arise where there is a subsequent transfer from one service provider to another (a second, third or subsequent generation transfer).

For the avoidance of doubt this issue will only arise where both of the following elements are present:

1. employees are in line to transfer from Sefton MBC or from an existing service provider to a new service provider; and
2. some or all of those employees are either current LGPS members or are eligible to join LGPS.

If the above elements are present, advice should be taken from Sefton HR and / or Sefton Legal Services in relation to these issues before the procurement process commences.

This is because these issues will need to be dealt with in either the Advance Request For Quotation or the Invitation To Tender.

There are various obligations and implications that must be considered and these can be addressed in part in the contractual documentation.

New contractors will need to consider, amongst other things, the following:

- They are likely to be required to enter into an admission agreement whereby the new contractor becomes an admitted body (a type of Scheme Employer). The other parties to this agreement must be the Administering Authority (Merseyside Pension Fund) and the Scheme Employer (Sefton MBC).
- They will need to know what obligations and responsibilities are placed upon them when they become an admitted body. They must know this before they submit a proposal as this can have significant costs and implications for them. For example:
- they will need to know the level of employer pension contributions they will be required to pay, and this will depend on the demographic of the transferring members and the number, but certainly anything in the region of 23% plus of payroll can be expected;
- there may be the requirement for a bond to be put in place to cover certain associated risks to the LGPS; and
- there is likely to be a requirement to obtain an actuarial valuation in relation to the affected employees and they will need to budget for this and build this into their timeframes.

It is unwise to assume that the potential new contractors understand the risks and it is worthwhile verifying that this is the case. It is not likely to be in Sefton's MBC's best interests or those of either the new contractor or the affected employees to rely on the ignorance of a potential contractor. It is important that both parties have understood the risks involved so that no unexpected issues arise during, or at the end of, the contract term.

PART 3: CONTRACTS UP TO BUT NOT EXCEEDING THE EUROPEAN UNION SPEND THRESHOLDS

3.1 Competition Requirements

3.1.1 European Union spend thresholds (for the whole value of the contract including any optional periods) are as follows:-

a) Supplies / Services -	£164,176.00
b) Works -	£4,104,394.00
c) Social and Other Specific Services -	£589,148.00

Note: Spend threshold figures correct as at January 2016, 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 2015 'Social and Other Specific Services' are as defined in Schedule 3 of the Public Contracts Regulations 2015

The contents of schedules 2 and 3 of the Regulations can be viewed here:-

[2015 Public Contracts Regulations](#)

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. This must be conducted in a way that competition isn't distorted. If a Procurement process is then required, a level playing field between bidders **MUST** be maintained.

Where the estimated cost of any supplies, works or services to be ordered on behalf of the Council is less than the applicable European Union Spend Threshold shown above then proposals shall be invited as outlined below:

(a) Between £5000 and the applicable EU Spend Threshold : a minimum of three electronic invitations via the Council's electronic opportunities portal, subject to a procurement risk assessment being submitted to the Procurement team , which will determine the route to market using a Request for Quotation (RFQ) (identified risk):

NOTE : *Where the Client Officer / Procurement Officer opts to publish a Request For Quotation opportunity openly, and where that opportunity is valued at £25,000 or more, then in addition to being managed on the Council's Electronic Opportunities Portal, this must also be advertised on the Government's 'Contracts Finder' Facility. Officers of the Procurement Unit will assist with this task.*

(b) Less than £5000: proof of two written quotations is necessary in order to satisfy that best value is achieved. This responsibility rests with the Client Officer, NOT Officers of the Procurement Unit

Officers are reminded that the use of a Selection Questionnaire in order to narrow a marketplace in a below EU spend threshold exercise is **forbidden** under the 2015 Public Contracts Regulations

3.2 Evaluation of Quotations

3.2.1 Evaluation and Award (for below EU spend threshold procurements)

(a) Quotations shall be evaluated and awarded on the basis of the value for money they offer to the Council in line with one of the following options:

Cost and Quality - in a ratio reflecting the risk and value of the contract

Lowest Cost. - where a detailed requirement specification is met as determined and documented in advance of Quotations being invited.

Highest Quality – where the budget that the Council is willing to commit is published to bidders and bidders are assessed on the quality that they can offer for that budget

(b) Quotations 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.

Should the Cost element of a quotation evaluation involve a Cost Model, Basket of Goods, or Basket of Works, then consideration must be given, ahead of commencing the procurement exercise, to publishing that detail within the procurement document. Where it is felt inappropriate to publish the detail then officers must consider lodging that detail with the Legal team for the duration of the bidding period and only access the detail once the bidding period has closed.

Where a Cost Model, Basket of Goods or Basket of Works is employed in the Cost Element of an Evaluation, the content **MUST NOT** be changed once bids are received.

3.2.2 Evaluation Panel

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

(b) Evaluation Panels for procurements based on a mix of Cost and Quality must include representation from the client department/key Stakeholders, and must consist of a minimum of two operational officers. Where the basis of evaluation is Cost only then the Procurement Officer can be one of the evaluators.

(c) Where an Interview / Presentation session has been planned into an evaluation, the evaluation panel members must be consistent with the panel members that have undertaken other elements of the evaluation. Ahead of any Interview / Presentation session, evaluation panel members must ensure that they are familiar with the content of the Quotations of the bidders invited to that session.

3.2.3 Evaluation Matrix

(a) The Evaluation Matrix will consist of defined evaluation criteria and weightings. Marks and scores must be brought through from the Quotation 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 bidders the relative importance of each criterion.

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

(d) All scores and notes made by the evaluation panel must be recorded in writing and used for reference if further moderation is required. Individual Panel Member's scores and associated notes along with moderated evaluation panel scores and final justifying notes must be uploaded to the Council's electronic opportunities portal.

(e) Section 3.2.4 of these rules advises on the need for moderation, and this is essentially to manage out subjectivity in an evaluation process. Where an evaluation contains an Interview / Presentation stage then quality scores attributed up to that point must be moderated in order to ensure that any decision taken to invite a shortlist of bidders to Interview / Presentation is based on correct and accurate scoring.

(f) Where an Interview / Presentation stage is employed within an evaluation then officers must seek to manage this stage incorporating the following advice:

- i) Should a Presentation be required from a shortlist of invited bidders, then all shortlisted bidders must equally be informed, ahead of the Presentation, via the Council's electronic opportunities portal, of:
 - the theme that the bidder must base their presentation on (and this must be relevant to the subject of the procurement).
 - the time limit applied to the Presentation

- ii) Where Interview questions are to be asked then all shortlisted bidders must equally be informed, ahead of the Interview session, via the Council's electronic opportunities portal:
 - the number of questions that will be asked
 - the marks that will be allocated to each question

However bidders Invited to an Interview session must NOT be informed, ahead of the session, of the content of the questions to be asked as this will simply result in pre-refined question responses which will make it difficult to distinguish the bidders.

- iii) Comprehensive notes of all Interview / Presentation Sessions must be recorded and fed into the evaluation matrix as these will be required to support the scoring allocated, and enable feedback to be given to unsuccessful bidders.

3.2.4 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.

3.2.5 Post Quotation Clarification

- (a) Post Quotation Clarification is to be requested and returned via the Council's electronic opportunities portal. Importantly, post quotation 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 Quotation 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.
- (c) All clarification questions and returns must be noted and any amended scores which result from clarification are to be updated in the Evaluation Matrix.

3.2.6 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 must be conducted through the Council's electronic opportunities portal, it must be provided to all 'compliant' bidders equally (i.e. those bidders that have passed all pass/fail elements of the evaluation), and must set a deadline for

submission of BAFO's, to be returned via the Council's electronic opportunities 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 Cost
- ii) An improvement in the quality offering
- iii) A value added element (such as an extended warranty on supplies)

Or any combination of these.

Where a BAFO is submitted Commissioning / Procuring officers must 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.

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 £5000	£5001 to EU Spend Threshold	Above EU Spend Threshold
Proof of 2 Written Quotations	Electronic Opportunities Portal Minimum of 3 electronic invitations Best and Final Offer (BAFO)	Electronic Opportunities Portal In line with Public Contract Regulations
Client Officer Responsibility	Procurement Team	Procurement Team
	Risk Based Request for Quotation	Formal Tender Exercise