

## G. Contract Regulations

### Table of Contents

G. Contract Regulations.....	93
Further Advice may be obtained from:	94
<b>A Quick Glance Guide on Contract Regulations .....</b>	<b>95</b>
<b>Table Guide on Procedures, Short-listing and Approval .....</b>	<b>97</b>
<b>1. Basic Principles .....</b>	<b>98</b>
<b>2. Officer Responsibilities .....</b>	<b>98</b>
2.1 Officers	98
2.2 Heads of Service	100
<b>3. Exemptions.....</b>	<b>100</b>
<b>4. Relevant Contracts .....</b>	<b>104</b>
<b>5. Steps Prior to Purchase .....</b>	<b>105</b>
<b>6. Records and Debriefing Candidates .....</b>	<b>106</b>
<b>7. Framework Agreements .....</b>	<b>108</b>
<b>8. Competition Requirements for Purchase and Partnership Arrangements ....</b>	<b>109</b>
<b>9. Pre-tender Market Research and Consultation .....</b>	<b>111</b>
<b>10. Standards and Award Criteria.....</b>	<b>111</b>
<b>11. Invitations to Tender / Quotations .....</b>	<b>112</b>
<b>12. Submission, Receipt and Opening of Tenders.....</b>	<b>113</b>
<b>13. Clarification Procedures.....</b>	<b>114</b>
<b>14. Evaluation and Award of Contract.....</b>	<b>115</b>
<b>15. Contract Documents.....</b>	<b>116</b>

<b>16. Bonds and Parent Company Guarantees .....</b>	<b>119</b>
<b>17. Corruption .....</b>	<b>120</b>
<b>18. Managing Contracts.....</b>	<b>121</b>
<b>19. Contract Monitoring, Evaluation and Review .....</b>	<b>121</b>
<b>20. Risk Assessment &amp; Contingency Planning .....</b>	<b>122</b>
<b>21. Amendments .....</b>	<b>122</b>
<b>22. Breaching Contract Regulations .....</b>	<b>123</b>
<b>23. Transfer of Contracts.....</b>	<b>123</b>
Definitions Appendix .....	124

**Further Advice may be obtained from:**

The Head or Deputy Head of Legal Practice/Legal Services or the Procurement Officer

Under Section 135, Local Government Act 1972

## A Quick Glance Guide on Contract Regulations

1. These Contract Regulations (issued under s.135 of the Local Government Act 1972) promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

**For the purposes of these Regulations, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and other electronic transmissions.**

2. **Officers responsible for purchasing *must* comply with Contract Regulations.** They lay down *minimum* requirements and a more thorough procedure may be appropriate for a particular contract.

### 3. In the event of a Civil Emergency

- 3.1 Any procurement or work contracted in response to an event that is classified as a Major Incident will be deemed to comply with these Contract Regulations.
- 3.2 The Authority is a Category 1 responder during a civil emergency. The definition of emergency in the Civil Contingencies Act 2004 focuses on the consequences of emergencies. It defines an emergency as:
  - (a) an event or situation which threatens serious damage to human welfare;
  - (b) an event or situation which threatens serious damage to the environment;  
or
  - (c) war, or terrorism, which threatens serious damage to security.
- 3.3 For Part 1 of the Act, the definition sets out the range of possible incidents for which local responders shall prepare when fulfilling their civil protection duties. Further information is available within the Council's Emergency Planning Manual.

### 4. During regular conditions

- 4.1 Check that there is a budget in place and that you are authorised to proceed.
- 4.2 Calculate the Total Contract Value. The Total Contract Value is the contract value for the contract term (e.g. £5k per year for a 3-year term contract = £15k value). Be particularly aware of the rules surrounding aggregation for the purpose of Tenders above the EU Threshold tenders. Do not break tenders up into constituent parts where it could be suggested that the Authority are avoiding EU procurement thresholds.

- 4.3 Every purchase or contract (other than for the sale / purchase of land and direct employment contracts) made by or on behalf of the Council shall comply with the Financial Regulations of the Council and with these Contract Regulations.
- 4.4 Take all necessary legal, financial, procurement and professional advice.
- 4.5 Declare any personal financial interest in a contract to your Line Manager to assess if a conflict of interest exists. Corruption is a criminal offence.
- 4.6 Take into account the requirements from any relevant service review and appraise the purchasing need.
- 4.7 Check with the Procurement Officer whether there is an existing Corporate Contract or Consortium Framework Contract before undergoing any procurement process.
- 4.8 Evaluate the potential to work on a Collaborative Contract or Shared Service with another Local Authority or Government body and make it possible to allow other Local Authorities to utilise our contracts.
- 4.9 Normally allow four weeks for submission of bids.
- 4.10 Keep bids confidential, safe and secure.
- 4.11 Include the Net Zero Carbon, Decarbonisation, Sustainable Procurement and Health & Safety elements in any enquiry or tender and ensure that they are evaluated as part of the award. Complete a written contract or Council purchase/works order before the supply or works begin.
- 4.13 Identify a Contract Manager with responsibility for ensuring the contract delivers as intended and ensure contract monitoring is undertaken (including Health & Safety).
- 4.14 Keep records of all dealings with suppliers.
- 4.15 Assess each contract afterwards to see how well it met the purchasing need and value for money requirements.

*Remember help, support and advice is available from the Head or Deputy Head of Legal Practice / Legal Services and the Procurement Officer.*

## Table Guide on Procedures, Short-listing and Approval

<b>Total Value</b>	<b>Award Procedure</b>	<b>Shortlisting</b>	<b>Who can approve Award?</b>
£0 to £5,000	Obtain one estimate in writing	Officer	Service Manager accept
£5,001 - £25,000	Three written quotations	Officer and Line Manager	Complete an Evaluation form and send to Authorised Signatory
£25,001 – EU Threshold	Invitation to Tender. See Para 5.4 regarding requirements for advertising	Officer and Line Manager	Complete an Evaluation form and send to Authorised Signatory
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by Advertisement / List to at least six candidates		PCR2015 must be followed. Consult with Legal Services and the Procurement Officer – see Regulation 8.4
Exemptions	See Regulation 3		
Disposals	See Regulation 8.5		

NB: This Guide is explanatory only and is not a substitute for reading the Contract Regulations.

## Section 1 – Scope of Contract Regulations

### 1. Basic Principles

All purchasing and disposal procedures shall:

- 1.1 Achieve best value for public money spent;
- 1.2 Be consistent with the highest standards of integrity and professionalism when undertaking procurement;
- 1.3 Ensure fairness in allocating public contracts;
- 1.4 Comply with all legal requirements;
- 1.5 Ensure that 'Non-Commercial Considerations' do not influence any Contracting Decision;
- 1.6 Support the Council's corporate and departmental aims and policies;
- 1.7 Comply with the Council's Procurement Strategy;
- 1.8 Build in Equalities, Net Zero Carbon, Decarbonisation, Sustainable Procurement, Health & Safety and Ongoing Savings into the procurement process;
- 1.9 Construct high quality agreements and make use of internal resources to document and provide a clear audit trail of decisions, agreements and contracts; or
- 1.10 Look for opportunities to work on a Collaborative Contract or a Shared Service with another Local Authority or Government body and evaluate whether the contract can allow other Local Authorities to utilise a SCDC contract.

### 2. Officer Responsibilities

#### 2.1 Officers

- (a) The Officer responsible for purchasing or disposal shall comply with these Contract Regulations, Financial Regulations, the Code of Conduct, The Public Contracts Regulations 2015 (PCR2015) , The Concessions Contract Regulations 2016 (CCR2016), the Social Value Act 2012 and

with all UK and European Union (or following exit from the European Union any replacement body) binding legal requirements.

- (b) The Officer shall have regard to the guidance from the Procurement Officer and the principles of the Council's Procurement Strategy.
- (c) The Officer shall check whether a suitable Corporate Contract or Consortium Framework contract exists before seeking to let another contract. Where a suitable Corporate Contract or Consortium Framework contract exists, it shall be used unless there is a demonstrable reason not to and in which case an exemption must be applied for. If a Corporate Contract is in place, this will be used rather than a Consortium Framework contract.
- (d) The Officer shall keep the records required by Regulation 6.
- (e) Tender procedures shall be conducted in accordance with procedures set out in the Invitation to Tender. Where the Officer can foresee forthcoming contracts over £25,000, the Officer shall seek the advice of the Procurement Officer who will help by advising on regulations, frameworks, tenders, options, advertising and guide you through the procurement procedure.
- (f) Officers shall also ensure that agents acting on their behalf also comply.
- (g) Officers shall take all necessary legal, procurement, financial and professional advice.
- (h) When any employee either of the Council or of a service provider may be affected by any transfer arrangement, officers shall ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain the advice of Human Resources or Legal Services before proceeding with inviting tenders or quotations.
- (i) Contract Regulations shall be strictly followed, as they lay down minimum requirements when contracting, however more thorough procedures may be appropriate for a particular contract.

(For example, if Regulation 8.1 would normally require that 3 quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally it may not always be appropriate to make use of an exemption under Regulation 3 even if one might apply or be granted.)

- (j) The Council declared a Climate Emergency on 28 November 2019 and pledged to ensure all strategic decisions and budgets are in line with a shift to zero carbon. Procurement is a key mechanism by which SCDC can influence carbon emissions.

The Council's procurement activity is focussed towards selecting suppliers that are pursuing carbon reduction to achieve Net Zero Carbon emissions, whilst also actively decarbonising the services provided to SCDC throughout the supply chain.

For all existing contracts or when issuing a tender or quotation document. Officers shall ask suppliers the following questions:

- confirmation that the supplier monitors their existing emissions;
- the supplier's plans to achieve Net Zero Carbon emissions; and
- clear commitments from the supplier to achieve supply chain Decarbonisation with timescales.

## 2.2 Heads of Service

Heads of Service shall:

- (a) ensure that their staff comply with Regulation 2.1;
- (b) ensure that all staff complete an approved Evaluation Report Form to record all contracts and where seeking an exemption complete an Exemption Request Form in Regulation 2.2(c);
- (c) ensure that:
- (i) **contracts** are completed by signature or under the Council's seal, as appropriate (see Regulation 15.8) and that arrangements are made for their safekeeping on Council premises; or
  - (ii) **exemptions** recorded under Regulation 3.3 and ensure the Procurement Officer receives a copy of the exemption form.

## 3. Exemptions

- 3.1 In most cases an exemption for a Level 1 (0 to £5k) shall not be required as it is sufficient to proceed with one quotation.
- 3.2 Exemptions are provided for in the Constitution (in the Financial Regulations) but are subject to the detailed requirements set out in this Regulation 3. An



exemption under this Regulation 3 allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with Regulation 8. For above EU Threshold Contracts, only Exemptions detailed within The Public Contract Regulations 2015 can apply.

- 3.3 All exemptions, and the reasons for them, shall be recorded using the Exemptions Form. Advice should be sought from the Procurement Officer or Legal Services before applying for an exemption. Exemptions shall be authorised by:

<b>Value</b>	<b>Levels</b>	<b>Who can authorise?</b>
£0 to £25k	1 to 2	Service Manager
£25k to £120k	3 to 4	Heads of Service
£120k to EU	Over 4 to EU	Heads of Service or Chief Officers
EU Threshold	EU	EU procedures apply. Only Exemptions detailed within The Public Contract Regulations 2015 can apply.  Heads of Service or Chief Officers

- 3.4 The following are allowable exemptions:

- (a) the subject matter of the contract can only be supplied by one specialist firm;
- (b) an exemption is necessary because of unforeseen emergency involving immediate risk to persons, property or serious disruption to Council services; or
- (c) collaborative procurement arrangements;

In order to secure value for money the Council may enter into collaborative procurement arrangements:

- (i) The Procurement Officer or Legal Services shall be consulted where the purchase is to be made using collaborative procurement arrangements with another Local Authority, Government department or statutory undertaker;
  - (ii) All purchases from any Government or Local Authority Purchasing Consortium are deemed to comply with Contract Regulations. An exemption is only required to formally record the decision to use the Framework Contract. The Framework Contract must comply with legal requirements and let in accordance with EU Procedures. If there is any doubt, then you should seek the guidance from Legal Services or the Procurement Officer;
  - (iii) Any contracts entered into through collaboration with other Local Authorities or other public bodies, where a competitive process has been followed that complies with the Contract Regulations of the leading organisation (but does not necessarily comply with these Contract Regulations), will be deemed to comply with our Contract Regulations and an exemption is only required to formally record the decision to use the collaborative contract. However, advice must be sought from the Procurement Officer or Legal Services; or
  - (iv) Shared services are a complex procurement and will require a thorough investigation of the options, the risks, the costs and the impacts. Advice shall be obtained from Human Resources, Legal Services, the Chief Finance Officer, as well as the Head of Service of any team that the Shared Service will impact upon.
- (d) There is a Corporate Contract in existence for this type of service / product but it is unsuitable, in which case:
- (i) The Procurement Officer or Legal Services shall be consulted before applying for any exemption for an existing Corporate Contract;
  - (ii) There shall be clear and concise documentary evidence confirming that the Corporate Contract cannot meet this requirement because of:
    - a. Technical reasons;
    - b. Capacity / availability; or
    - c. Conflict of interest.
- (e) The product is for the supply of Electricity or Gas and is subject to significant and rapid changes in market forces, which gives only hours to respond and accept prices.

To proceed using this exemption the exemption form shall clearly demonstrate:

- (i) the Head of Service for the budget has provided consent to proceed;
  - (ii) the regular procedure in these Contract Regulations are unable to facilitate this type of purchase;
  - (iii) the values will not exceed EU thresholds and
    - a. is not an act to purely circumnavigate EU Procedures; or
    - b. that longer contract periods (that necessitate an EU process) would not provide a better deal for the Council (better price, terms, certainty or less risks).
  - (iv) a competitive process will be undertaken;
  - (v) the award criteria that is to be used;
  - (vi) that bids will be invited from at least 3 suppliers;
  - (vii) sufficient time will be allowed for suppliers to respond; and
  - (viii) that the contract will be advertised appropriately.
- (f) Extension to an existing contract.

Contract extensions can contribute to problems for example through contractor complacency or where Officers find themselves unwittingly contravening EU Regulations. In order to avoid such problems:

- (i) where a contract has the provision within the existing contract for an extension, the Officer may extend with the permission of their manager;
- (ii) where there isn't the provision within the existing contract for an extension, the Chief Finance Officer shall agree and sign off the exemption on the grounds of:
  - a. disproportionate technical difficulties;
  - b. disproportionate effect on the Council's resources or finances;  
or
  - c. significant disruption to the delivery of Council services.

- 3.5 **In exceptional circumstances** the Chief Executive / Chief Operating Officer or the Chief Finance Officer also has the power, under the Scheme of Delegation in the Constitution to dispense with any provision of these Contract Regulations, provided that where the contract exceeds level 4 (£120,000), the relevant lead Cabinet member is consulted.

**Where the contract exceeds the EU Threshold**, only Exemptions detailed within The Public Contract Regulations 2015 can apply and where they do then the Chief Executive Officer or Chief Operating Officer, can approve. Where exemptions do not apply then the matter has to be determined by the Cabinet or Council (see Regulation 3.6).

- 3.6 **In exceptional circumstances**, the Council and its Cabinet have power to dispense with any provision of these Contract Regulations. Any such decision may be a Key Decision.
- 3.7 All exemptions will be appropriately time bound and attached to the specific contract. Overly long time periods and blanket exemptions are contrary to the Public Contract Regulations 2015.
- 3.8 The Chief Finance Officer must be kept informed of all authorised exemptions and provide an annual report to the Audit and Corporate Governance Committee.
- 3.9 The use of e-procurement technology does not negate the requirement to comply with all elements of Contract Regulations, particularly those relating to competition and value for money.

## 4. Relevant Contracts

- 4.1 Every purchase or contract made by or on behalf of the Council (every department, team, [including DLO], member, officer, consultant or contracted company) shall comply with the Financial Regulations of the Council and with these Contract Regulations will be considered a Relevant Contract.
- 4.2 Relevant Contracts do not include:
- (a) Contracts of employment making an individual a direct employee of the Council; or
  - (b) agreements regarding the acquisition, disposal or transfer of land (for which Financial Regulations shall apply).

## Section 2 – Common Requirements for all Contracts

### 5. Steps Prior to Purchase

5.1 Before beginning a purchase, the Officer responsible for it shall appraise the purchase by working through the following criteria. If the Total Value exceeds £25,000 then the Officer shall complete this as a checklist before commencing. The appraisal tasks shall be proportionate to the complexity and value of the purchase and take into account any guidance provided by the Procurement Officer.

5.2 The Officer **shall** appraise the purchase by:

- (a) ensuring that they have the budget and permissions to carry out this type of purchase;
- (b) making sure there is not a Corporate Contract or Consortium Framework Contract already in place before proceeding with any procurement exercise;
- (c) taking into account the requirements from any relevant service review;
- (d) appraising the need for the expenditure and its priority;
- (e) defining the objectives of the purchase;
- (f) assessing the risks associated with the purchase and how to manage them;
- (g) considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing or sourcing through a purchasing consortium, a joint contract and collaboration with other purchasers;
- (h) consulting users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring;
- (i) selecting the most appropriate procurement method;
- (j) assess the relevance of Health & Safety and Equalities and ensure that these elements are included in any enquiry or tender;
- (k) taking into account Net Zero Carbon, Decarbonisation, Sustainable Purchasing factors such as environmental accreditation (e.g. EMAS or

ISO 14001), consumption, waste management, recycled, reclaimed or managed sources (e.g. forests for timber), biodegradability, ease of repair, packaging, transportation, toxicity, ethical sourcing and fair-trade;

- (l) explore the potential for future savings within any quotation or tender documents and ensuring that where a bid is accepted and it contains ongoing cost savings proposals, that these are agreed and reflected within the contract documentation; and
- (m) investigate the options for Collaborative Contracts, Shared Services and whether the contract can be written to allow other Local Authorities to utilise it.

5.3 The Officer shall confirm that:

- (a) the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution;
- (b) if the purchase is a Key Decision, all appropriate steps have been taken;
- (c) Prior Information Notices, required for the EU Procedure, have been placed in the Official Journal of the European Union and copied to the Procurement Officer.

5.4 Officers shall ensure that where proposed contracts, irrespective of their Total Value, are likely to be of interest to potential Candidates located nationally and in other member states of the EU, appropriate accessible advertising takes place. Generally, the greater the interest of the contract to such potential Candidates the wider should be the coverage of the advertisement. Advertisements for contracts above £25,000 must always be placed on Contracts Finder and contracts above the EU Threshold must be placed in the Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED).

## **6. Records and Debriefing Candidates**

6.1 Where the value is less than £5000:

- (a) The officer shall keep the quotation for a minimum of 18 months after the year end (to enable internal or external audit scrutiny). Telephone quotations should be followed up with a hard copy in the post with any other information from the supplier;
- (b) There is no requirement to debrief candidates or enter the record in the Contracts register; and

- (c) An Exemption is unlikely to be required (as a single quote is sufficient), but where an Exemption has been applied ensure that it is recorded in the central archive.
- 6.2 The Procurement Officer will hold the centralised records of Contracts and Exemptions. Any authorised Exemption must be copied to the Procurement Officer detailing the exemption and the reasons for it.
- 6.3 All contracts that exceed £5,000 shall be recorded in the central archive (note: the original documents may need to be made available for scanning).
- 6.4 Where the Total Value is £25,000 or less, Officers should use the nominated electronic tendering portal to undertake quotes and make sure that the same principles of fairness, transparency and competition are being applied to quotations.

The following documents shall be kept:

- (a) invitations to quote and Quotations. Remember 3 quotations shall be obtained;
  - (b) the reason if the lowest price is not accepted; and
  - (c) written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.
- 6.5 Where the Total Value exceeds £25,000, Officers should use the nominated electronic tendering portal to undertake tenders.

The Officer shall record Pre-tender market research;

- (a) any exemption under Regulation 3 together with the reasons for it;
- (b) the method for obtaining bids (see Regulation 8.1);
- (c) the Award Criteria in descending order of importance;
- (d) tender documents sent to and received from Candidates;
- (e) the responses to any Net Zero Carbon, Decarbonisation, Sustainable Procurement and Health & Safety requirements;
- (f) any clarifications undertaken;
- (g) any Contracting Decision and the reasons for it;

- (h) the contract documents;
  - (i) written records of communications with Candidates and with the successful contractor throughout the period of the contract;
  - (j) records of cost savings achieved throughout the life of the contract with supporting evidence; and
  - (k) post-contract evaluation and monitoring (including Net Zero Carbon, Decarbonisation, Sustainable Procurement, Health & Safety and Equalities).
- 6.6 Written records required by this Regulation (6.2 above) shall be kept for six years after the end of the contract. Documents which relate to unsuccessful Candidate shall be retained for 12 months and then may be destroyed, provided there is no dispute about the award. However, the documents which relate to unsuccessful Candidates may be electronically scanned. (See 15.9 regarding record storage). All contracts once scanned should be stored within the service area, with an electronic copy held in the Central Contracts Archive.
- 6.7 Candidates shall be notified simultaneously and as soon as possible of any Contracting Decision.
- (a) The notification shall be in writing where the Total Value exceeds £25,000; and
  - (b) If a Candidate requests in writing the reasons for a Contracting Decision, the Officer shall give the reasons in writing within 10 working days of the request (see further Regulation 14.4).

## **7. Framework Agreements**

- 7.1 The term of framework agreements shall not exceed 4 years, except in cases duly justified by Contracting Authorities.
- 7.2 Where the framework agreement is concluded with several organisations contracts may be awarded either:
- (a) By applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition;
  - (b) Where the terms laid down in the framework agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
    - (i) Inviting the organisations within the framework agreement who are capable of executing the subject of the contract to submit written



tenders which should be submitted electronically via the tendering portal;

- (ii) Taking the complexity and the subject matter into account, setting a suitable end date and time for tender responses; and
- (iii) Keeping the tenders sealed until after stipulated end date and time for reply has expired. Contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.

## **Section 3 – Conducting a Purchase**

### **8. Competition Requirements for Purchase and Partnership Arrangements**

The Officer shall calculate the Total Value. The following procedures apply where there are no other procedures that take precedence. Other procedures may include agency agreements with government. If in doubt, Officers shall seek the advice of Legal Services or the Procurement Officer.

#### **8.1 Purchasing – Minimum Competition Requirements £0 to £5,000**

- (a) Obtain one estimate in writing;
- (b) Officer can short list; and
- (c) The award shall be approved by the appropriate authoriser as detailed in the Officer Financial Scheme of Delegation.

#### **£5,001 – £25,000**

- (a) Three written Quotations and response to our Equalities Questionnaire;
- (b) Contracts over £25,000 that are advertised shall be advertised on Contracts Finder, see Para 5.4 regarding requirements for advertising;
- (c) Officer and Line Manager can shortlist; and
- (d) The Evaluation form shall be sent to the appropriate authoriser as detailed in the Officer Financial Scheme of Delegation.

**£25,001 – EU Threshold**

- (a) Undertake full tender process;
- (b) Invitation to Tender (that includes our response to our Equalities Questionnaire) See Para 5.4 regarding requirements for advertising; and
- (c) The award decision – The evaluation form shall be sent to the appropriate authoriser as detailed in the Officer Financial Scheme of Delegation.

**Above EU Threshold**

- (a) Undertake full tender process;
- (b) Procedures set out in PCR2015;
- (c) Invitation to Tender by Advertisement;
- (d) The procedures described in PCR2015 must be followed. Consult with Legal Services and the Procurement Officer – see Regulation 8.4; and
- (e) The award decision – The evaluation form shall be sent to the appropriate authoriser as detailed in the Officer Financial Scheme of Delegation.

8.2 In addition, other steps shall be taken as necessary to obtain adequate competition and Value for Money.

8.3 An Officer shall not enter into separate contracts nor select a method of calculating the Total Value in order to minimise the application of these Contract Regulations.

8.4 Where the EU Procedure is required, the Officer shall consult with Legal Services or the Procurement Officer to determine the method of conducting the purchase.

8.5 Assets for disposal shall be sent to public auction except where better value for money is likely to be obtained by inviting Quotations and Tenders unless the time commitment and costs outweigh the benefits of selling off the equipment. In any event, the method of disposal of surplus or obsolete stocks / stores or assets other than land is determined in the Financial Regulations in the Constitution.

**8.6 Providing services to external purchasers**

The Financial Regulations, Legal Services and the Procurement Officer shall be consulted where contracts to work for organisations other than the Council are contemplated.

**8.7 Collaborative and partnership arrangements** are subject to all UK and EU Procurement legislation and should follow the usual principles in Contract Regulations. The advice of Legal Services and the Procurement Officer shall be taken.

## **9. Pre-tender Market Research and Consultation**

9.1 The Officer responsible for the purchase:

- (a) may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential Candidate; but
- (b) shall not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in it, if this may prejudice the equal treatment of all potential Candidates or distort competition; and
- (c) shall seek advice from Legal Services or the Procurement Officer.

## **10. Standards and Award Criteria**

10.1 The Officer shall ascertain which British, European or International standards apply to the subject matter of the contract. The Officer must include these standards to describe the required quality. The Head or Deputy Head of Legal Practice must be consulted if the Officer proposes to use standards other than European standards.

10.2 The Officer shall define Award Criteria appropriate to the purchase. Award Criteria must be designed to secure an outcome giving Value for Money for the Council. The basic criteria shall be:

- (a) The preference is the use of "most economically advantageous" offer (where considerations other than price also apply).
  - (i) "lowest price" where payment is to be made by the Council;
  - (ii) "highest price" if payment is to be received; or

If the first criterion is adopted, it shall be further defined by reference to sub-criteria. Sub-criteria may refer only to relevant considerations. These may include: resources, service, quality of goods, running costs, technical merit, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), health & safety, after-sales services, technical assistance and any other relevant matters.

10.3 The Award Criteria shall take into account:

- (a) the ability of the firm to make ongoing future savings over the life of the contract; and
- (b) Net Zero Carbon, Decarbonisation and Sustainable Procurement.

10.4 Award Criteria shall not include:

- (a) Non-Commercial Considerations; or
- (b) matters that discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

## **11. Invitations to Tender / Quotations**

11.1 The Invitation to Tender or Quote shall include a specification. The specification shall describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers. In preparing specifications the Officer shall have regard to any guidance from the Procurement Officer.

11.2 The Invitation to Tender or Quote shall state that the Council is not bound to accept any Quotation or Tender.

11.3 All Candidates invited to tender or quote shall be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.4 The Invitation to Tender shall specify the Award Procedure.

11.5 Invitations to Tender shall state the Award Criteria in objective terms.

11.6 The Invitation to Tender shall include a form of tender and instructions to tenderers (see the Procurement Officer or Legal Services for the Council's Invitation to Tender template).

11.7 The Invitation to Tender should normally include the contract terms (see Regulation 15).

## **12. Submission, Receipt and Opening of Tenders**

12.1 Period for Candidates' response:

Candidates invited to respond shall be given an adequate period in which to prepare and submit a proper Quotation or Tender, consistent with the urgency of the contract requirement. Normally at least four weeks shall be allowed for submission of Tenders. In exceptional circumstances a period of five calendar days may be allowed after seeking the permission of the Procurement Officer.

The EU Procedure lays down specific time periods (see the Procurement Officer for further guidance).

- 12.2 Tenders shall normally be submitted using an approved electronic method as approved by the procurement officer. Where manual submission methods are used, Tenders shall be clearly identified with the name of the Tender exercise and have an envelope that has 'Tender' clearly written on it and addressed and returned c / o Reception, South Cambridgeshire District Council, Cambourne Business Park, Cambourne CB23 6EA. The envelope shall not carry any distinguishing marks. Tenders arriving by hand shall be given a receipt.
- 12.3 The Officer conducting a manual tender exercise (or their nominated representative) shall inform the Reception desk at Cambourne Offices of the tender return date. On receipt of any tenders the Reception will store these in a secure place until the time of opening.
- 12.4 Late Tenders received after the specified time for submission shall be endorsed with the date and time of receipt (by reception for a manual tender exercise) and returned promptly to the tenderer by the Officer concerned. The tender may be opened to ascertain the name of the tenderer.
- 12.5 Tenders received not using the approved receipt method, shall be rejected.
- 12.6 Reception shall record the details in a Tender Receipt Log (they must ensure that they do not disclose the names of Candidates to any staff involved in the tender process). The tender shall be:
- (a) date-stamped;
  - (b) recorded in the Tender Receipt Book; and

- (c) Stored in a central secure location and kept in safe custody until the date and time of opening.
- 12.7 The Officer shall ensure that all Tenders are opened at the same time when the period for their submission has ended. The Officer or his representative shall be present. Tenders shall be opened in the presence of two officers one representing the service and the other from Procurement or Legal Services (If either is unavailable then a Head of Service is acceptable).
- 12.8 Upon opening, a summary of the main terms of each Tender shall be recorded in the Tender Book. The information on each Tender containing prices shall be initialled by each Officer and the summary of the main terms of each tender entered into the Tender Book such as:
- (a) The details of the company name;
  - (b) The Tender sum;
  - (c) The order in which the tenders were opened; and
  - (d) A signature from the Officers present confirming that the information is correct.
- 12.9 If there appears to be an error in a bid or supporting information, the Candidate shall be invited to confirm or withdraw the bid. Where the error relates to the tender total as calculated from tendered rates and variable quantities, the bid shall be regarded as the tender total bid and the rate adjusted accordingly. The tenderer shall be invited to confirm or withdraw the bid and resulting rate.

### **13. Clarification Procedures**

- 13.1 Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender whether in writing or by way of a meeting is permitted. However, the Procurement Officer or Legal Services shall be consulted.
- 13.2 Post-tender clarifications mean clarifications with any tenderer after submission of a Tender and before the award of the contract with a view to clarifying information about the content of the bidder's submission. Care shall be taken where clarifications may distort competition.
- 13.3 Where post tender clarification results in a fundamental change to the specification (or contract terms) the contract shall not be awarded but re-tendered.

## 14. Evaluation and Award of Contract

- 14.1 Apart from the debriefing required or permitted within this section (Regulation 14)
- (a) confidentiality of Quotations, Tenders and the identity of Candidates shall be preserved at all times; and
  - (b) information about one Candidate's response shall not be given to another Candidate.
- 14.2 Contracts shall be evaluated and awarded in accordance with the Award Criteria.
- 14.3 Before accepting any tender or quotation a Contract Award Form shall be completed.
- 14.4 Where the Total Contract Value is over £25,000
- (a) All contracts;
    - (i) The Officer shall inform all Candidates of their Intention to Award the contract to the successful Candidate and provide the unsuccessful Candidate with their scores and the scores of the winning bidder.
  - (b) Contracts below the EU Threshold
    - (i) The Officer is expected only to provide useful feedback at their discretion; and
    - (ii) A 10-day standstill period shall not apply.
  - (c) Contracts above the EU Threshold:
    - (i) The officer shall provide detailed feedback automatically;
    - (ii) The officer shall allow a standstill period of not less than 10 days after announcing their Intention to Award. This is to provide unsuccessful Candidates with a period in which to challenge the decision before the Officer awards the contract; and
    - (iii) If the decision is challenged by an unsuccessful Candidate then the Officer shall not award the contract and shall immediately seek the advice of Legal or the Procurement Officer.

14.5 The Officer shall debrief in writing all those Candidates who submitted a bid about the characteristics and relative advantages of the leading bidder. This should normally include:

- (a) how the Award Criteria were applied; and
- (b) the prices or range of prices submitted (in percentage analysis form), in either case not correlated to Candidates' names (anonymised);

No other information should be given without taking the advice of Legal Services.

14.6 If requested, the Officer may also give the debriefing information required by Regulation 14.4 to Candidates who were deselected in a pre-tender short-listing process.

## **Section 4 – Contract and Other Formalities**

### **15. Contract Documents**

15.1 Every Relevant Contract shall be recorded on a Contract Award Form (or the approved electronic version of this form).

15.2 Every Relevant Contract shall be recorded in writing or through an order placed using a Purchase Order/Works Order, and shall state clearly:

- (a) what is to be supplied (description and quality);
- (b) roles and responsibilities of the supplier (where appropriate); and
- (c) payment provisions (amount and timing).

15.3 Every Relevant Contract up to £25,000 shall state clearly:

- (a) when the Council will have the right to terminate the contract;
- (b) that the contract is subject to the law as to the prevention of corruption (Regulation 17); and
- (c) the Council's Order Form or standard terms and conditions shall be used where possible.

15.4 Every Relevant Contract over £25,000 shall state clearly:



- (a) that the contractor may not assign or sub-contract without prior written consent;
- (b) any insurance requirements;
- (c) health and safety requirements;
- (d) ombudsman requirements;
- (e) requirements under the Data Protection Act 1998;
- (f) that charter standards are to be met (if relevant);
- (g) Equalities and race relations requirements;
- (h) Disability Discrimination Act requirements;
- (i) Freedom of Information Act requirements;
- (j) (where agents are used to let contracts) that agents must comply with the Council's Contract Regulations relating to contracts;
- (k) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant;
- (l) any provision for Ongoing Savings; and
- (m) Net Zero Carbon, Decarbonisation and Sustainable Procurement requirements.

15.5 The advice of Legal Services shall be sought for the following contracts:

- (a) those involving leasing arrangements;
- (b) where it is proposed to use the supplier's own terms;
- (c) where the Total Value exceeds £25,000; or
- (d) those that are complex in any other way.

15.6 Contract Agreements shall be completed as follows:

<b>Total Value</b>	<b>Method of Completion</b>	<b>By</b>
Level 1  £0 to £5,000	Due to the low values it is unlikely there will be no need for a written document.  In cases where one is necessary use a Purchase Order/Works Order and include our terms and conditions.	N/A
Level 2  £5,001 to £25,000	Completion of a Contract Award Form and a Purchase Order/Works Order and include our terms and conditions.	N/A
Level 3 to above Level 4  £50,001 to above £120,001	Completion of an Award Form and written agreement followed by a signature.	Written contract signed by Legal Services and Head of Service.

A practical approach to contracting should be adopted. Level 1 & 2 contracts A Purchase Order/Works Order accompanied by our terms and conditions will be sufficient.

All contracts in excess of Level 2 shall be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances.

### 15.7 Signature

The Officer responsible for securing signature of the contract shall ensure that the person signing for the other contracting party has authority to bind it.

## 15.8 Sealing

Where contracts are completed by each side adding their formal seal, the fixing of the Council's seal shall be witnessed by the Head or Deputy Head of Legal Practice or their nominated representative. A decision of the Council, or any part of it, shall be sufficient authority for sealing any document necessary to give effect to the decision. Every Council sealing shall be consecutively numbered, recorded and signed by the person witnessing the seal. The seal shall not be affixed without the authority of the Head or Deputy Head of Legal Practice. A contract shall be sealed where:

- (a) the Council may wish to enforce the contract more than six years after its end; or
- (b) where there is any doubt about the authority of the person signing for the other contracting party.

## 15.9 Archiving and lodgement of records

Any original signed or sealed contract that is considered high risk or is at or above EU value shall be stored in Legal Services. All other contracts shall be held within the relevant service department. The Officer shall also ensure that a copy of the contract has been scanned into the central Contracts Archive held by the Procurement Officer.

## 16. Bonds and Parent Company Guarantees

16.1 The Officer shall consult the Chief Finance Officer:

- (a) when a Candidate is a subsidiary of a parent company, the Officer does not think a Parent Company Guarantee is necessary and any of the following conditions are satisfied:
  - (i) the total value exceeds £120,000;
  - (ii) award is based on evaluation of the parent company; or
  - (iii) there is some concern about the financial stability of the Candidate.
- (b) about whether a Bond is needed
  - (i) where the Total Value exceeds £120,000; or
  - (ii) where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract.

## 17. Corruption

### 17.1 The Council's Code of Conduct:

- (a) The Officer shall comply with the Code of Conduct and shall not invite or accept any gift or reward in respect of the award or performance of any contract.
- (b) It will be for the Officer to prove that anything received was not received corruptly.
- (c) High standards of conduct are obligatory. Corrupt behaviour shall lead to dismissal and is a crime under the statutes referred to in Regulation 17.2.

### 17.2 The following clause shall be put in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf does any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done);
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause."

### 17.3 The Bribery Act 2010 details both general offences in relation to bribing another person or being bribed and also introduces a specific corporate offence of failing to prevent bribery. SCDC can now be held responsible for failing to prevent bribery committed on their behalf by employees, agents or subsidiaries. Officers shall therefore ensure that they do not commit an offence under the act and also where they suspect an offence, report the activity to their Line Manager or the Chief Finance Officer.

## **Section 5 – Contract Management**

### **18. Managing Contracts**

18.1 Contract management is the ongoing monitoring and management of the provision of services in line with the agreed terms and conditions of the contract. It ensures that the contract delivers value for money by meeting its performance targets throughout the contract's lifetime.

18.2 Heads of Service in each department shall appoint Contract Managers for all new contracts. All Contracts shall have a named SCDC Contract Manager for the entirety of the contract.

18.3 Contract Managers shall follow the procedures set out by the Procurement Officer and the advice of Legal Services.

### **19. Contract Monitoring, Evaluation and Review**

19.1 All contracts which have a value higher than the EU Threshold limits, or which are high-risk, are to be subject to formal review with the contractor. The minimal requirements are to conduct a review quarterly however more frequent reviews may be appropriate on large, complex or high-risk projects. It is important that during these reviews formal minutes are taken and agreed by both parties. Where no action is necessary, this shall be noted.

19.2. A service developed review process must be applied to all contracts deemed either high risk, high value or high profile. This process must be applied at key stages of major procurement projects.

19.3. During the life of the contract the Officer shall:

- (a) monitor:
  - (i) performance;
  - (ii) compliance with specification and contract;
  - (iii) cost;
  - (iv) any value for money requirements;
  - (v) user satisfaction and risk management;

- (vi) Ongoing Savings;
  - (vii) improvements in working practices and efficiency; and
  - (viii) Net Zero Carbon, Decarbonisation and Sustainable Procurement requirements.
- (b) act in accordance with any guidance in the Procurement Strategy or from the Procurement Officer.

## **20. Risk Assessment & Contingency Planning**

20.1 A Business case shall be prepared for all procurement with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, shall be identified in the business case.

20.2 For all contracts where the value exceeds Level 2 (£25,000), Contract Managers shall:

- (a) Maintain a risk register during the Contract period;
- (b) Undertake appropriate risk assessments;
- (c) For identified risks, ensure contingency measures are in place; and
- (d) Ensure critical support and maintenance arrangements are documented in the Specification.

## **Section 6: General**

### **21. Amendments**

21.1 In accordance with the Constitution, The Chief Finance Officer shall have the power to make amendments from time to time to these contract procedure rules after consultation with the Head or Deputy Head of Legal Practice, the Procurement Officer, Audit and Risk Management.

21.2 All such amendments shall be recorded and notification made to the Civic Affairs Committee so that the changes can be incorporated into the Constitution by the Full Council.

## **22. Breaching Contract Regulations**

22.1 Contract Regulations form part of the Council's Constitution. A breach of these regulations may lead to disciplinary action. A breach is defined as any non-compliance or failure to evidence compliance with any part of these regulations.

## **23. Transfer of Contracts**

23.1 Responsibility for a contract cannot be transferred to another party without agreement in writing of the existing parties to the contract. The agreement is called a Novation Agreement.

## Definitions Appendix

Agent	A person or organisation acting on behalf of the Council or on behalf of another organisation.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected (see further Regulation 10 and 11.5).
Award Procedure	The procedure for awarding a contract as specified in Regulation 8.
Bond	An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Cabinet	The Council's Cabinet as defined in the Constitution.
Candidate	Any person who asks or is invited to submit a Quotation or Tender.
Chief Officer	The officers defined as such in Article 12 of the Constitution.
Code of Conduct	The Officers' Code of Conduct regulating conduct of Officers as set out in Part 5 of the Constitution.
Committee	A committee, which has power to make decisions for the Council (including a joint committee with another local authority but not a scrutiny committee).
Constitution	The constitutional document approved by the Council which:



## Part 4 - Rules of Procedure: Contract Regulations

- (a) allocates powers and responsibility within the Council and between it and others
- (b) delegates authority to act to the Cabinet, committees, lead cabinet members and officers; and
- (c) regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Contracting Authority

The organisation which is letting the contract in question.

Contracting Decision

Any of the following decisions:

- (a) composition of Approved Lists
- (b) withdrawal of Invitation to Tender
- (c) whom to invite to submit a Quotation or Tender
- (d) award of contract
- (e) any decision to terminate a contract.

Contracts Finder

A national government portal for advertising public contracts.

Corporate Contract

A contract let by the Officer to support the Council's aim of achieving Value for Money. Where a Corporate Contract is in place, the Officer is obliged to use it unless an exemption has been granted under Section 3 of Contract Regulations.

Council

For the purposes for these Regulations, "Council" refers to South Cambridgeshire District Council (SCDC).

Chief Executive

As defined in Article 12 of the Constitution.

Chief Finance Officer

As defined in Article 12 of the Constitution.

Decarbonising/ Decarbonisation	Means reducing the carbon dioxide intensity of the emissions expressed in grams of (CO <sub>2</sub> ). Decarbonising/Decarbonisation the supply chain is necessary to respond to the Climate Emergency declared by SCDC on 28 November 2019.
Chief Officers	The Chief Executive, Chief Finance Officer, Monitoring Officer and Joint Director of Planning and Economic Development, as defined in Article 12 of the Constitution.
Chief Operating Officer	As defined in Article 12 of the Constitution.
E-Procurement or EBIS	The Council's Information Technology system including financial and self-service purchasing modules, and any others that may be added in future.
Consortium Framework Contract	A contract let by a Local Authority or other Government body that the Council is entitled to use to support the Council's aim of achieving Value for Money. Where a suitable Consortium Framework Contract exists, the Officer should use it unless there are auditable reasons for going elsewhere. See also "Framework Agreement"
EU Procedure	The procedure required by the EU where the Total Value exceeds the EU Threshold (see the Purchasing Guide for the tendering rules).
EU Threshold	The contract value at which the EU public Procurement Officer directives must be applied. See the Purchasing Guide for current values.
European Economic Area	The 15 members of the European Union, and Norway, Iceland and Liechtenstein.
Evaluation Report Form	A report produced by the Officer detailing the outcome of the evaluation process undertaken, from which a recommendation is put forward for the acceptance of a tender or quotation. One approved it will be forwarded to Procurement to update the contracts register.

Equalities	Ensuring fairness and promotion of equalities and covers race, sex, employment equality, disability, sexual orientation, religion and beliefs.
Equalities Questionnaire	The Council's questionnaire that addresses the procurement aspects of equalities.
Financial Regulations	The financial regulations outlining Officer responsibilities for financial matters issued by the Chief Finance Officer in accordance with the Constitution.
Full Council	As defined in the Constitution.
Framework Agreement	<p>An agreement between one or more contracting authorities and one, three or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.</p> <p>(EU law allows contracts with 1 contractor or more).</p>
Government or Local Authority Purchasing Consortium	A Government department, body or owned organisation or a Local Authority owned organisation that lets competitively Framework Agreements that entitle Local Authorities such as ours to use these contracts without negating the need for the Council to undertake an enquiry or a tender exercise. Examples of these organisations are Eastern Shires Purchasing Organisation (ESPO), Crown Commercial Service, (CCS), Department for Work and Pensions (DWP), HM Prison Service (HMPS) and the Central Buying Consortium (CBC).
Government Procurement Agreement	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Head of Service	Senior officers who report to the Chief Executive and Chief Operating Officer and are responsible for the effective management, delivery and performance of the services and functions within their specific corporate areas of responsibility.
High Profile	A high-profile purchase is one which could have an impact on functions integral to Council service delivery should it fail or go wrong.
High Risk	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
High Value	A high-value purchase is one where the value is greater than that of the EU Threshold values.
Invitation to Tender	Invitation to tender documents in the form required by Contract Regulations.
Invitation to Tender by Advertisement / List	<p>An Invitation to Tender sent to Candidates shortlisted from among either</p> <p>those responding to advertisement of the contract inviting proposals placed in such publications as shall secure widest publicity among relevant suppliers; or</p> <p>those included on an Approved List in respect of the type of purchase which is the subject of the Invitation to Tender.</p>
Irregular Tender	An Irregular Tender is a Tender, which is received after the appointed time for receipt or contains a mark of identification.
Key Decision	As defined in the Constitution.
Lead Cabinet Member	A member of the Cabinet to whom political responsibility is allocated in respect of specified functions.

**Line Manager** The Officer's immediate superior or the Officer designated by the Chief Executive Officer to exercise the role reserved to the Line Manager by these Contract Regulations.

**Net Zero Carbon** Net Zero Carbon relates to how the impact of the production of carbon dioxide (CO<sub>2</sub>) can be cancelled by other activity (e.g. planting trees or clean generation of power).

**Nominated Suppliers and Sub-contractors** Those persons specified in a main contract for the discharge of any part of that contract.

**Non-Commercial Considerations** Except as provided below, the following matters are non-commercial considerations:

- (a) the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (“workforce matters”);
- (b) whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only;
- (c) any involvement of the business activities or interests of contractors with irrelevant fields of Government policy;
- (d) the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (“industrial disputes”);
- (e) the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors;
- (f) any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;

- (g) financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;
- (h) use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined above in paragraphs (a) and (d) of this definition, cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (“TUPE”) may apply.

Officer	The Officer, who for the purposes of these Rules, is authorised to deal with the contract in question.
Ongoing Savings	Ongoing Savings are those that occur during the lifetime of the contract and are necessary to achieve both the Council’s financial aspirations and the targets set by the Government.
Open Procedure	All Candidates are invited to bid in response to advertisement.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead
Head and Deputy Head of Legal Practice	The Council’s Head and Deputy Head of Legal Practice who manages Legal Services.
Priority Services	Those services required to be tendered as defined in the EU public Procurement directives.

Procurement Officer	The Council's Procurement Officer charged with providing strategic direction and advice to secure value for money in the Council's procurement activities. In the absence of a dedicated Procurement Officer this role shall be fulfilled by the Chief Finance Officer's nominated representative
Procurement Strategy	The document setting out the Council's approach to Procurement taking into account the Council's key priorities for the next few years.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Relevant Contract	Contracts to which these Contract Regulations apply (see Regulation 4).
Short-listing	Where Candidates are selected:  (a) to quote or bid or  (b) to proceed to final evaluation.
Supervising Officer	The Line Manager's immediate superior.
Sustainable Procurement	Approach for reducing the environmental impact of procurement. The Council shall ensure that it purchases goods that have a recycled content, use less energy, use less raw material or produce less waste during their life cycle than alternatives.
Tender	A Candidate's proposal submitted in response to an Invitation to Tender.
Tender Record Book	The log kept by the Chief Executive to record details of Tenders (see Contract Regulations 12).

- Total Value
1. the whole of the value **or estimated** value (in money or equivalent value) for a single purchase or disposal
  2. whether or not it comprises several lots or stages
  3. to be paid or received by the Council or a Discrete Operational Unit within the Council.

The Total Value shall be calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
- (c) where the contract is for an uncertain duration by multiplying the monthly payment by 48;
- (d) for feasibility studies: the value of the scheme or contracts which may be awarded as a result;
- (e) for nominated suppliers and sub-contractors: the Total Value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor.

TUPE –  
Transfer of  
Undertakings  
(Protection of  
Employment)

TUPE refers to the Transfer of Undertaking (Protection of Employment) Regulations, 1981. These regulations were introduced to ensure the protection of employees when, for example, a business is taken over by another organisation. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money

The established definition of Value for Money (VFM) is the relationship between economy, efficiency and effectiveness.

VFM should not be judged on the basis of the cheapest initial price, but on the lowest whole life cost to GENERIC. This means that, in anticipating the price to pay, we should consider aspects such as maintenance, support costs, buy back values, design, delivery, and reliability. Factors such as these may justify a higher initial cost in the expectation of lower whole life costs. In major purchases or projects this may include preliminary business cases and discounted cash flow calculations. VFM can be achieved through:

- (a) competition;



- (b) improved supply chain management;
- (c) supplier partnership working;
- (d) group purchasing by aggregating the organisations spend for structured discounts; and
- (e) for low value items spot purchasing.

The method used is very much determined by your level of delegated authority, the organisations Financial Directions and the assessed risk a poor procurement route poses to the organisation.

#### Workforce Matters

Authorities cannot focus on matters classed as 'non-commercial' considerations as part of the contractual process. However, the restrictiveness of the original definitions was considered too great, and so from 2001 authorities may consider the following matters to the extent that they are relevant to the delivery of best value or for the purposes of a TUPE transfer.

- (a) the terms and conditions of employment by suppliers of their workers or the composition of, the arrangements for the promotion, transfer or training of or other opportunities afforded to, their workforces (section 17(5)(a) of the Local Government Act 1988)
- (b) the conduct of suppliers or workers in industrial disputes between them (section 17(5) (d) of the Local Government Act 1988).

Save for the above restrictions on other non-commercial considerations listed in Section 17 of the Local Government Act 1988 remain in place.