



**South Cambridgeshire District Council
Contract Regulations**

Under Section 135, Local Government Act 1972
Draft Revision V7.1

A Quick Glance Guide on Contract Regulations

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 fax transmissions.

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.

In the event of a Civil Emergency

- 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.
- 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:
 - an event or situation which threatens serious damage to human welfare;
 - an event or situation which threatens serious damage to the environment; or
 - war, or terrorism, which threatens serious damage to security.
- For Part 1 of the Act the definition sets out the range of possible incidents for which local responders must prepare when fulfilling their civil protection duties. Further information is available within the Council's Emergency Planning Manual.

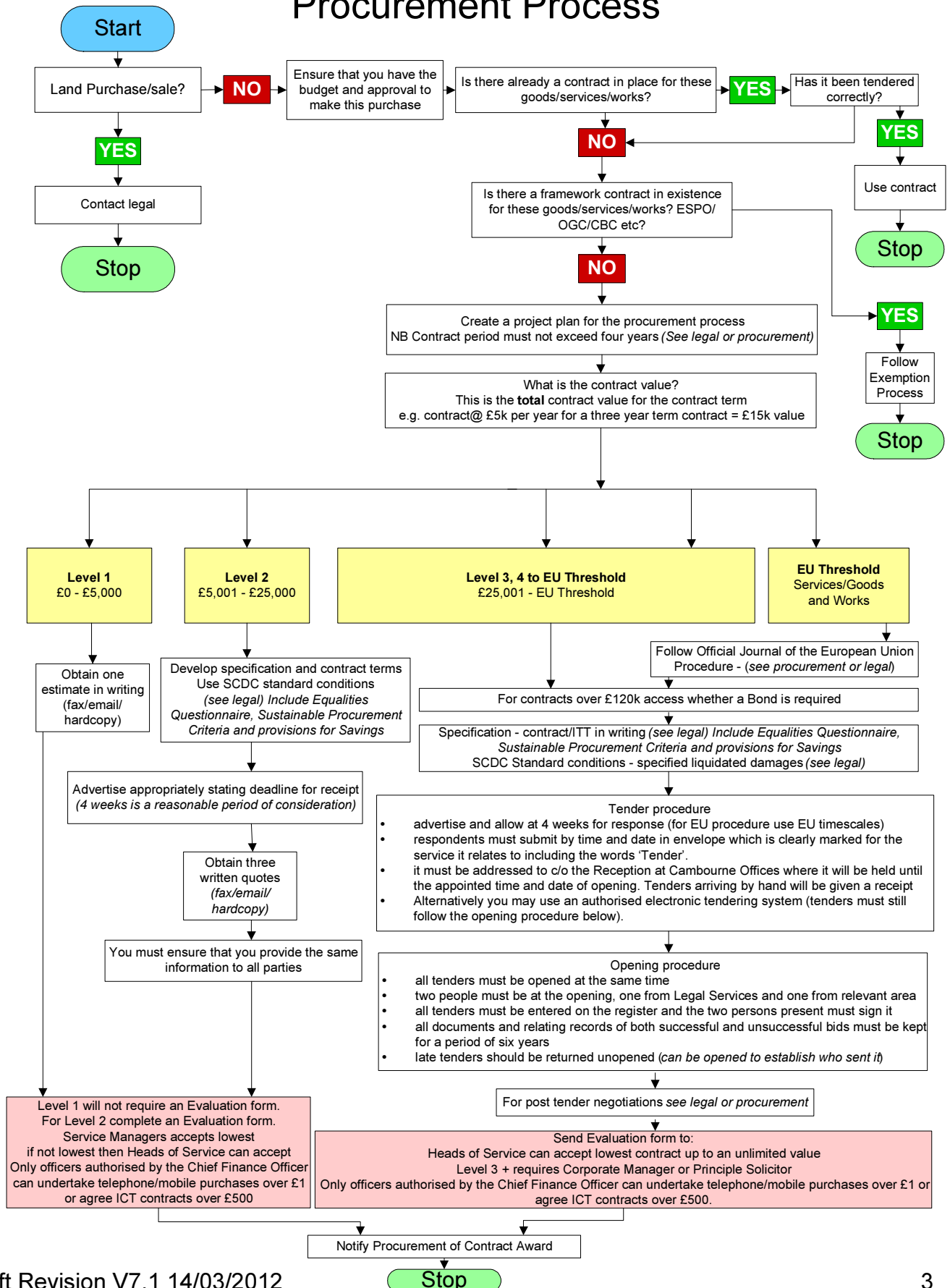
During regular conditions

- Check that there is a budget in place and that you are authorised to proceed.
- 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 EU tenders. Do not break tenders up into constituent parts where it could be suggested that the Authority are avoiding European procurement Threshold.
- 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.
- Take all necessary legal, financial, procurement and professional advice.
- 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.
- Take into account the requirements from any relevant **service** review and appraise the purchasing need.
- Check with the Procurement Officer whether there is an existing Corporate Contract or Consortium Framework Contract before undergoing any procurement process.
- 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.
- Normally allow four weeks for submission of bids (not to be submitted by fax).
- Keep bids confidential, safe and secure.
- Include the Equalities Questionnaire, Sustainable Procurement and Health & Safety elements in any enquiry or tender and ensure that they are evaluated as part of the award.
- Any post tender negotiation should be in accordance with Regulation 14.
- Complete a written contract or Council order before the supply or works begin.
- Identify a Contract Manager with responsibility for ensuring the contract delivers as intended and ensure contract monitoring is undertaken (including Equalities and Health & Safety).
- Keep records of all dealings with suppliers.
- 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 Principal Solicitor/Legal Services and the Procurement Officer.

Table Guide on Procedures, Short-listing and Approval

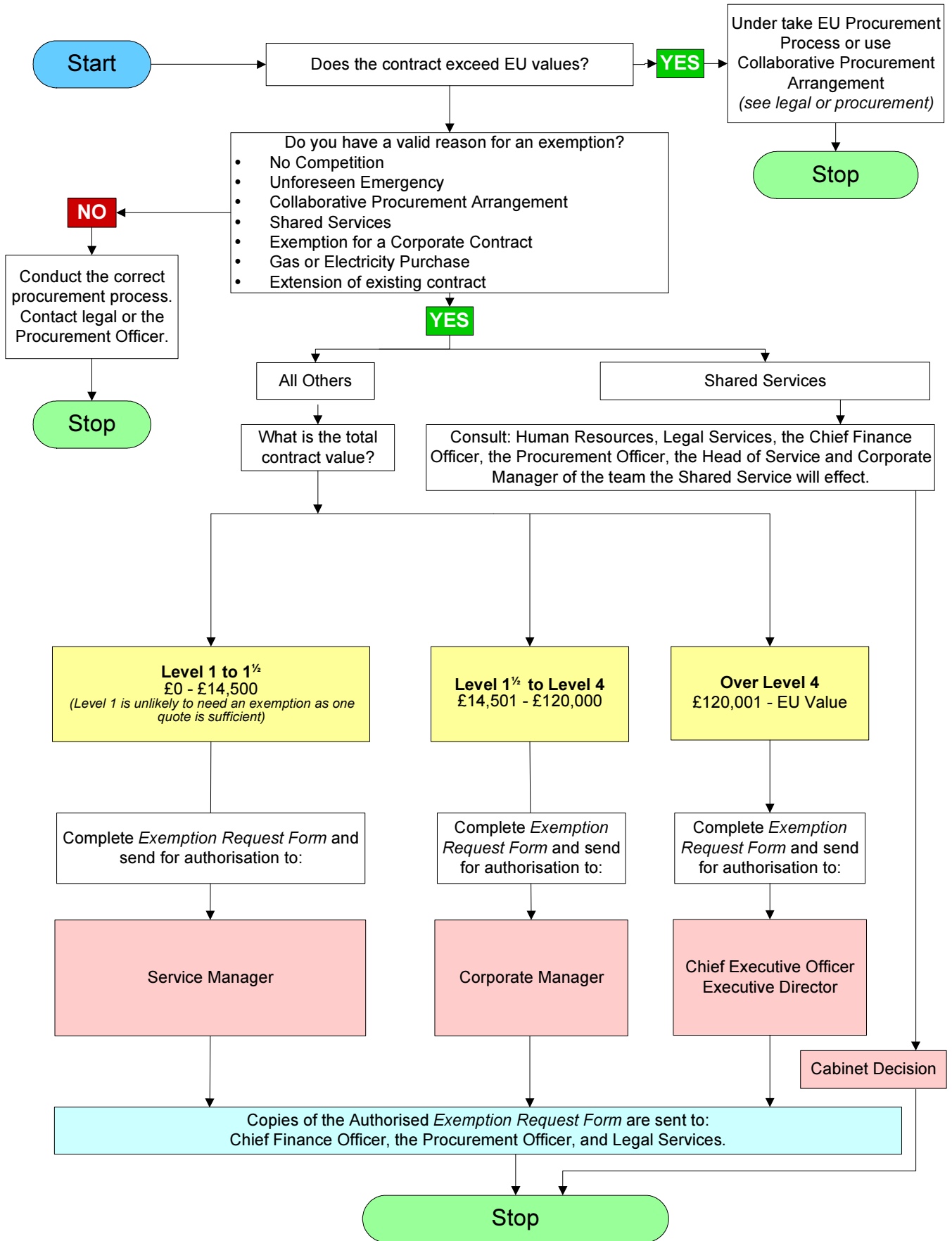
Procurement Process



Total Value	Award Procedure	Shortlisting	Who can approve Award?
<p>Please note regardless of the rules of delegation only officers authorised by the Chief Finance Officer can undertake telephone and mobile purchases over £1 or accept ICT contracts over £500.</p>			
£0 to £5,000	Obtain one estimate in writing	Officer	Service Managers accept lowest; if not lowest then Heads of Service can accept.
£5,001 – £25,000	Three written Quotations and response to our Equalities Questionnaire	Officer and Line Manager	Send Evaluation form to: Service Managers accepts lowest if not lowest then Heads of Service can accept.
£25,001 – EU Threshold	Invitation to Tender (that includes our response to our Equalities Questionnaire) See Para 5.4 regarding requirements for advertising, any pre selected candidates must be approved by Line Manager.	Officer and Line Manager	Send Evaluation form to: Heads of Service can accept lowest contract up to an unlimited value. If not lowest then Corporate Manager or Principal Solicitor.
Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by Advertisement/List to at least six Candidates (that includes our response to our Equalities Questionnaire)		EU Procedure must be followed. Consult with Legal Services and the Procurement Officer – see Regulation 8.5
Exemptions:	See Regulation 3.		
Insufficient Candidates:	See Regulation 8.2		
Disposals:	See Regulation 8.6		

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

Overview of Exemptions Procedure



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Further Advice may be obtained from:

The Principal Solicitor/Legal Services
The Procurement Officer

Section 1 – Scope of Contract Regulations

1. **Basic Principles**

All purchasing and disposal procedures must:

- Achieve best value for public money spent
- Be consistent with the highest standards of integrity and professionalism when undertaking procurement
- Ensure fairness in allocating public contracts
- Comply with all legal requirements
- Ensure that Non-Commercial Considerations do not influence any Contracting Decision.
- Support the Council's corporate and departmental aims and policies.
- Comply with the Council's Procurement Strategy.
- Build in Equalities, Sustainable Procurement, Health & Safety and Ongoing Savings into the procurement process
- Construct high quality agreements and make use of internal resources to document and provide a clear audit trail of decisions, agreements and contracts
- 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 South Cambridgeshire District Council (SCDC) contract.

2. **Officer Responsibilities**

2.1 **Officers**

- 2.1.1 The Officer responsible for purchasing or disposal must comply with these Contract Regulations, Financial Regulations, the Code of Conduct and with all UK and European Union binding legal requirements.
- 2.1.2 The Officer must have regard to the guidance from the Procurement Officer and the principles of the Council's Procurement Strategy.
- 2.1.3 The Officer must 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 must 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.
- 2.1.4 The Officer must keep the records required by Regulation 6.
- 2.1.5 Tender procedures must 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 should 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.
- 2.1.6 Officers must also ensure that agents acting on their behalf also comply.
- 2.1.7 Officers must take all necessary legal, procurement, financial and professional advice.
- 2.1.8 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, officers must 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.

- 2.1.9 Contract Regulations must be strictly followed. They lay down minimum requirements and a more thorough procedure 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.)

2.2 Corporate Managers

Corporate Managers must:

- 2.2.1 ensure their staff comply with Regulation 2.1.
- 2.2.2 ensure all staff complete an approved Evaluation Report Form to record all contracts and where seeking an exemption complete an Exemption Request Form in Regulation 2.2.3.
- 2.2.3 ensure that:
- **contracts** completed by signature (rather than by the Council's seal – see Regulation 16.4.3) and arrange their safekeeping on Council premises.
 - **exemptions** recorded under Regulation 3.2 and ensure that the Chief Finance Officer, Legal Services and 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) will 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. No exemption can be used if the EU procedure applies.
- 3.3 All exemptions, and the reasons for them, must be recorded using the Exemptions Form and should be copied to the Chief Finance Officer. Advice should be sought from the Procurement Officer or Legal Services before applying for an exemption. Exemptions shall be authorised by:

Value	Levels	Who can authorise?
£0 to £14.5k	1 to 1½	Service Manager
£14.5k to £120k	1½ to 4	Corporate Manager
£120k to EU	Over 4 to EU	Chief Executive Officer Executive Director
EU	EU	EU procedures apply. No Exemption Possible

The following are **allowable exemptions**:

- 3.4.1 the subject matter of the contract can only be supplied by one specialist firm.
- 3.4.2 an exemption is necessary because of unforeseen emergency involving immediate risk to persons, property or serious disruption to Council services.
- 3.4.3 Collaborative procurement arrangements

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

- 3.4.3.1 The Procurement Officer or Legal Services must be consulted where the purchase is to be made using collaborative procurement arrangements with another Local Authority, Government department or statutory undertaker.
- 3.4.3.2. 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.
- 3.4.3.3 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.
- 3.4.3.4 Shared services are a complex procurement and will require a thorough investigation of the options, the risks, the costs and the impacts. Advice will need to be obtained from Human Resources, Legal Services, the Chief Finance Officer, the Procurement Officer as well as the Head of Service and Corporate Manager of any team that the Shared Service will impact upon.

3.4.4 There is a Corporate Contract in existence for this type of service/product but it is unsuitable due to:

- 3.4.4.1 The Procurement Officer or Legal Services must be consulted before applying for any exemption for an existing Corporate Contract.
- 3.4.4.2 There needs to be clear and concise documentary evidence confirming that the Corporate Contract cannot meet this requirement because of:
 - Technical reasons
 - Capacity/availability
 - Conflict of interest

3.4.5 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 must clearly demonstrate:

- the Corporate Manager for the budget has provided consent to proceed
- the regular procedure in these Contract Regulations are unable to facilitate this type of purchase
- the values will not exceed EU Threshold and
 - is not an act to purely circumnavigate EU Procedures
 - 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)
- a competitive process will be undertaken
- the award criteria that is to be used
- that bids will be invited from at least 3 suppliers
- sufficient time will be allowed for suppliers to respond
- that the contract will be advertised appropriately

3.4.6 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:

3.4.6.1 where a contract has the provision within the existing contract for an extension, the Officer should follow the standard exemptions process.

3.4.6.2 where there isn't the provision within the existing contract for an extension, the Chief Finance Officer must agree and sign off the exemption on the grounds of:

- disproportionate technical difficulties
- disproportionate effect on the Council's resources or finances
- significant disruption to the delivery of Council services

3.5 **In exceptional circumstances** the Chief Executive/Executive Director 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 Portfolio Holder is consulted.

Where the contract exceeds the EU Threshold, the Chief Executive/Executive Director or the Chief Finance Officer has no delegated powers and 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. (There is no Exemption available for Priority Services above the EU Threshold.)

3.7 All exemptions will be appropriately time bound and attached to the specific contract. Overly long time periods and blanket exemptions fall foul of EU Procurement Regulations.

3.8 The Chief Finance Officer must be kept informed of all authorised exemptions and provide an annual report to the 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:

- contracts of employment making an individual a direct employee of the Council; or
- 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 must appraise the purchase by working through the following criteria. If the Total Value exceeds £25,000 then the Officer must complete this as a checklist before commencing. The appraisal tasks must 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 **must** appraise the purchase by:
- ensuring that they have the budget and permissions to carry out this type of purchase and that if the item is for ICT equipment/services that they have obtained the consent of the Head of ICT to proceed;
 - making sure there is not a Corporate Contract or Consortium Framework Contract already in place before proceeding with any procurement exercise;
 - taking into account the requirements from any relevant **service** review;
 - appraising the need for the expenditure and its priority;
 - defining the objectives of the purchase;
 - assessing the risks associated with the purchase and how to manage them;
 - 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;
 - consulting users as appropriate about the proposed procurement method, contract standards, and also performance and user satisfaction monitoring;
 - selecting the most appropriate procurement method;
 - assess the relevance of Health & Safety and Equalities and ensure that the Equalities Questionnaire is included in any enquiry or tender;
 - taking into account 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;
 - 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;
 - 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 must confirm that**
- the purchase accords with the approved policy framework and scheme of delegation as set out in the Constitution;
 - if the purchase is a Key Decision, that all appropriate steps have been taken;
 - 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 must take place. Generally, the greater the interest of the contract to such potential Candidates the wider should be the coverage of the advertisement. Advertisements must always be placed on the Council's website and may also be placed on:
- **SCDC's website; and/or**
 - portal websites specifically created for contract advertisements; and/or
 - National official journals; and/or
 - the Official Journal of the European Union (OJEU)/Tenders Electronic Daily (TED) [even if there is no requirement within the EU Procedure].

6. Records and Debriefing Candidates

- 6.1 Where the value is less than £5,000:
- The officer must 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.
 - There is no need to debrief candidates or enter the record in the Contracts register;
 - 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 Ensure that all contracts that exceed £5,000 are recorded in the central archive (note: the original documents may need to be made available for scanning).
- 6.4 Where the Total Value is less than £25,000, the following documents must be kept:
- invitations to quote and Quotations. Remember 3 quotations must be obtained.
 - the reason if the lowest price is not accepted
 - written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced
 - Ensure that the same principles of fairness, transparency and competition are being applied to quotations.
- 6.5 Where the Total Value exceeds £25,000, the Officer must record
- pre-tender market research;
 - any exemption under Regulation 3 together with the reasons for it;
 - the method for obtaining bids (see Regulation 8.1);
 - the Award Criteria in descending order of importance;
 - tender documents sent to and received from Candidates;
 - the responses to any Sustainable Procurement, Health & Safety requirements and the Council's Equalities Questionnaire;
 - clarification and post-tender negotiation (to include minutes of meetings);
 - any Contracting Decision and the reasons for it;
 - the contract documents;
 - written records of communications with Candidates and with the successful contractor throughout the period of the contract;
 - records of cost savings achieved throughout the life of the contract with supporting evidence; and
 - post-contract evaluation and monitoring (including Sustainable Procurement, Health & Safety and Equalities).
- 6.6 Written records required by this Regulation (6.2 above) must be kept for six years after the end of the contract. Documents which relate to unsuccessful Candidate must be retained for 18 months and then may be destroyed, provided there is no dispute about the award. However the documents which relate to unsuccessful Candidates may be microfilmed or electronically scanned. (See 16.4.4 regarding record storage). Legal will need to store the original contracts of any high risk or contracts above EU value in their storage facility. All other contracts once scanned should be stored within the service area.
- 6.7 Candidates must be notified simultaneously and as soon as possible of any Contracting Decision.
- 6.7.1 The notification must be in writing where the Total Value exceeds £25,000.
- 6.7.2 If a Candidate requests in writing the reasons for a Contracting Decision, the Officer must give the reasons in writing within 15 working days of the request (see further Regulation 15.4).

7. **Approved Lists and Framework Agreements**

- 7.1 **Approved Lists** may be used to select Candidates as an alternative to advertisement (see Regulation 5.4). Approved Lists should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the EU Procedure applies.
- 7.2 Head of Service or above may draw up in consultation with the Procurement Officer or Legal Services.
- 7.2.1 Approved Lists of persons ready to perform contracts to supply goods or services of particular types on the basis of agreed contract terms;
- 7.2.2 Criteria for Short-listing from the lists.
- 7.3 No person may be entered on an Approved List until there has been an adequate investigation into both their financial and technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.
- 7.4 Approved Lists must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure widest publicity among relevant suppliers throughout all member states of the EU. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Regulation 7.3 are met.
- 7.5 The list and short-listing criteria must be reviewed at least annually and re-advertised at least every three years. Review means:
- the reassessment of the financial, technical ability and performance of those persons on the list unless such matters will be investigated each time bids are invited from that list
 - the deletion of those persons no longer qualified, with a written record kept justifying the deletion
 - on re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply.
- 7.6 Lists maintained by Central Government under the New Qualification System (NQS), Constructionline or any list maintained in substitution of the NQS will be deemed to be an Approved List for the purpose of these Contract Regulations and shall not be subject to the requirements of Regulation 7.2 and 7.6 inclusive. The Council has adopted and supports the use of Constructionline subject to point 7.7.
- 7.7 All Approved Lists shall be maintained in an open, fair and transparent manner and must be open to public inspection. Before undertaking procurement using any list you must ensure that a competitive process is in place and consult with the Procurement Officer.
- 7.8 **Framework Agreements**
- 7.8.1 The term of framework agreements should not exceed 4 years, except in cases duly justified by Contracting Authorities.
- 7.8.2 Where the framework agreement is concluded with several organisations, there must be at least 3 in number. Contracts based on framework agreements may be awarded either:
- 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;
 - 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:

- a) Inviting the organisations within the framework agreement who are capable of executing the subject of the contract to submit written* tenders.
- b) Fixing a time limit, which is sufficiently long, to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract.
- c) Tenders shall be submitted in writing*, and their content shall remain confidential until the stipulated time limit for reply has expired.
- d) 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.

* written includes by e-mail or fax

Section 3 – Conducting a Purchase

8. Competition Requirements for Purchase and Partnership Arrangements

The Officer must 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 must seek the advice of Legal Services or the Procurement Officer.

8.1 Purchasing – Minimum Competition Requirements

£0 to £5,000

- Obtain one estimate in writing
- Officer can short list
- Service Managers accept lowest if not lowest then Heads of Service can accept. Only officers authorised by the Chief Finance Officer can accept ICT contracts over £500.

£5,001 – £25,000

- Three written Quotations and response to our Equalities Questionnaire
- Officer and Line Manager can shortlist
- Send Evaluation form to:
Service Managers accepts lowest if not lowest then Heads of Service can accept. Only officers authorised by the Chief Finance Officer can accept ICT contracts over £500.

£25,001 – EU Threshold

- Undertake full tender process
Invitation to Tender (that includes our response to our Equalities Questionnaire)
See Para 5.4 regarding requirements for advertising, any pre selected candidates must be approved by Line Manager.
- For contracts over £120,000 confirm if a bond is required.
- Officer and Line Manager can shortlist
- The award decision - send Evaluation form to:
Heads of Service can accept lowest contract up to an unlimited value. If not lowest then Corporate Manager or Principal Solicitor. Only officers authorised by the Chief Finance Officer can accept ICT contracts over £500.

Above EU Threshold

- Undertake full tender process
- EU Procedure or, where this does not apply,
- Invitation to Tender by Advertisement/List to at least six Candidates (that includes our response to our Equalities Questionnaire)
- EU Procedure must be followed. Consult with Legal Services and the Procurement Officer – see Regulation 8.5

8.2 Where it can be demonstrated that there is insufficient competition or insufficient Candidates then all suitably qualified Candidates must be invited to quote or tender. In these circumstances it is important to decide whether it is necessary to restart the process and undertake the procurement exercise once more, by consulting with the Procurement Officer.

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

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

- 8.5 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.
- 8.6 Assets for disposal must be sent to public auction except where better value for money is likely to be obtained by inviting Quotations/Tenders unless the Chief Finance Officer decides that the time commitment and costs would 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.

8.7 **Providing services to external purchasers**

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

- 8.8 **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 must be taken.

8.9 **The Appointment of Consultants to provide services – additional requirements**

Because of the breadth, complexity, high cost and nature of Consultancy work additional requirements are necessary to ensure that the Council receives value for money. The following requirements must be applied to any consultancy contract in addition to points 8 to 8.8 of these Contract Regulations.

- 8.9.1 Before proceeding the Officer must check that and confirm:-

- (a) the nature of the services for which the appointment of a Consultant is required;
- (b) the estimated Total Value of the services;
- (c) that no employee of the Council has the capacity or is available to undertake the services.
- (d) the Procurement Officer or Legal Services should be consulted before starting a procurement exercise to hire consultancy services.

- 8.9.2 The enquiry or contract documents must contain:

- (a) A specification for the services (be clear what is in scope and out of scope);
- (b) A questionnaire seeking details of the Candidate's experience in providing similar services, relevant Health & Safety or Sustainable Procurement criteria and the Equalities Questionnaire must also be included;
- (c) The Council's General Conditions of contract (for individuals, companies or agencies) which it is intended to appoint the Consultant to provide the services, equalities questionnaire and criteria where appropriate;
- (d) The Award Criteria;
- (e) Start, date, completion dates and duration of the contract;
- (f) A questionnaire that obtains specific working times, hourly rates, document rates, percentage of consultancy time that will be spent on contract, the number of staff (their qualifications and whether they are junior or senior personnel) or a suitable alternative.
- (g) Wherever possible the use of milestones and a clear link of the payment to successful completion of these.

- (h) Evaluation and Award Criteria that enables the Council to clearly identify and score bids appropriately. The scoring needs to be robust (i.e. to clearly show where a bid is re-badged or a sub-optimum bid comprising of previous work done by the Consultant).
- (i) Clear instructions that the consultancy firm will utilise their own materials and resources or that we will charge them for the use of the Council's. The documentation must also make clear that the Council will not pay for additional costs unless detailed and accepted as part of the consultant's bid.
- (j) That where the consultancy will provide graphic design or printing services the costs are provided in advance. The Officer cannot accept these without first comparing with the Council's internal costs or Corporate Contracts.
- (k) That where a firm is being contracted the contract documentation must ensure:
 - the Council is guarded from the firm using junior members but charging senior rates.
 - that whilst the consultancy staff are in our employment that they work solely on our project and do not work for others whilst charging their time to the Council;
 - where a number of employees of a consultancy firm are utilised, ensure that there is some mechanism for checking who is actually working on the project.

9. Pre-tender Market Research and Consultation

9.1 The Officer responsible for the purchase:

- 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
- must 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
- should seek advice from Legal Services or the Procurement Officer.

10. Standards and Award Criteria

10.1 The Officer must 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 Principal Solicitor must be consulted if the Officer proposes to use standards other than European standards.

10.2 The Officer must 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:

- "lowest price" where payment is to be made by the Council
- "highest price" if payment is to be received, or
- "most economically advantageous" offer (where considerations other than price also apply).

If the last criterion is adopted, it must be further defined by reference to sub-criteria. Sub-criteria may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, 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 must take into account:

- the ability of the firm to make ongoing future savings over the life of the contract

- Sustainable Procurement
- The results from the Equalities Questionnaire

- 10.4 Award Criteria must not include:
- Non-Commercial Considerations
 - matters that discriminate against suppliers from the European Economic Area or signatories to the Government Agreement

11. **Invitations to Tender/Quotations**

- 11.1 The Invitation to Tender or Quotation must include a specification. The specification must describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers. In preparing specifications the Officer must have regard to any guidance from the Procurement Officer.
- 11.2 The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 11.3 Except where the Open Procedure applies, all Candidates invited to tender or quote must 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 must specify the Award Procedure and forbid submission of Tenders by fax.
- 11.5 Where any prior advertisement has not defined the Award Criteria, Invitations to Tender must state the Award Criteria in objective terms and if possible in descending order of importance.
- 11.6 The Invitation to Tender must include a form of tender, tendering certificate 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 16).

12. **Short-listing**

- 12.1 Where Approved Lists are used, short-listing may be done by the Officer in accordance with short-listing criteria drawn up when the Approved List was compiled (see Regulation 7). However, where the EU Procedure applies, Approved Lists may not be used in this way.
- 12.2 Any short-listing must have regard to financial and technical standards relevant to the contract and must be related to the Award Criteria. Special rules apply in respect of the EU Procedure. Please see the Procurement Officer or Legal Services.
- 12.3 Officers may decide not to short-list but to send Invitations to Tender and to evaluate all possible Candidates. The officers responsible for short-listing are specified in Regulation 8.1.

13. **Submission, Receipt and Opening of Tenders**

- 13.1 Period for Candidates' response:

Candidates invited to respond must 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 should be allowed for submission of Tenders.

In exceptional circumstances:

- 10 calendar days may be allowed after seeking the permission of the Procurement Officer.
- 5 calendar days may be allowed after seeking the permission of the Chief Finance Officer.

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

- 13.2 All Tenders must be clearly identified for the service it relates to and have 'Tender' clearly written on the envelope. The envelope must then be addressed and returned to the relevant Officer, c/o Reception, South Cambridgeshire District Council, Cambourne Business Park, Cambourne CB23 6EA. The envelope must not carry any distinguishing marks. Tenders arriving by hand will be given a receipt.
- 13.3 The Officer conducting the tender exercise or their nominated representative must 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.
- 13.4 Late Tenders received after the specified time for submission shall be indorsed with the date and time of receipt by reception and returned promptly to the tenderer by the Officer concerned after consultation with their Head of Service. The tender may be opened to ascertain the name of the tenderer.
- 13.5 Tenders received solely by fax, e-mail or other electronic means must be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Chief Finance Officer.
- 13.6 Reception must 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):
 - tender must be date-stamped
 - logged within the Tender Receipt Book
 - Store in a central secure location and shall be responsible for the safe custody of tenders until the date and time of opening
- 13.7 The Officer must ensure that all Tenders are opened at the same time when the period for their submission has ended. The Officer or his representative must be present. Tenders must be opened in the presence of two officers one representing the service and the other from Legal Services (If unavailable then a Head of Service or Corporate Manager is acceptable).
- 13.8 Upon opening, a summary of the main terms of each Tender must be recorded in the Tender Book. The information on each Tender containing prices should be initialled by each Officer and the summary of the main terms of each tender entered into the Tender Book such as:
 - The details of the company name
 - The Tender sum
 - The order in which the tenders were opened
 - A signature from the Officers present confirming that the information is correct
- 13.9 If there appears to be an error in a bid or supporting information, the Candidate must 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 will be regarded as the tender total bid and the rate adjusted accordingly. The tenderer will be invited to confirm or withdraw the bid and resulting rate.

14. **Clarification Procedures and Post-tender Negotiation**

- 14.1 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 must be consulted.
- 14.2 Post-tender negotiations means negotiations with any tenderer after submission of a Tender and before the award of the contract with a view to obtaining an adjustment in price, delivery or content. However, post tender negotiations must be the exception rather than the rule. In

particular they must not be conducted in a EU Procedure where this might distort competition.

14.3 Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

14.4 Procedure

14.4.1 The Chief Finance Officer must be consulted

- wherever it is proposed to enter into post-tender negotiation, and
- about whether negotiation is to be with all Candidates.

14.4.2 Negotiations must be conducted by a team of at least two officers.

14.4.3 A report must be submitted to relevant Corporate Manager by negotiating officers.

15. Evaluation and Award of Contract

15.1 Apart from the debriefing required or permitted within this section (Regulation 15)

- confidentiality of Quotations, Tenders and the identity of Candidates must be preserved at all times
- information about one Candidate's response must not be given to another Candidate

15.2 Contracts must be evaluated and awarded in accordance with the Award Criteria.

15.3 Before accepting any tender or quotation an Evaluation form must be completed.

15.4 Where the Total Contract Value is over £25,000:

All contracts:

- The Officer must inform all Candidates of their Intention to Award the contract to the successful Candidate and provide the unsuccessful Candidate with their scores and those of the winning bidder.

Contracts below the EU Threshold:

- The Officer needs only to provide useful feedback at their discretion.
- A 10 day standstill period shall not apply.

Contracts above the EU Threshold:

- The Officer must provide detailed feedback.
- The Officer must 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.
- 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 and inform the Procurement Officer.

15.5 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:

- how the Award Criteria were applied;
- the prices or range of prices submitted, in either case not correlated to Candidates' names; and
- the names of Candidates where there were three or more Candidates.

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

15.6 If requested, the Officer may also give the debriefing information required by Regulation 15.4 to Candidates who were deselected in a pre-tender short-listing process.

Section 4 – Contract and Other Formalities

16. Contract Documents

- 16.1 Every Relevant Contract must be recorded on a Approved Evaluation Report Form.
- 16.2 Every Relevant Contract must be recorded in writing or through an order placed using E-Procurement (or EBIS) or a Purchase Order Book depending on value, and must state clearly:
- what is to be supplied (description and quality)
 - roles and responsibilities of the supplier (where appropriate)
 - payment provisions (amount and timing)
- 16.3 Every Relevant Contract up to £25,000 must state clearly:
- when the Council will have the right to terminate the contract
 - that the contract is subject to the law as to the prevention of corruption (Regulation 18)
 - the Council's Order Form or standard terms and conditions must be used where possible.
- 16.4 Every Relevant Contract over £25,000 must state clearly:
- that the contractor may not assign or sub-contract without prior written consent
 - any insurance requirements
 - health and safety requirements
 - ombudsman requirements
 - requirements under the Data Protection Act 1998
 - that charter standards are to be met (if relevant)
 - Equalities and race relations requirements
 - Disability Discrimination Act requirements
 - Freedom of Information Act requirements
 - (where agents are used to let contracts) that agents must comply with the Council's Contract Regulations relating to contracts
 - a right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
 - any provision for Ongoing Savings
 - performance management / key performance indicators (if this cannot be done before a contract is signed, then this should be agreed at the first contract management meeting and minuted as such)
- 16.5 The advice of Legal Services must be sought for the following contracts:
- those involving leasing arrangements
 - where it is proposed to use the supplier's own terms
 - where the Total Value exceeds £25,000
 - those involving the purchase of application software with a Total Value of more than £5,000 (in addition you must have the approval of the Head of ICT)
 - those that are complex in any other way
- 16.6 Contract Agreements shall be completed as follows:

Total Value	Method of Completion	By
Level 1 £0 to £5000	Due to the low values it is unlikely there will be no need for a written document.	N/A
	In cases where one is necessary use a simple written letter of agreement, and include our terms and conditions.	Written award letter of agreement (enclose a copy of our terms) signed by Legal Services and Service Manager.
Level 2 (£5,001 to £25,000)	Completion of an Approved Evaluation Report Form and written agreement followed by a signature.	Written contract signed by Legal Services and
Level 3 (£25,001 to £50,000)		- Service Manager (Levels 2 and 3)
Level 4 (£50,001 to £120,000)		- Head of Service (Level 4).
Above Level 4 Above £120,001	Completion of an Approved Evaluation Report 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 contracts are unlikely to require a contract document, but where they do a written award letter of agreement will be acceptable (accompanied by our terms and conditions).

All contracts in excess of Level 1 (£5,000) must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances. An award letter is insufficient.

16.7 Signature

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

16.8 Sealing

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

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

16.9 Archiving & lodgement of records

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

17. Bonds and Parent Company Guarantees

17.1 The Officer must consult the Chief Finance Officer:

17.1.1 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:

- the total value exceeds £25,000
- award is based on evaluation of the parent company, or
- there is some concern about the financial stability of the Candidate

17.1.2 about whether a Bond is needed

- where the Total Value exceeds £120,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract.

18. Corruption

18.1 The Council's Code of Conducts

- The Officer must comply with the Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- It will be for the Officer to prove that anything received was not received corruptly.
- High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Regulation 18.2.

18.2 The following clause must 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); or
 - (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.

18.3 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 must 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

19. **Managing Contracts**

- 19.1 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 contracts lifetime.
- 19.2 Heads of Service in each department are to name Contract Managers for all new contracts. All Contracts must have a named SCDC Contract Manager for the entirety of the contract.
- 19.3 Contract Managers must follow the procedures set out by the Procurement Officer and the advice of Legal Services.

20. **Contract Monitoring, Evaluation and Review**

- 20.1 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 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 that the need for no action is formally noted.
- 20.2 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.
- 20.3 During the life of the contract the Officer must monitor:
- monitor performance against criteria as set out in 16.4;
 - compliance with specification and contract;
 - cost;
 - any value for money requirements;
 - user satisfaction and risk management;
 - Equalities;
 - Ongoing Savings;
 - improvements in working practices and efficiency; and
 - and act in accordance with any guidance in the Procurement Strategy or from the Procurement Officer.
- 20.4 Where the Total Value of the contract exceeds Level 2 (£25,000) and on completion of the contract, the Officer must complete a checklist to evaluate how closely the objectives and requirements were satisfied by the contract. This will inform the approach to re-letting the subsequent contract or provide valuable information to inform and improve future contracts. A copy of this evaluation checklist should go to the Procurement Officer.

21. **Risk Assessment & Contingency Planning**

- 21.1 A Business case must 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, must be identified in the business case.
- 21.2 For all contracts where the value exceeds Level 2 (£25,000), Contract Managers must:
- Maintain a risk register during the Contract period and,
 - Undertake appropriate risk assessments and,
 - For identified risks, ensure contingency measures are in place.
 - Ensure critical support and maintenance arrangements are documented in the Specification in order to avoid costly post-tender negotiation.

Section 6: General

22. **Amendments**

- 22.1 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 Principal Solicitor, the Procurement Officer, Audit and Risk Management.
- 22.2 All such amendments should be recorded and notification made to the Constitutional Review Working Party so that the changes can be incorporated into the Constitution by the Full Council.

23. **Breaching Contract Regulations**

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

24 **Transfer of Contracts**

- 24.1 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.