

# Crawley Borough Council



## Report to Cabinet 8 July 2015

### Procurement Code

Report of the Head of Partnership Services - CPS/011

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#### **1. Purpose**

- 1.1 On February 26<sup>th</sup> 2015 the biggest changes to public sector procurement for over a decade took effect with the issue of the Public Contract Regulations 2015. The legislation has a significant impact on how the Council undertakes its procurement.
- 1.2 In addition, over the past year, other legislative and local policies have been introduced, for example the Transparency Code, and the Social Value Act, as well as the Council's own commitments to the Living Wage, 'Buy Local' and to eliminate zero hours contracts.
- 1.3 As a result of these changes the Procurement Code, which forms part of the Council's Constitution, has been reviewed and updated to ensure that the Council's complies with the latest Legislation.
- 1.4 This report provides background information to the Procurement Code, its purpose and the key changes.

#### **2. Recommendations**

- 2.1 To the Cabinet

The Cabinet is recommended to:

- a) Approve that any future minor changes to the Procurement Code be delegated to the Head of Partnership Services in consultation with the Head of Finance, Revenues and Benefits and the Head of Legal and Democratic Services.
- b) Request Full Council to approve the revised Procurement Code attached as Appendix 1 to this report.

#### **3. Reasons for the Recommendations**

- 3.1 The Council requires clear rules about how it conducts procurement. The Procurement Code has been updated to reflect changes in legislation and local policy. The Code needs approval so that it can be incorporated into the Council's Constitution.
- 3.2 Recommendation 2.1 (a) has been included in order to allow minor changes to be made to the Procurement Code without needing formal approval by Cabinet and

Council. The recommendation takes into account recent changes to organisational structure and the procurement function now forming part of Partnership Services. The types of changes which may be required would include changes to internal processes, legislative or policy changes which may be required to be included as quickly as possible.

#### **4. Background**

- 4.1 The current version of the Procurement Code was agreed in October 2012 following a review into the effectiveness of the code. Procurement has changed significantly over the past few years, not only legislatively but in its importance to the Council by assisting with the delivery of cashable savings and ensuring that in a time when we are publicly scrutinised for our spending that we have open and transparent procedures in place.
- 4.2 On February 26<sup>th</sup> 2015 significant changes to public sector procurement took effect with the issue of the Public Contract Regulations 2015. The legislation has a significant impact on how the Council undertakes its procurement with a focus on Public Sector transparency, opening up opportunities to a wider audience and conducting more business electronically. This has inevitably led to more 'rules' that need to be complied with to which the Council will be under more scrutiny.
- 4.3 In addition to the Public Contract Regulations, other legislative and local policy has been introduced, for example the Transparency Code, the Social Value Act, and the Council's commitment to the Living Wage and 'Buy Local'. The Council is also committed to working with our contractors to eliminate the use of zero-hours contracts, encouraging the use of apprenticeship schemes, and ensuring that the supply chain associated with the contract is paid promptly.
- 4.4 As a result of these changes the Procurement Code has been reviewed and updated. Whilst updated the Code, changes have been incorporated that simplify and improve processes wherever it is permitted to do so.

#### **5. The Purpose of the Procurement Code**

- 5.1 The purpose of the Procurement Code is to establish clear rules for the procurement of all the Council's goods, works and services and assists in ensuring that there is a system of openness, integrity and accountability as required by the Local Government Act 1972, the EU Directives the EU Treaty obligations and the Public Contracts Regulations 2015. The Procurement Code forms part of the Council's Constitution.
- 5.2 Procurement can be complex, particularly when undertaking high value EU tender processes. The Procurement Code sets out legislation and rules that need to be followed, this can seem complex because it covers all potential procurements. As many aspects of the Code will not apply to all procurement projects, it is recommended that officers undertaking a procurement exercise seek advice from the Procurement team to clarify what does apply to their specific requirement.
- 5.3 The Procurement Code is supported by the procurement toolkit which provides practical and more detailed advice about how to undertake a procurement exercise, including access to a suite of template documentation. The toolkit is updated on a regular basis to address queries and issues that arise.

- 5.4 The Procurement Code is also supported by the Procurement Strategy which outlines the future direction and deliverables of strategic procurement covering areas such as supporting the local economy and small businesses, sustainability, innovation, and collaborative procurement.

## **6 Overview of the Procurement Code Changes**

- 6.1 The key principles of the Procurement Code remain the same. However, the most fundamental changes are:
- Updated information regarding the use of and accessing Framework Agreements and Joint Procurements. The Council must be clearly identified in the advert which led to the creation of the Framework Agreement in order for us to access it. In addition only minor modifications can be made to the Framework terms and conditions.
  - Changes to the thresholds making them more streamlined, and incorporating the Councils Scheme of Delegation requirements. The £5,000 - £19,999 threshold has now been removed. For all contracts under the value of £19,999 there is no longer a formal process to follow, however officers must be able to demonstrate value for money.
  - New rules regarding advertising opportunities on Contracts Finder, a national portal, for all contracts above £50,000. In addition all tender documentation must be available at the time the advert is placed. Contract awards must also now be advertised on Contracts Finder.
  - The replacement of Part A and Part B services and the introduction of a new 'light touch' regime for some service areas. Some areas of expenditure which were considered Part B services, such as temporary agency staff, are now covered by the full EU regulations rather than the new 'light touch' regime.
  - Updated information on the use of selection and award criteria. All criteria must be appropriate to the Contract, in addition, any evidence of contractors meeting minimum requirements for example in areas such as audited account, insurance etc, can only be sought at preferred bidder stage.
  - The use of Pre-Qualification Questionnaires (PQQs) is now prohibited on most non EU tenders. The only exception is local tenders for Works where a national standard PQQ can be used. This is one of the biggest changes to the legislation and will mean many more tenders are undertaken as an 'open' tender process.
  - New approval routes for Awarding Contracts to align with the Councils Scheme of Delegation.
  - New information on Contract Variations. The regulations set new rules about varying a contract and when it is permissible.
  - New contract clauses relating to Blacklisting and prompt payment throughout the supply chain. All new contracts require that the contractor pay its supply chain (relevant to the Contract awarded) within 30 days.
  - New information and links to local policies, for example, promoting 'Buy Local', living wage and zero-hour contracts, and encouraging the use of apprenticeship schemes.

## **7 Next Steps**

- 7.1 A series of briefing sessions have already taken place in order to ensure compliance with the new Public Contract Regulations. It is intended that following approval, the Procurement Code will be launched and a programme of training will be delivered to enhance the understanding of the Code. In addition the Procurement Toolkit will be updated and re-launched and our intranet pages will be updated in order to communicate the changes.

## **8. Implications**

The Public Contract Regulations 2015 were brought into force with the aim of opening up public sector contract opportunities to a wider audience and encouraging more businesses to tender for these opportunities. It is too early to predict what the impact of advertising nationally via Contracts Finder will be, however, it should be recognised that the Council may receive a larger volume of tenders than it normally might expect and officers should account for this by ensuring sufficient time for evaluation has been scheduled.

The Procurement Code now incorporates the Councils local policy commitments. It is hoped by introducing these commitments the Council can work towards eliminating the use of zero-hours contracts through our supply chain, encourage more of our suppliers to pay their employees the Living Wage, and to support more apprenticeship schemes. In addition we will ensure prompt payment through our supply chain, and formulate our contracts so that they are more accessible to local and SME businesses which will help to build the economy.

## **9. Background Papers**

None

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## **Crawley Borough Council**

### **Procurement Code**

**July 2015**

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## CRAWLEY BOROUGH COUNCIL

### PROCUREMENT CODE

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## CRAWLEY BOROUGH COUNCIL - PROCUREMENT CODE

### 1. INTRODUCTION

- 1.1. The purpose of the Procurement Code is to establish clear rules for the procurement of all the Council's goods, works and services as required by the Local Government Act 1972. The Procurement Code ensures a system of openness, integrity and accountability and incorporates the legal requirements of the Public Contract Regulations 2015 to which we must comply with.
- 1.2. Procurement decisions are important because the money involved is public money and the Council has a duty to ensure that high quality goods, works and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any accusation of dishonesty or corruption. For these reasons all employees have a duty to report breaches of the Procurement Code to an appropriate senior manager as soon as they become aware of it.
- 1.3. The Procurement Code is supported by the [Procurement Toolkit](#) which provides practical and more detailed advice about how to undertake a procurement exercise, including access to a suite of template documentation. There are useful links contained within the Procurement Code that will take you to the relevant section of the Procurement Toolkit for further reference. It is also supported by the [Procurement Strategy](#) which outlines the future direction and deliverables of strategic procurement. The toolkit will be updated on a regular basis to address queries and issues that arise.
- 1.4. Any Officer unfamiliar with undertaking a procurement exercise should seek advice from their Head of Service and/or the Procurement Team. It is also a requirement of the Procurement Code that any Officer undertaking a procurement exercise with an aggregated value (see 3.2) of £50,000 or above for goods and services and £100,000 or above for works, inform the Procurement Team and their Head of Service prior to the commencement of the procurement.
- 1.5. The Procurement Code applies to all purchases by the Council of goods works and services. It does not apply to contracts of employment or acquisitions and disposals of land or buildings. The Procurement Code applies to all Council employees and elected Members. The Head of Partnership Services shall maintain, update and issue the Procurement Code.
- 1.6. Procurement is a complex area and as the Procurement Code sets out legislation and the rules that need to be followed it can seem daunting because it covers all potential procurements. Many aspects of the Code will not apply to many procurements. If you want advice or further information, concerning this Procurement Code, you can contact any of the following Officers:-

Nigel Sheehan Head of Partnership Services	Ann-Maria Brown Head of Legal and Democratic Services
Jo Newton-Smith Procurement Manager	Kevin Carr Legal Services Manager
Roger Dennis Joint Procurement Adviser	Gillian Edwards Audit Manager

## **2.0 ROLES AND RESPONSIBILITIES**

### **2.1. Any Officer undertaking a procurement process must:**

- Ensure that there is an adequate approved budget to cover the full cost of the goods, services or works to be procured
- Ensure that, where required, member approval for specific projects is obtained prior to committing expenditure, as per the [Council's scheme of delegation](#). This can be found on the intranet and forms part of the Constitution
- Ensure that agents, consultants and any contractual partners acting on their behalf also comply with these requirements
- Comply with the rules set out in the Procurement Code, the Councils [Financial Regulations](#), the [Employee Code of Conduct](#), and with all UK and EU legislation
- Where applicable, comply with the requirements of the Equality Act 2010, the Public Services (Social Value) Act 2012, and the Localism Act 2011
- Seek and take due account of all necessary legal, financial and professional advice.
- Declare any personal interest in a contract
- Keep records and documentation of all procurement processes (see section 11 of the Procurement Code for details of how long records need to be kept)
- Not enter into any leasing agreements or other forms of borrowing, including the set up of store or credit cards other than those arranged or approved by the Head of Finance, Revenues and Benefits
- Keep the relevant Head of Service updated on all the relevant stages of the procurement process
- Ensure that when a Framework Agreement is being used checks have been undertaken to ensure the Council has been clearly identified in the contract advertisement and that the framework is being accessed as per the conditions set out in the Framework Agreement (see 5).
- Comply with the Council's Transparency Code obligations by promptly submitting information about any procurement or commissioned activity over £5,000 immediately after it has taken place using the [e-form](#) on the intranet.
- Issue an order using the Council's financial management system, where appropriate

### **2.2. Heads of Service (additional responsibilities):**

2.2.1. The Head of Service has responsibility for all contracts tendered and let by their Division. The Head of Service is accountable to the Cabinet for the performance of their duties in relation to contracts tendered and the management of contracts, which are:

- To ensure that all relevant staff are familiar with the provisions of the Procurement Code and that they have access to appropriate training
- To ensure compliance with any guidelines issued in respect of the Procurement Code
- To take immediate action in the event of a breach of the Procurement Code within their area
- To ensure that the Portfolio Holder is kept up to date with the progress of relevant procurements
- To ensure that the Council's Contract Register (see 16) is updated with the details of any new or extension to an existing contract or agreement.



### 2.3. **Head of Partnership Services**

- 2.3.1 The Head of Partnership Services will ensure that:
- The Procurement Code and Procurement Toolkit are kept up to date and easily accessible
  - Training is available to Officers and Members

### 3. **DETERMINING THE CONTRACT VALUE**

- 3.1. Prior to commencing a procurement process it is the responsibility of the Lead Officer to estimate the total value of the contract or project. This will indicate which procurement route must be followed in order to comply with the Public Contract Regulations 2015.
- 3.2. The estimated total value means the aggregated value payable in Pounds Sterling exclusive of Value Added Tax. The aggregated value includes not only the purchase price but ALL the associated costs over the entire contract period (including any potential extension). These could include installation, training, maintenance and disposal costs. The total aggregated value should include all phases or potential future phases of a project, which is particularly relevant when procuring consultants.
- 3.3. If the expenditure on an item, service or with a particular supplier is recurring then the Officer must determine the likely spend over a 12 month period and multiply this by the length of the contract. Where the contract is for an uncertain duration, then as per the requirements of the Public Contract Regulations 2015, the total value shall be determined as the value of the requirement over a period of 48 months.
- 3.4. Where the requirement covers a number of suppliers providing the same goods, services or works then the contract value shall be the combined sum of all the individual contracts. It is the responsibility of the Lead Officer to check expenditure in other service areas to see if there are similar requirements.
- 3.5. Where the Council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies requirements.
- 3.6. Where it is intended to package the contract into several different 'lots' e.g. based on geographical area or by particular types of requirements, then the contract value shall be the total value of all the combined lots.
- 3.7. In the case of Concession contracts (i.e. where the service users as opposed to the Council make payments to the contractor for use of the service) then the total value (i.e. turnover) of the contract must be used to determine the contract value. Procurements for Concessions contracts should be undertaken in accordance with paras 9.1.13/14.
- 3.8. Officers cannot shorten the length of a contract to less than 48 months, or split a requirement into separate or smaller packages, to avoid an EU or local tender threshold.

#### **4. DETERMINING THE PROCUREMENT ROUTE**

- 4.1. All tender processes (any contract above £50,000 for goods and services and above £100,000 for works contracts)<sup>1</sup> should be notified to the relevant Head of Service and the Procurement team.
- 4.2 The majority of the Councils procurement falls within the Goods and Services contract thresholds. The table below (4.13) identifies the procurement route required depending on the value of the contract. Works contracts are generally for construction related projects and therefore only used by a few divisions within the Council, the Works thresholds table can be found in section 22.
- 4.3 Where the requirement covers a combination of goods, services and/or works then the element with the greater value will determine the procurement route followed. For example the purchase of a piece of equipment (goods) for £10,000 together with building related works to fix it in situ costing £20,000 would be a Works contract. These rules also apply in circumstances where there may be a mixture of services some of which may be subject to the *Light Touch Regime* (see paras 9.1.10/11).
- 4.4 In all instances, if there is a current corporate contract in place for the goods, works or services required then the corporate contract must be used and no further quotations or tenders are required.
- 4.5 The use of Framework Agreements is permitted for any value of procurement, please see section 5 for further information on what a Framework Agreement is and how to access them.
- 4.6 The acquisition and disposal of land or employee contracts are not covered by the Procurement Code.
- 4.7 The Council does not allow the use of Approved or Preferred Supplier Lists in any of its procurement procedures.
- 4.8 The selection and engagement of architects, engineers and surveyors or other professional consultants shall be subject to this Procurement Code. Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the relevant Head of Service for the periods specified in the contract.
- 4.9 The requirement to seek written quotations or tenders shall not apply where the Council is:
- Seeking arbitration or conciliation services
  - Seeking the advice or services of Counsel
  - Seeking the services of an expert witness

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<sup>1</sup> A goods contract covers the procurement of products e.g. stationery, vehicles, equipment etc. Services contracts are the procurement of skills and expertise provided by an individual or other organisations e.g. grounds maintenance, facilities management, training etc. Works contracts cover the procurement of any building work, building repairs and maintenance, construction, civil engineering etc.

- 4.10 Any procurement exercise triggered as a result of an Expression of Interest submitted under the [Community Right to Challenge](#) shall be undertaken as per the requirements of the Procurement Code. CMT must be notified of any such expression.
- 4.11 With the exception of any employee-led mutual organisations, tenders or quotations will not be invited or considered from individual Council employees, business partnerships in which a Council employee is a partner, companies in which a Council employee is a paid director or any business where a Council employee has an interest which exceeds a nominal value of £25,000 or one hundredth of the total issued share capital.
- 4.12 Certain partnership arrangements with other organisations (usually other public bodies) to provide services on behalf of the Council may fall outside of the scope of the Public Contract Regulations 2015. The Head of Legal and Democratic Services should be consulted if such a partnership is being considered.

4.13 Procurement Thresholds and Contract Award Procedure - Goods and Services Contracts (see 22 for Works contracts thresholds)

Total Contract Value	Procurement Route	Short-listing /evaluation of suppliers	Receipt of Quotes / Tenders	Contract Approval and Award	Method of Contract Completion	Transparency Code obligations
Under £19,999	Evidence of value for money	Officer	Officer	Officer in consultation with the appropriate budget holder	Signature and or purchase order raised	Publish details of all contracts of £5,000 + on the Council's contracts register*
£20,000 - £49,999	Three written quotations	Officer and Line Manager	Quotations returned to Department and reviewed by at least two Officers	Officer in consultation with Head of Service.	Signature	Publish details of all contracts on the Council's contract register*
£50,000 – EU Threshold (see intranet for current EU Thresholds)	Open tender by advertisement on Contracts Finder via the SE Shared Services Portal.	Tenders to be evaluated by a minimum of two officers.	Tenders to be returned to Legal & Democratic Services and opened in the presence of two Council representatives See section 9.7 Or To be electronically opened by the Council's approved e-tendering package	Officer in consultation with Head of Service	Up to £100,000 Signature	Publish details of contract award on SE Shared Services Portal.  Publish details of all contracts on the Council's contract register*
					Over £100,000 Sealing	
Above EU Threshold	Invitation to tender to at least five Tenderers by advertisement Contracts Finder via the SE Shared Services Portal and by advertisement in the Official European Journal.	Tenders to be evaluated by a minimum of two officers.  Where a restricted tender process has been used, approval of shortlist by Officer, and Head of Service	As above	EU to £250k Head of Service approval in consultation with CEO/Deputy CEO	Sealing	Publish details of contract award on SE Shared Services Portal.  Publish details of all contracts on the Council's contract register*
				£250k to £500k Head of Service in consultation with CEO/Deputy CEO and Portfolio Holder. .A Significant Operational Decision Form (SOD) must be completed and submitted to Democratic Services for inclusion in the Members Bulletin		
				Above £500k – approval by Cabinet	Sealing	

\* The Contracts Register is managed through the Procurement Team and Legal and Democratic Services. There is an eform available on the intranet that can be completed in order to provide details of the contract award.

## **5. USE OF FRAMEWORK AGREEMENTS AND JOINT PROCUREMENT**

- 5.1. A Framework Agreement is a contract that has been officially tendered for by another local authority, public sector organisation, Purchasing Consortium, or central Government. Acquiring goods, works or services under a Framework Agreement can be an efficient method of procuring the Councils requirements. The contract is awarded to one or more suppliers, and has provision for other named public sector bodies to use the contract without having to undertake their own tender process so long as these public bodies have been clearly identified in the advert which led to the creation of the Framework Agreement.
- 5.2. Framework Agreements may be used at any of the threshold levels as an alternative to the procurement routes identified in Tables 4.13 and 22 subject to 5.3 below. A framework agreement should only be used where the benefits justify its use.
- 5.3. Caution must be taken as the rules for accessing a Framework Agreement can vary from one agreement to another. Failure to comply with the rules of a Framework Agreement could result in the Council being found in breach of the Regulations. Officers are recommended to seek guidance from the Procurement Team in order that they can;
- Establish if the Council can legally access the Framework Agreement
  - Determine whether the Council must enter into an agreement with the Contracting Authority which created the Framework Agreement prior to using it
  - Check that the advertised total contract value of the Framework Agreement has not been exceeded
  - Establish the rules of the Framework Agreement governing the selection and invitation of organisations listed on the framework. Where no guidance is provided all organisations listed on the Framework Agreement should be invited to 'mini-competition'
  - Establish the evaluation criteria set within the Framework Agreement. The published criteria must be used to determine the successful Tenderer. If the evaluation criteria does not meet the Council's requirements of no less than 60% price or no higher than 90% on price (as outlined in para 9.6.3.2), then agreement to use the Framework must be sought by the relevant Head of Service.
  - Acknowledge that only minor modifications to the Terms and Conditions of the Framework Agreement are permissible. If more substantial contractual modifications are required the Council must tender for the requirements separately.
  - Comply with any minimum requirements outlined in the Framework Agreement regarding the provision of information to the bidders
  - Ensure that where the value of the requirement is above £50,000 for goods and services or £100,000 for works, tenders are returned to Legal and Democratic Services in accordance with Section 9.7
  - Ensure that the provisions for the Contract Award procedure detailed in the Framework Agreement are followed. In addition, the Council's procedure detailed in Section 10 on Contract Award must be followed.
- 5.4. The Council may participate in a procurement process organised by another authority, however it is legally responsible for ensuring compliance with the regulations whether undertaking the procurement exercise itself, or jointly with other authorities.

5.5 Officers shall ensure in consultation with the Procurement team that all procurement activity whether undertaken directly by their department on behalf of other authorities or through participation in a joint procurement process led by another authority it is conducted in accordance with the Regulations. Officers should immediately inform the Procurement Team or Head of Legal and Democratic Services about any concerns of non-compliance should any occur during the procurement process.

## 6. **EXEMPTIONS**

6.1. There is provision within the Procurement Code for the requirement to obtain quotations or tenders, or an element of the process to obtain quotations of tenders to be waived, however the following conditions apply:

- NO exemptions can be made if the EU Procedure applies
- NO exemptions can be made retrospectively.

6.2. An exemption can only be applied when it is to the clear benefit of the Council to exercise an exemption. In considering whether an exemption is appropriate, an assessment needs to be made of the costs, benefits and risks that follow should an exemption be agreed. An exemption will only be agreed where the risks are proportionate to the benefits. The justification for an exemption must be well evidenced.

6.3. Although it is not an exhaustive list, it is likely that the grounds for the exemption will be one of the following:

- A contract is required as a matter of genuine urgency (e.g. flood alleviation/damage)
- There are sound reasons why there would not be a genuine competition and no reasonable alternative is available
- The specification for goods and services is of a specialised nature which only a limited number of suppliers can meet and tenders will be invited from all suitable suppliers
- The contract period cannot be accurately determined as the service area is undergoing review or restructure which may change future requirements. In these instances an exemption may be granted for a limited period of time in order to ensure the correct delivery model can be agreed prior to tender/quote.

6.4. All exemptions and the reasons for them must be recorded using the [Exemption Form](#) on the intranet. The Officer seeking the exemption must provide clear and sufficient evidence why the contract matches one or more of the criteria set out above. If none of the above criteria apply the Officer must clearly state the reasons for applying for the exemption. **Note: this evidence may need to be provided to the Cabinet Office to explain why a procurement process was not undertaken.** If you are unsure whether the exemption is likely to be granted you should seek advice from the Procurement Team.

6.5. All exemptions for a contract value of less than £50,000 must be approved by the relevant Head of Service, and the Head of Finance, Revenues & Benefits. The Head of Service must ensure that the form is signed and a register is kept of all exemptions approved for future audit.

6.6. For exemptions above the contract value of £50,000 approval must be sought from the relevant department CEO or Deputy CEO, the Head of Finance, Revenues and

Benefits, and the Head of Legal and Democratic Services. Once approved by the Head of Legal and Democratic Services, a copy will be provided for the Head of Partnership Services for information. A register of approved exemptions should be kept by the Head of Legal and Democratic Services.

- 6.7. If an exemption is agreed it will still be necessary to complete the contract administration procedures such as contract formation and checking of insurances.

## **7. PRE-PROCUREMENT CONSIDERATIONS AND PROJECT START UP**

### **7.1 Pre-Procurement Stakeholder and Market Engagement**

- 7.1.1 Early market engagement with organisations which may be interested in supplying goods or providing services to the council is encouraged.

- 7.1.2 A structured dialogue prior to the commencement of the procurement with independent experts, trade association bodies or suppliers/organisations actually operating in the marketplace may help to identify the current capabilities, any new developments or innovations in the pipeline, and assist in estimating the cost of the requirements, and the development of the specification.

- 7.1.3 Any advice obtained may be used to assist in the creation of the procurement documentation and inform how the procurement process is conducted but the Lead Officer must ensure the use of this information does not distort competition or discriminate against any suppliers or organisations. If information is provided to organisations taking part in the market engagement process, the Lead Officer must consider how it is subsequently made available to any organisations taking part in the formal procurement process

### **7.2 Public Services (Social Value) Act 2012**

- 7.2.1 The Public Services (Social Value) Act 2012 requires the Council to have regard to economic, social and environmental well-being in connection with any Service contract over the EU threshold where the Council commissions an individual, voluntary sector organisation, or company to provide those services on behalf of the Council. It may also be applied voluntarily on sub EU threshold procurements. Further information on this Act can be found within the Procurement Toolkit. Prior to undertaking a procurement process the Lead Officer should consider:

- How the procured service might improve the economic, social and environmental well-being of the *relevant area* (i.e. within the boundaries of the public bodies involved in the procurement exercise);
- Whether to undertake any consultation as to the economic, social and environmental matters which may need to be considered.
- How the economic, social and environmental elements should be incorporated into the relevant procurement documentation such as the specification and contract conditions. Only economic, social and environmental matters which are **relevant** to what is to be procured may be incorporated. Those that are included must be **proportionate** to the requirement being procured.

### **7.3 Procurement Project Start-Up**

- 7.3.1 The lead Officer must determine whether the procurement falls within the definition of a Key Decision as per the [Councils Scheme of Delegation](#). If it does, then the lead Officer must follow the relevant approval procedures before the procurement process commences. If in doubt please contact Legal & Democratic Services, or refer to the Democratic Services Toolkit on the intranet.
- 7.3.2 Determining the appropriate Procurement route can be extremely complex, therefore prior to the commencement of any procurement process over £50,000 it is recommended that the Lead Officer notifies the Procurement Team. In addition, the Lead Officer may wish to complete a [Procurement Start-up Checklist](#) which is designed to help Officers identify the most appropriate procurement route and the necessary resources that will be required to undertake the procurement process. The Lead Officer can use this checklist for lower value procurements if they feel it is beneficial.
- 7.3.3 The [Procurement Start-up Checklist](#) also helps ensure that all necessary policy and legislative requirements have been considered, such as [TUPE transfer of staff, safeguarding, sustainability, equalities, living wage and zero-hours contracts, social value, technology, company finances, insurance, apprenticeships and skills](#), and contract considerations. It also enables an initial assessment of risks to be undertaken. The Procurement Toolkit gives more detailed information about each of these considerations.
- 7.3.4 If procurement resources are required and have been requested, where necessary resource allocation will be discussed with the Joint Procurement Board and the Lead Officer will be notified of the resources available.

## **8. QUOTATION PROCESS**

- 8.1. Where the estimated value or amount of a proposed contract does not exceed £19,999.99, the officer concerned, in consultation with the Budget Holder, should determine value for money prior to making the purchase. Evidence of value for money could be for example the receipt of two quotations or evidence obtained through on-line research. A purchase order should be raised for all purchases via the Councils financial management system, where required.
- 8.2. Any contract valued between £20,000.00 and £49,999.99 for goods and services or between £20,000.00 and £99,999.99 for works should follow the formal quotation process. If there is any doubt whether the contract will be valued below the highest threshold prior to the start of the procurement process then a local tender process should be followed regardless.
- 8.3. The quotation process must be transparent and fair, all suppliers invited to submit a quotation must be issued with the same information at the same time and subject to the same conditions. A record of all correspondence between the council and supplier shall be maintained. Should any further information be issued this must be given to all suppliers on the same basis, unless it is commercial sensitive to a specific supplier. A realistic timescale for response must also be given.



- 8.4. A request for quotation should, where appropriate, contain the following information (check the [Procurement Toolkit](#) for up to date list of requirements and access to all the standard documents):
- Background information and Instructions to suppliers – concise relevant information about the Council, and details of the quotation procedure. This must include the evaluation criteria along with any minimum levels of financial, legal and technical capability required of the bidder (see para 8.5 below if applicable to the contract)
  - The Specification/Requirements Document – providing full details of the goods, services or works that are required
  - Council Terms and Conditions (see also 10.6)
  - Price Schedule – a form/spreadsheet for the bidder to complete enabling the bidder to easily submit their quotation pricing information
  - Method Statements – a series of questions in order to help evaluate the qualitative elements. The bidders may be asked to outline how the goods or services will be delivered and/or their capability/skills/experience of doing this (if appropriate to the contract)
  - A statement that the Council is not bound to accept any quotation and that all submissions are at the supplier's own cost
- 8.5. Any requests for company information or requirements to meet minimum criteria or standards for example insurance documents, health and safety policy, evidence of financial strength and turnover etc must be applicable to the contract and be proportionate to the value and level of risk of the requirement. Information that is not going to be evaluated should not be requested. Any minimum turnover threshold must be limited to not more than two times the total value of the contract. Documentary evidence of meeting these requirements should only be sought from the preferred bidder prior to making the formal contract award decision.
- 8.6. As a minimum three suppliers must be asked to provide a quotation, and it is recommended that at least one should be a local supplier<sup>2</sup>, where practicable. Suppliers can be selected by any means deemed suitable by the Lead Officer, including the use of the SE Shared Services Portal where suppliers that have expressed an interest in working with the Council register their interest. Where there are less than three suppliers that can provide the goods or services then this must be evidenced by the lead Officer following the procurement exemption process as detailed in section 6.
- 8.7. Quotations must be submitted in writing either electronically via email, post or using the Council's approved e-tendering system which can be accessed via the Procurement Team.
- 8.8. After evaluating the quotations, in consultation with the Head of Service, the responsible Officer must notify all the suppliers of the award decision in writing as soon as practicable. Feedback to unsuccessful suppliers should be provided should they want it.
- 8.9. All documentation must be kept for a minimum of 12 months. The successful quote should be kept for the duration of the contract period. (See section 11 for more information on record keeping).

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<sup>2</sup> a local supplier is defined as a business that is either based in Crawley or has operational activity within Crawley (RH10 or RH11) that generates local employment and benefits. Whilst operational activity within Crawley is preferable it is acknowledged that this may have limitations, therefore businesses within the Gatwick Diamond or wider West Sussex areas are encouraged. See Section 23 for further definitions.

## **9 LOCAL AND EU TENDER PROCESSES**

### **9.1 Scope**

9.1.1 There are three main types of tender process:

- a) Local Tender - defined as any procurement process below the relevant EU Threshold (see intranet page for current Thresholds), and
- b) EU Tender – defined as any procurement above the relevant EU Threshold, this category has a number of different procurement routes including;
  - i. Open (see para 9.1.7)
  - ii. Restricted (see para 9.1.9)
  - iii. Other specialist categories e.g. competitive dialogue (9.1.9)
  - iv. Light-touch (see para 9.1.10)
- c) Concessions Contract – normally an arrangement where the Service Users as opposed to the Council make payments to the contractor for use of the service. Concession contracts normally follow a Local Tender process irrespective of the value. Further details may be found in Section 9.1.13/14

9.1.2 The duration of a Tender process will be dependent upon the complexity of what is being procured and the type of procurement process being undertaken. The key milestones are detailed in the Procurement Toolkit, however broadly speaking a local tender process will on average take 3-6 months and an EU tender 6-12 months depending on the complexity.

9.1.3 Any contract valued at £50,000 or above for goods and services or £100,000 for works must follow a formal tendering process. If there is any doubt whether the contract will be valued below these thresholds then a tender process should be followed regardless.

9.1.4 A local tender process can be undertaken for any contract below the EU Threshold (current EU threshold are contained within the Toolkit). Local tenders for goods and services MUST be conducted as a single stage 'open' tender exercise without the use of any Pre-Qualification Questionnaire (PQQ). An open tender exercise is where the Council advertises the opportunity and all interested parties complete and return the full tender documentation.

9.1.5 Local tenders for Works contracts above the value of £172,514 can use the 'restricted' tender route using the national standard PQQ [PAS91 2013] which can be found in the procurement toolkit. A PQQ is not permitted for Works contract below this value.

9.1.6 Any contract above the EU Threshold must follow full EU Procurement Directives and Legislation and the Procurement Team must be notified. The responsible Officer, in conjunction with the Procurement Team, must determine the type of procurement exercise to be undertaken. The two most common routes are 'open' and 'restricted'.

9.1.7 An 'open' tender process is where the Council advertises the opportunity and all interested parties complete and return the full tender documentation.

9.1.8 A restricted process is where the Council advertises the opportunity and all interested parties complete a nationally developed Pre-Qualification Questionnaire (PQQ). The PQQ is then evaluated and a shortlist of suppliers who will be invited to submit a full tender is developed. A 'restricted' tender exercise can only be used for EU Tender processes or for a Tender for a local Works contract above the value of £172,514

### **Specialist EU Tender Processes**

9.1.9 Other procurement methods are available for contracts valued above the EU thresholds, such as the Competitive Dialogue and the Negotiated Procedure. These are extremely complex and should not be undertaken without the prior notification of the Procurement Team and/or the Head of Legal and Democratic Services.

### **Light-touch EU Tenders**

9.1.10 The EU has identified a number of Services areas that are not subject to the full EU Tender process, but instead are subject to a 'light touch' (i.e. simplified) procurement regime, if the value of these services is above £625,050. If the value of the services is below this amount then a local tender process can be followed, some of the services include:

- Social and health services including wellbeing contracts
- Cultural, recreational and leisure/sports services
- Hotel and temporary B&B accommodation
- Catering services
- Legal services
- Bailiff services
- Security services including manned guarding and patrol services
- Post and courier services

9.1.11 For all tenders above the EU threshold covered by this 'light touch' regime, the Lead Officer must ensure:

- The requirements are advertised in the OJEU
- The procurement is undertaken in accordance with the provisions in the Local Tender process
- A Contract Award Notice must be published on conclusion of the procurement

### **Concessions Contracts**

9.1.13 *Note: The rules relating to the tendering of Concession contracts will change with the publication of new Regulations during 2016. The rules below shall be followed until further notice.*

9.1.14 A Concession contract (i.e. where the Service Users as opposed to the Council make payments to the contractor for use of the service) should be undertaken in accordance with the provisions for a Local Tender process detailed in Section 9.5.

## 9.2 Advertising of Tender Opportunities

- 9.2.1 Prior to advertising any local or EU tender opportunity, a full completed set of tender documents, or in the case of a restricted procedure a full set of PQQ documentation, **must** be published simultaneously at the time of placing the advert. All tender documentation must be available to all suppliers free of charge.
- 9.2.2 All tender exercises (above £50,000 for goods and services and £100,000 for works) must be advertised for a minimum of 28 days on the SE Shared Services Portal which links directly with Contracts Finder via the Procurement Team. Other media can also be used to ensure market penetration. The advertisement must contain details of the tender exercise including timescales, any minimum selection criteria the suppliers will be expected to meet, details of the award criteria and evaluation process and a link to the website where the tender documents are published.
- 9.2.3 In addition to the above, all EU tenders must be advertised by the Procurement Team in the Official Journal of the European Union.
- 9.2.4 The OJEU advertisement must state whether contract variants will be accepted. If nothing is stated no alternative proposals to the specification may be considered.

## 9.3 Pre-Qualification Questionnaire and Short-listing – EU Tenders and Local Tenders for Works Only

- 9.3.1. The use of a Pre-Qualification Questionnaire is only permitted for EU Tenders and Local Works Tenders above the value of £172,514. The use of a PQQ is not permitted for any other tender as required by EU legislation.
- 9.3.2 If you are undertaking an EU tender process for goods and services using the restricted route, the national standard Pre-Qualification Questionnaire (PQQ) must be used to short-list suppliers that you would like to invite to submit a formal tender. The PQQ template can be found in the Procurement Toolkit. The PQQ template is a mandatory format set by UK Government with very limited scope to add additional questions.
- 9.3.3 For any Works contracts whether they are EU or local then the national standard PQQ [PAS91 2013] must be used if you are following a restricted procedure. There is limited scope to amend this PQQ template. The PQQ can be found in the procurement toolkit.
- 9.3.4 The selection criteria, weightings and any minimum pass-mark must be communicated to suppliers either as part of the advertisement or in the PQQ documentation which must be available at the time the advert is placed. Selection criteria deal with the ability of the supplier to satisfy certain minimum levels of economic and financial standing, legal capacity and/or technical or professional ability including past experience, see para 9.6.2.3 for further details.

9.3.5 The PQQ pack, must be published at the same time as the advertisement is placed and shall contain the following information (see the procurement toolkit for standard documentation and further guidance):

- Information for Tenderers – concise information about the Council, what the requirements are, the document should include;
  - a. The timetable for the whole procurement process
  - b. Full details of the evaluation criteria and weightings that will be used to award the contract, along with the details of the evaluation procedure, scoring and minimum criteria required to progress to the invitation to tender stage
  - c. If it has been decided to invite a minimum and/or a maximum number of companies to tender these numbers must be stated. NB: for all tenders the minimum number of companies invited to tender is five (5)
  - d. Details of the process used to determine which companies are invited to tender if there are more suitable companies than the maximum number stated in the documents (e.g. “maximum number of companies invited to tender will be 10. In the event there are more than 10 companies the top 10 as determined by the total evaluation score will be invited to tender”)
  - e. Exemption for Freedom of Information Act, confirmation of non-collusive tendering and non-collusive tendering
- Specification – detailing the Council’s requirements
- Contract Terms and Conditions (see 10.6)
- The Pre-Qualification Questionnaire (the national standard PQQ templates can be found in the toolkit)

9.3.6 Suppliers invited to respond must be given the minimum time period of 30 days in which to prepare and submit a PQQ. The minimum time period of 30 days commences the day after the advertisement has been placed. The submission of PQQs should be returned electronically to the Lead Officer/department and a log should be kept of all PQQs returned

#### 9.4. **PQQ Evaluation Process**

9.4.1. The Lead Officer must ensure that the PQQ selection process is transparent and that all applicants are treated fairly and equally at all times. The Lead Officer must ensure that:

- Confidentiality of PQQs, and the identity of Applicants are preserved at all times
- Information about one Applicant’s response is not to be given to another Applicant
- PQQs must be evaluated in accordance with the Selection Criteria detailed in the advertisement/documentation. Additional criteria or sub criteria must not be used
- a thorough PQQ evaluation is undertaken by a minimum of two Officers
- advice is sought from the relevant service Division on any areas of Selection Criteria that require specialist knowledge in order to evaluate effectively e.g. Financial Information, Equalities and Diversity, Health and Safety, Sustainability etc
- the PQQ evaluation scoring spreadsheet and assessment is independently checked for accuracy before the Invitation to Tender (ITT) shortlist is agreed

9.4.2. Upon conclusion of the PQQ evaluation process the Lead Officer must write to all unsuccessful applicants advising them of the reasons why they have been

unsuccessful. If the applicant requests further information or a formal debrief this should be provided.

- 9.4.3. Once the unsuccessful applicants have been notified, it is advised that the Lead Officer allow 5 days before the Invitation to Tender documentation is despatched to successful applicants.

## 9.5. Invitation to Tender – Local and EU Tenders

- 9.5.1. Tenderers must be given an adequate period in which to prepare and submit a proper tender. This should not be less than a period of 28 days for a local tender, with day one starting the day after the advertisement is placed. Where an EU tender process applies this must not be less than the minimum time period allowed for the particular procurement route being followed. See the Procurement Toolkit for further guidance.

- 9.5.2. All invitation to tender documentation and requirements must be proportionate to the value and level of risk associated with the requirements but shall include the following (see the procurement toolkit for access to all standard documentation and further guidance):

- Information for Tenderers (see template in toolkit) – concise information about the Council, background to the project, details of the procurement process and the timetable for completion, full details of the evaluation criteria and weighting, including any sub-criteria, minimum financial/technical requirements, details of presentations/site visits/interviews that will be used to award the contract (see also 9.6). It should also include a Form of Tender that includes confirmation of exemption from Freedom of Information Act and confirmation of non-collusive tendering and confirmation of no canvassing.
- Specification – detailing the Council's requirements in sufficient detail to enable the submission of competitive offers
- Council Contract Terms and Conditions – all contracts to be in writing in a form approved by Legal & Democratic Services (see 10.6)
- Price Schedule – a clearly structured form/spreadsheet enabling the bidder to easily submit the full details of the tender prices excluding VAT
- Method Statements – a series of questions in order to evaluate the qualitative elements of the tender. The bidders should be asked questions which outline how the goods, works or service will be delivered and demonstrate their capability/skills/experience of doing this.

- 9.5.3 The tender documentation must be finalised and available at the time the advert is placed, unless a 'restricted' procurement process is being undertaken.

## 9.6. Evaluation Criteria

- 9.6.1. The evaluation criteria are those used to determine which suppliers are selected for Invitation to Tender in the case of a restricted process or to determine the award of the contract in an open tender process. These criteria fall into two categories Selection Criteria and Award Criteria:

### 9.6.2 Selection Criteria

- 9.6.2.1 Selection criteria are those which cover elements such as suppliers' capability, capacity and past experience, for example to satisfy minimum levels of economic and financial standing, and / or technical or professional ability.

9.6.2.2 In an 'Open' procurement process any minimum requirements that suppliers need to meet should be stated in the tender documentation, and suppliers asked only to self-certify that they meet these requirements by completing a checklist. Evidence of compliance to these requirements should not be requested until after the Award Criteria have been applied and a Preferred Bidder has been identified.

9.6.2.3 The following list shows a range of Selection criteria that may be used and information which the supplier(s) may be asked to provide;

- Evidence that they fulfil the mandatory requirements and discretionary requirements (where applicable) relating to disclosure of criminal and misconduct offences required by Regulation 57 of the UK Public Contracts Regulations, 2015;
- Evidence that they shall hold valid public liability insurance or other required insurances at the values required by the council (or that they are prepared to obtain such levels of insurance cover). The types and levels of insurance cover required will be determined by the nature of the requirement. Guidance on the relevant levels of public liability should be sought from the Finance Team
- Evidence of a sound financial standing – this will normally be through audited trading accounts or other official financial/trading records.. The requirements should be relative to the value and risk of the requirement, and if a minimum turnover threshold is required this shall not exceed twice the estimated contract value. The Finance Team should be consulted for advice.
- Evidence that they possess the necessary experience, skills and ability to perform the type of contract for which they are bidding;
- Satisfactory customer references from existing Public or Private Sector organisation clients;
- A copy of their company Health and Safety Policy and confirmation that the supplier conforms with statutory obligations;
- A valid CIS tax exemption certificate (for construction related procurements);
- Evidence of their Equalities Policy, and Environmental Policy and monitoring arrangements and confirmation that the supplier confirms with statutory obligations (optional depending upon the type of procurement);
- Any other supporting relevant information and documentation as may be required.

9.6.2.4 In the case of a 'Restricted' procurement routes (EU and local Works tenders only) a national standard Pre-Qualification Questionnaire (PQQ) may be used and appropriate evidence requested. See section 9.3.

### 9.6.3. *Award Criteria*

9.6.3.1. Award criteria are used to assess the ability of suppliers to meet the Council's specification requirements and the cost of providing the service. This is often referred to as the Most Economically Advantageous Tender (MEAT) evaluation. The Tenderer should be requested to answer method statements (questions) to evidence that they meet the qualitative elements of the Award criteria, in addition they should be requested to submit a Price Schedule in order to evaluate the price elements of the Award criteria. The criteria must be linked to the requirement, information should not be requested that will not be evaluated.

9.6.3.2. Award criteria are split into Price and Quality criteria and given a percentage score. The criteria must be no less than 60% on price unless agreed in writing by the relevant Head of Service. In addition if you wish to award more than 90% on price this must be formally agreed in writing by the relevant CEO/Deputy CEO.

9.6.3.3. Award evaluation criteria may include the following:

- Quality assessment of the requirement, including any technical or functional characteristics of the item or requirement;
- Equalities/accessibility considerations;
- Social, economic and environmental considerations linked to the specific requirement
- Innovation – solutions recommended over and above those detailed in the Specification
- Qualifications and experience of staff assigned to undertake the contract on the Council's behalf (only where this can have a significant impact on the quality of contract performance, for example consultants)
- Timescales, installation, customer service, technical assistance, maintenance considerations
- Allocation of risk
- Contract management considerations including performance monitoring regimes
- Presentations and/or site visits

9.6.3.4. Evaluation criteria used to determine the award of the contract MUST be clearly detailed in the tender advert / or in the tender documentation which must be available at the time of placing the advert. This information must include details of the relevant weighting of each question or section and detail any sub-criteria used. It must also state the method that will be used to assess suppliers' responses. Furthermore, if there are any minimum pass-mark requirements for specific sections these must also be detailed in the documentation. The procurement toolkit gives examples of evaluation methodology that are recommended be used.

9.6.3.5 The evaluation of the price element must be undertaken on the basis of the most economically advantageous tender based on the whole life cost cycle criteria. These may include:

- Costs relating to acquisition (equipment purchase price, installation, training, consultancy etc)
- Cost of use (e.g. consumption of energy)
- Maintenance costs
- End of life costs such as collection and recycling

9.6.3.6 All relevant costs should be considered and a Price Schedule developed for inclusion in the tender pack so that all suppliers can accurately submit their price on an equal basis.

## 9.7. **Tender Receipt and Opening**

### 9.7.1. *Hard Copy Postal Receipt*

9.7.1.1. All Tenders over a total value of £50,000 for goods and services, and £100,000 for works must be returned to the Head of Legal and Democratic Services in a sealed envelope indicating the subject matter and the date for return. The Lead Officer must notify Legal and Democratic Services of the return of tender date well in



advance, along with details of the goods/services or works, the estimated contract value (if known), and details of who should be invited to the opening-

9.7.1.2 The Head of Legal and Democratic Services, or representative, shall be responsible for the safekeeping of all Tenders until opening. On receipt, each Tender must be:

- date-stamped
- initialled by the receiving Officer
- kept securely until formal opening takes place.

9.7.1.3. The Head of Legal and Democratic Services, or representative, must ensure that all Tenders are opened at the same time when the period for their submission has ended. Tenders must be opened in the presence of two Council representatives who may include Officers and/or Members (other than the Officer managing the process).

9.7.1.4. At the opening, all tenders received within the proper timescale must be logged in the Tender Record Book, kept by Legal & Democratic Services, recording the following;

- the date and time of receipt of the tender
- the name of the tenderer
- the tender price
- the date and time the tender was opened
- the signature and names of those present at the opening
- details of whom the tenders were handed after opening

9.7.1.5. No tender will be considered unless it is received by the date and time stipulated in the Invitation to Tender unless the Head of Legal and Democratic Services is satisfied that there is evidence of it having been despatched in sufficient time to have arrived before the closing date and time.

#### 9.7.2. *Electronic Receipt (e-tendering)*

9.7.2.1. Where the procurement route has been agreed as an e-tender exercise using the Council's approved e-tendering solution, all information must be submitted via the e-tendering solution by the date and time stipulated in the Invitation to Tender.

9.7.2.2. All tenders will be stored electronically by the e-tendering system in a secure inbox. Access to the system will be password protected at individual user level. Only once the deadline for receipt has passed will the e-tendering system allow the user to login and electronically open the tenders.

9.7.2.3. Use of any other electronic tendering or bid submission portal/system (e.g. GCloud) to receive tenders or quotes via Framework Agreements shall be subject to the prior approval of the Procurement Team.

#### 9.7.3 *e-auctions*

9.7.3.1 If the Lead Officer wishes to use an e-auction to fulfil the requirement, use of such system shall be subject to the prior approval of the Procurement team. The procurement documents must clearly state that it is intended to use an e-auction to conclude the procurement.

9.7.3.2 By using e-auctions it is customary in the case of late bids being received that the time (but not the date) for the receipt of tenders is extended to give rival bidders an opportunity to respond. Provided that such arrangements are set out in the tender details this procedure shall not be a breach of the Procurement Code.

## 9.8. **General Conduct and Tender Evaluation Process**

9.8.1 The Head of Service shall ensure that every PQQ and Tender process undertaken is transparent and that all participants are treated fairly and equally at all times throughout the process. In particular:

- ensure that competition is not distorted in circumstances when some participants in a procurement exercise may have previously assisted the Council in preparation of the procurement documentation (e.g. via a market engagement exercise). As a minimum any additional background information which the council provided to participants during a market engagement exercise should be made available to all participants of the procurement exercise;
- all participants have access to the full procurement (PQQ or tender) documentation electronically free of charge from the SE Shared Services Portal via the Procurement Team as soon as the advert is published. If a PQQ is to be used it must be the national standard template document located on the Procurement intranet page and it must not be amended;
- a record is maintained of all the correspondence between the council and the participants including details of any additional information provided to participants and any clarification questions from participants which should be submitted in writing by email.
- a reply is issued to all participants answering those clarification questions of a generic nature. Clarification questions specific to a particular participant or containing information of a commercially sensitive nature should only be communicated to that particular participant.
- Should the procurement process need to be extended this must be communicated to all participants allowing sufficient time before the closing date to ensure that no submissions may have already been received.

9.8.2. When undertaking the evaluation the Lead Officer must ensure that:

- Confidentiality of Tenders, and the identity of Tenderers, is preserved at all times
- Information about one Tenderers response is not to be given to another Tenderer
- Tenders are evaluated and awarded in accordance with the Evaluation Criteria outlined in the tender documentation
- A thorough tender evaluation is undertaken by a minimum of two Officers
- Advice is sought from the relevant service on any areas of Selection and Award criteria that require specialist knowledge in order to evaluate effectively e.g. Financial Information, Equalities and Diversity, Health and Safety, Sustainability etc. This should be scheduled with the relevant Officer well in advance
- There is a formal record of how the evaluation process was conducted and the contract award recommendation has been reached. In particular details must be kept of the discussions and outcomes of any moderation meetings where

officers evaluating the tender submissions have discussed and amended or averaged tenderers scores.

- The tender evaluation process and scoring spreadsheet is independently checked before a Contract Award recommendation is made

9.8.3. The arithmetic content in Tenders must be checked. If arithmetical errors are found you should notify Legal & Democratic Services or the Procurement team, and subject to advice received, the Tenderer should be notified and requested to confirm or withdraw their Tender, in writing.

9.8.4. Where appropriate, the Lead Officer will check that submitted tender prices are compared with any pre-tender estimates/budgets and that any discrepancies are examined and resolved, in particular:

- to be alert to the risk of collusion between tenderers and aware of indications of potentially anti-competitive behaviour and report any suspicious bidding activities to the Procurement team;
- to be alert to the possibility of receiving an Abnormally Low Bid from one or more tenderers. If an Abnormally Low Bid is suspected the procedure outlined in section 9.10 below shall be followed.

## 9.9. Clarifications and Post-Tender Negotiation

9.9.1. Providing clarification on an Invitation to Tender in writing or by way of a meeting is permitted. When clarifying information on an Invitation to Tender the Lead Officer must ensure that all potential Tenderers, not just the one requesting the information, also receive notification of the clarification (see also 9.8.1).

9.9.2. Post-Tender Negotiation means negotiations with any Tenderer after submission of a Tender and before the award of the contract with a view to obtaining adjustments in both price and content. Public Procurement rules only allow limited negotiation on certain types of procurement route. It is not allowable on most EU Tenders procedures.

9.9.3. Post-Tender Negotiation must only be conducted in accordance with any guidance issued by the Head of Legal and Democratic Services. The Head of Legal and Democratic Services must be formally consulted:

- wherever it is proposed to enter into Post-Tender Negotiation, and
- about whether negotiation is to be with all Tenderers.

9.9.4. Where Post-Tender negotiations result in a fundamental change to the specification or contract terms the contract must not be awarded but re-tendered.

9.9.5. If Post-Tender Negotiations are necessary, then such negotiations shall only be undertaken with the Tenderer who has previously been identified as submitting the most economically advantageous Tender. Post-Tender Negotiations must be conducted by a team of at least two Officers. Officers appointed by the CEO/Deputy CEO to carry out Post-Tender Negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

## 9.10 Abnormally Low Bids

9.10.1 A bid may be regarded as being Abnormally Low if there is a significant difference in price between the lowest priced bid and other bids received. In the event that

Officers believe that one or more of the bids received from Tenderers may be an Abnormally Low Bid the Officer should consult with the Procurement Team and Legal Services to review the bid(s) submitted and for support throughout the clarification process.

9.10.2 If it is still believed that the bid(s) may be an Abnormally Low Bid then the Lead Officer should request in writing from the Tenderer an explanation of the bid, or the parts thereof, which contribute to the bid being Abnormally Low. When seeking an explanation the information requested may include:

- a) detailed breakdown of the price or costs associated with the method of construction proposed, the manufacturing process or the services provided
- b) more information about the technical solutions proposed by the Tenderer and whether there are particular factors (e.g. innovative service model) which may give the Tenderer a competitive advantage;
- c) whether the works, goods or services proposed are exclusive to the Tenderer
- d) that the bid is compliant with provisions relating to environmental, social and labour laws, sub-contracting, etc established by EU or national laws or collective agreements
- e) whether the Tenderer may have obtained State Aid

9.10.3 Tenderers should not be allowed to modify Abnormally Low Bids.

9.10.4 In determining whether the bid(s) is an Abnormally Low Bid the Officer in consultation with the Head of Legal and Democratic Services should take into account the evidence provided by the Tenderer in response to the written request and verify the bid, or parts of the bid, being considered abnormally low with the Tenderer.

9.10.5 If after reviewing the evidence provided by the Tenderer it still does not satisfactorily explain the low level of price submitted by the tenderer then the Lead Officer in consultation with the Head of Legal and Democratic Services may reject the bid(s) as an Abnormally Low Bid where the evidence supplied does not satisfactorily account for the low level of the bid, and in such case shall immediately notify the Tenderer that the bid is being rejected. Abnormally Low Bids must be rejected before Contract Award.

9.10.6 Where a tender is rejected on the basis of being an Abnormally Low Bid because the tenderer has received State Aid then the European Commission must be informed.

## **10. CONTRACT AWARD PROCEDURE**

### **10.1 Acceptance of Tenders – Contract Award Recommendation**

10.1.2 In the case of a tender following the Restricted procedure where the Selection criteria have already been assessed using a PQQ then the Head of Service should produce a Contract Award Recommendation report and seek approval in accordance with Section 10.2 below.

10.1.3 In the case of a tender following the Open procedure once the tender evaluation process has been concluded and the Preferred Bidder(s) identified, the Lead Officer should request the documentary evidence in respect of the Selection Criteria from the tenderer(s) and check to confirm they meet the Council's minimum requirements.

- if the documentary evidence fails to establish that the tenderer can meet the council's minimum requirements further clarification should be sought from the tenderer. If this still fails to establish that the tenderer can meet the council's minimum requirement then the tenderer should be notified in writing and the next best placed tenderer should be asked to provide the documentary evidence;
- if the documentary evidence confirms the tenderer meets the council's minimum requirements a formal Contract Award Recommendation report should be produced and approval sought as detailed in Contract Award Procedure in Section 10.2 below;

## 10.2. Approval of Contract Award

10.2.1. Following completion of a comprehensive evaluation process of all tenders submitted as detailed in section 9.8 of the Procurement Code, the contract approval process is delegated to;

10.2.2. The relevant Head of Service for tenders up to the EU threshold for goods and services contracts and up to £250,000 for works contracts.

10.2.3. The relevant Head of Service in consultation with CEO/Deputy CEO for goods and services contracts from EU Threshold to £250,000.

10.2.4 The Head of Service in consultation with CEO/Deputy CEO and Portfolio Holder for all Tenders between £250,000 and £500,000. The Head of Service must complete a [Significant Operational Decision form](#) that must be submitted to Democratic Services for publication in the Members information bulletin.

10.2.5. For all tenders above £500,000 approval by Cabinet or, in the case of urgency, by the relevant Head of Service in conjunction with the Head of Finance, Revenues and Benefits after consultation with the relevant Portfolio Holder, or in their absence, the Leader.

10.2.6 In all instances the decision for contract award must be made on the basis that:

- This Procurement Code and toolkit has been fully complied with
- The most economically advantageous Tender is accepted based on the evaluation criteria advertised and contained in the tender documentation
- The evaluation process has been carried out satisfactorily.
- The Tender and all other costs associated with the procurement to which the Tender relates are within the approved budget
- Any necessary, written, approval has been obtained including member approval relating to matters of policy.

## 10.3. Call in Procedure

10.3.1. Acceptance of tenders over £500,000 is subject to Call-In under the Council's Scrutiny Procedure Rule 14(a) to (i). See the Procurement Toolkit and/or refer to the Head of Legal and Democratic Services for further advice.

#### 10.4. Notification of Contract Award to Tenderers – Above EU Thresholds

10.4.1. Following approval of a contract award recommendation, in respect of any tender above the EU threshold or following the use of a Framework Agreement for a value above the EU threshold, the Lead Officer in consultation with the Head of Service must, notify all Tenderers of the outcome and commence a mandatory 10 day standstill period. The Lead Officer must;

- Email the successful Tenderer(s), informing them of the decision and the intention to award the Contract following completion of the standstill period
- Simultaneously email all unsuccessful Tenderers, providing the following information:
  - a. The criteria for the award of the contract
  - b. The reasons for the decision, including the characteristics and relative advantages of the successful tender
  - c. The evaluation score of the Tenderer receiving the notice and the score(s), of the successful Tenderer(s)
  - d. The reasons (if any) why the Tenderer did not meet the technical specifications and / or the areas where the Tenderers submission was weaker than that of the successful Tenderer(s)
  - e. The name of the successful Tenderer(s)
  - f. A date the standstill period is expected to end
  - g. Details of how the ending of the standstill period might be affected (e.g. Tenderer requests further information regarding the Contract Award) and if so what contingencies will be made (e.g. the standstill period will be extended to allow further information to be provided)

10.4.2. The standstill period must run for a minimum of 10 days (or 15 days if electronic notification has NOT been used) commencing the day immediately after the notification is sent to the Tenderer and concludes at midnight on the 10<sup>th</sup> day. If the expiry date of the standstill period falls on a weekend or public holiday then the expiry date shall be midnight on the next working day.

10.4.3. Should a Tenderer request further information or a debrief during the standstill period the Lead Officer should immediately consult with the Procurement team and Head of Legal and Democratic Services for advice. The Council may extend the standstill for a further period until the Tenderer has received and considered the information.

10.4.4. If the Council receives notification from a Tenderer that it intends to challenge a Contract Award Decision then the Head of Legal and Democratic Services must be notified immediately and the Council must automatically refrain from entering into the contract. Failure to comply could result in the Courts making the contract ineffective under the EU rules.

10.4.5. Upon satisfactory conclusion of the standstill period the Lead Officer may advise the successful Tenderer(s) that the standstill period has passed and instruct the Head of Legal and Democratic Services to draw up a formal contract with the successful Tenderer(s).

10.4.6 Once the standstill period has concluded the Lead Officer must notify the Procurement team so that a Contract Award Notice can be placed in the Official Journal of the European Journal (OJEU) within 30 days of the Contract Award. A

Contract Award Notice is not required for any contract concluded via the use of a 'mini-competition' under a Framework Agreement.

10.4.7 The Lead Officer must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code (see section 16). The Transparency Code requirements also apply to contracts awarded under a Framework Agreement.

#### **10.5. Notification of Contract Award to Tenderers – Local Tenders**

10.5.1. Tenders below the EU Procurement Directives financial thresholds are not covered by the full requirements laid out under in Section 10.4. However, it is considered best practice to follow the same general principles of notifying unsuccessful Tenderers, and if requested by the Tenderer, providing feedback on the outcome of the procurement.

10.5.2. Where requested by an unsuccessful Tenderer the Officer should debrief, and explain the reasons why they were unsuccessful and the characteristics and relative advantage of the successful Tenderer, as appropriate. This should normally include:

- how the Award Criteria were applied
- where appropriate the prices or range of prices submitted, in either case not correlated to Tenderers' names, and
- the name(s) of the successful Tenderers

10.5.3 No other information should be given without taking the formal advice of the Head of Legal and Democratic Services.

10.5.4 Once the informal standstill period has concluded the Lead Officer must notify the Procurement team so that a Contract Award Notice can be placed in the on the Contracts Finder website within 30 days of the Contract Award. A Contract Award Notice is not required for any contract concluded via the use of a 'direct award' or 'mini competition' under a Framework Agreement.

10.5.5 The Lead Officer must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code. The Transparency Code requirements apply to contracts awarded under a Framework Agreement.

#### **10.6. Contract Formalities and Documentation**

10.6.1. All Contract documentation (draft and final versions) should be developed in association with Legal and Democratic Services during the course of the procurement process in ensure that all relevant policy and contracting conditions are incorporated. The procurement toolkit provides standard documentation which can be used as a template to develop your contract in consultation with Legal and Democratic Services.

10.6.2. Regulation 113 of the Public Contracts Regulations 2015 requires the Council to include in every Council contract provisions requiring:

- The payment of invoices submitted by the Contractor no later than the end of a period of 30 days from the date on which the invoice is regarded as valid and undisputed.

- The verification of invoices in a timely fashion.
- That any undue delay in considering and verifying an invoice is not sufficient justification for failing to regard it as valid and undisputed.
- That any subcontract awarded by the Contractor contains suitable provisions to impose, as between the parties to the subcontract:
  - requirements to the same effect as those set out above; and
  - a requirement that the same provisions are included in any subcontract that the subcontractor awards.

10.6.3. All contracts must be concluded before the supply, service or construction of works begins, except in exceptional circumstances, and then only with the prior written consent of the relevant CEO/Deputy CEO. A contract award letter is insufficient.

10.6.4. The Lead Officer shall ensure that Legal and Democratic Services are given instruction and provided with all the necessary supporting documentation and information in order to draw up the final contract.

10.6.5. The Council's official purchase order should be used where applicable.

10.6.6. In addition to the above, the formal advice of the Head of Legal and Democratic Services must be sought for the following contracts:

- those involving leasing arrangements (these also require approval of the Head of Finance, Revenues and Benefits)
- where it is proposed to use a third parties contract terms and conditions, for example when accessing Framework Agreements

10.6.7. *Signature*

10.6.7.1 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.

10.6.8. *Sealing*

10.6.8.1. Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two authorised signatories.

10.6.8.2. Every Council sealing will be consecutively numbered, recorded and signed by the persons witnessing the seal. The seal must not be affixed without the authority of the Cabinet or a Head of Service or CEO/Deputy CEO acting under delegated powers. A contract must be sealed where:

- the Council wishes to enforce the contract for more than six years after its end, or
- where the Total Value is expected to exceed £100,000

## 11. **RECORD KEEPING**

11.1. The Lead Officer shall ensure that sufficient documentation is retained to justify decisions taken at all stages of the procurement procedure, as such the following documents must be retained in a secure and easily retrievable format;



- All documentation including internal and external communications, project meeting notes etc regarding the preparation of the procurement documentation and undertaking the process
  - Invitations to quote and quotations received
  - Invitation to Tender and tenders received
  - A written record of any exemptions obtained under the Procurement Code and the reasons for them
  - Any Contract Award Decision and the reasons for it
  - The Award Criteria
  - All evaluation information/reports
  - Clarification and post-tender negotiation (to include minutes of meetings)
  - The contract documents
  - The post-contract evaluation and monitoring documentation
  - Written records of all communications with all *Tenderers* and with the successful Tenderer throughout the period of the contract
- 11.2. Documentation relating to a successful quotation must be retained for the duration of the contract period, or in the case of the supply of goods or provision of works a minimum of three years after supply/completion of the requirement. Documentation relating to unsuccessful quotations must be retained for a minimum of 12 months from the award of the contract, providing there is not dispute about the award.
- 11.3. Documentation relating to a successful tender must be kept for a minimum of six years (12 years if the contract is under seal) after the final settlement/end of contract. However, documents which relate to unsuccessful Tenderers may be disposed of after 12 months from the award of the contract, provided there is no dispute about the award. Further guidance on document retention periods is included in the Procurement Toolkit.
- 11.4. The original signed/sealed contract documents must be forwarded to Legal and Democratic Services for indexing, inclusion on the Council's contracts register and secure storage.

## **12. CONTRACT MANAGEMENT**

- 12.1 No contract shall commence unless and until the procurement exercise and contract documents have been completed.
- 12.2 Heads of Services shall ensure that all contracts are adequately managed based on an assessment of the contract value, service complexity, and/or level of risk or strategic importance to the Council.
- 12.3 During the life of the contract the Head of Service shall ensure:
- A Contract Manager with the relevant skills, expertise and resource is assigned to effectively manage the contract, and has received any additional training required to adequately perform the contract management function;
  - the performance of the contract is appropriately monitored and compliance with the specification and contract conditions is ensured;
  - that where any Statutory Duty (e.g. Safeguarding Duty, Data Protection) is transferred to the Contractor that the Contractor complies with the Duty including any reporting or record keeping requirements;

- a joint risks register for the contract is agreed with the Contractor with an agreement on who owns the risk;
- discuss any proposed contract variations with Head of Legal and Democratic Services before they are carried out. Only variations that have been clearly and specifically detailed in the initial tender documentation may be made during the course of the contract;
- authorise in writing any variations to contracts before they are carried out. These variations to be authorised by the relevant Head of Service, relevant Director or relevant Cabinet Member (see also 13);
- ensure that a record is kept of all certificates and instructions issued under the contract;
- agree any price fluctuation or indexation provisions, subject to appropriate supporting documentary evidence being provided by the Contractor; and
- notify the Head of Legal and Democratic Services of any breach of contract;

12.4. Further information on the importance and benefits of Contract Management can be found within the [Procurement Toolkit](#).

### **13. CONTRACT VARIATION**

13.1 Following consultation and agreement by Head of Legal and Democratic Services and the Procurement Team contracts may only be modified without the need for a new procurement exercise if any of the following cases apply:

- a. There was clear and unambiguous provision for the contract modifications, irrespective of their monetary value, made in the initial tender documentation that stated the scope and nature of such possible modifications as well as the conditions under which these modifications made be used. Such modifications must not alter the overall nature of the contract;
- b. Additional works, services or supplies by the original contractor have become necessary but were not included in the initial tender provided that a change of a contractor cannot be made for economic or technical reasons (e.g. software compatibility) or would cause substantial duplication of cost so long as any increase in price does not exceed 50% of the value of the original contract. In such cases the Council must publish a Notice in the OJEU;
- c. Where all the following conditions are fulfilled:
  - The need for the modification could not genuinely have been foreseen by the Council;
  - The modification does not alter the overall nature of the contract;
  - Any increase in price does not exceed 50% of the value of the original contract;
  - In such cases the Council must publish a Notice in the OJEU
- d. Where a new contractor replaces the one to which the council awarded the contract due to company takeover, merger, acquisition, insolvency, etc. providing that this change does not entail substantial modification of the contract;
- e. The value of the modification is below the relevant EU threshold and less than 10% of the initial contract value (goods and services) or 15% of the initial contract value (works).
  - Where several successive modifications are made the value shall be the net cumulative value of the successive modifications;
  - Where the contract has an indexation clause then the inflated value shall be the one used as the basis of the calculation;

- 13.2 A new procurement exercise shall be required for any contract modification which:
- Materially alters the contract from the one initially awarded;
  - Introduces conditions that if they had been part of the original procurement would have allowed other suppliers to participate;
  - Changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
  - Extends the scope of the contract considerably;
  - Introduces a new contractor to replace the initial contractor for any reason other than those listed in e) above;
  - Proposes a contract modification other than those provisions outlined in 13.1 above.
- 13.3 Once negotiations with the contractor(s) regarding the contract variation have concluded the Head of Service must provide the Head of Legal and Democratic Services with all the appropriate documentation and instructions to issue the contract variation notice in accordance with the provisions in the contract.

#### **14. CONTRACT EXTENSION**

- 14.1. Any contract that expressly provides for extension may be extended in accordance with its terms provided that the Lead Officer and Head of Legal and Democratic Services are satisfied that Best Value will be achieved and the extension is reasonable in all the relevant circumstances.
- 14.2. Where the contract terms do not expressly provide for extension legal advice should be sought from the Head of Legal and Democratic Services at the earliest opportunity.
- 14.3. Approval for a contract extension is delegated as per the Contract Award procedures set out in para 10.2.
- 14.4 Once granted the contractor must be notified in writing of the contract extension and the Head of Legal and Democratic Services and Procurement Team provided with the appropriate instruction and supporting documentation to issue the contract extension.

## **15. CONTRACT TERMINATION**

- 15.1. Contracts may be terminated, by the relevant Head of Service, by agreement prior to the expiry date or in accordance with the Termination Provisions set out in the contract. Advice must be sought from the Head of Legal and Democratic Services before terminating any contract.

## **16. CONTRACTS REGISTER**

- 16.1 As per the requirements of the Transparency Code, immediately upon the completion of every contract of £5,000 or over, the Lead Officer shall supply through the [e-form](#) hosted on the Council's intranet site the details of the contract for inclusion in the central contracts register (maintained by the Procurement Team).
- 16.2 In addition, upon receipt of the completed Contract from the successful tenderer(s) the Head of Legal and Democratic Services shall send an electronic copy of any contract that has been completed to the relevant Head(s) of Service and the Procurement Team for inclusion in the central contracts register.
- 16.3 The central contracts register shall be available on the Council's intranet and an edited version on the Council's website.

## **17. BONDS AND PARENT COMPANY GUARANTEES**

- 17.1 The Lead Officer must consult the Head of Finance, Revenues and Benefits;
- about whether a *Parent Company Guarantee* is necessary when a Tenderer is a subsidiary of a parent company, and;
    - the Total Value exceeds £300,000, or
    - the award is based on evaluation of the parent company, or
    - there is some concern about the financial stability of the Tenderer, about whether a Bond is required: or
    - where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the financial stability of the *Tenderer*.

## **18. PREVENTION OF CORRUPTION AND BRIBERY**

- 18.1. The Lead Officer must comply with the Council's Employees' Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 18.2. High standards of conduct and integrity are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.
- 18.3. Officers shall not use any contract or other procurement arrangement entered into by the Council for their own personal use, benefit or gain other than with the prior written approval of the Head of Finance, Revenues and Benefits.
- 18.4. The following clause must be included, in every Council contract:

The Council may terminate this contract and recover all its losses 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 Bribery Act 2010 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.

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

## **19. BLACKLISTING**

19.1 The Employment Relations Act 1999 (Blacklists) Regulations 2010 states that no person shall compile, use, sell or supply a prohibited list which a) contains details of persons who are or have been members of the trade unions or persons who are taking part or have taken part in the activities of trade unions, and b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.

19.2 The Trade Union and Labour Relations (Consolidation) Act 1992, states that, amongst other things, it is unlawful to refuse a person employment, a) because he is, or is not, a member of a trade union, or b) because he is unwilling to accept a requirement – (i) to take steps to become or cease to be, or to remain or not to become, a member of a trade union, or (ii) to make payments or suffer deductions in the event of his not being a member of a trade union.

19.3 Every Council contract (where it is proportionate and appropriate to do so) shall contain the following clause:

- The Contractor must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. The Council may terminate this Agreement with immediate effect in the event of any breach by the Contractor of this clause.

## **20. DECLARATION OF INTERESTS**

20.1. If it comes to the knowledge of a member or an employee of the Council that a contract in which he or she has a financial or personal interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Legal and Democratic Services. The Head of Legal and Democratic Services shall report such declarations to the appropriate Committee.

20.2. Such written notice is required, irrespective of whether the monetary interest is direct or indirect. An indirect financial interest is distinct from a direct financial interest in as much as it is not a contract to which the member or employee is directly a party.

- 20.3. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a financial interest for the purposes of the Procurement Code.
- 20.4. The Head of Legal and Democratic Services shall maintain a record of all declarations of interests notified by Members and Officers.
- 20.5. The Head of Legal and Democratic Services shall ensure that the attention of all members is drawn to the appropriate provisions within the Council's Code of Conduct.

**21. REVIEW AND AMENDMENTS TO THE PROCUREMENT CODE**

This Procurement Code shall be reviewed and updated on a regular basis, not less than annually. Minor amendments to the Procurement Code are delegated for approval to the Head of Partnership Services in consultation with the Head of Finance, Revenues and Benefits and Head of Legal and Democratic Services. Major amendments to the Procurement Code shall be agreed and adopted by the Full Council.

22. **PROCUREMENT THRESHOLDS AND CONTRACT AWARD PROCEDURES - WORKS CONTRACTS**

Total Contract Value	Procurement Route	Short-listing /evaluation of suppliers	Receipt of Quotes / Tenders	Contract Approval and Award	Method of Contract Completion	Transparency Code obligations
Under £19,999	Evidence of value for money	Officer	Officer	Officer in consultation with the appropriate budget holder	Signature and or purchase order raised	Publish details of all contracts of £5,000 + on the Council's contracts register*
£20,000 - £99,999	Three written quotations	Officer and Line Manager	Quotations returned to Department and reviewed by at least two Officers	Officer in consultation with Head of Service.	Signature	Publish details of all contracts on the Council's contract register*
£99,999 – EU Threshold (see intranet for current EU Thresholds)	<p>Invitation to tender, to at least five Tenderers by advertisement on Contracts Finder via the SE Shared Services Portal.</p> <p>A 'restricted' tender process for Works contracts can only be used for Tenders above the EU Threshold for goods and services. A national standard PQQ must be used.</p>	<p>Tenders to be evaluated by a minimum of two officers.</p> <p>Where a restricted tender process has been used, approval of shortlist by Officer, and Head of Service</p>	<p>Tenders to be returned to Legal &amp; Democratic Services and opened in the presence of two Council representatives See section 9.7</p> <p>Or</p> <p>To be electronically opened by the Council's approved e-tendering package</p>	Up to £172,514 (EU Goods threshold) Officer in consultation with Head of Service	Up to £100,000 Signature	<p>Publish details of contract awards on SE Shared Services Portal.</p> <p>Publish details of all contracts on the Council's contract register*</p>
				£172,514 to £250k Head of Service approval in consultation with CEO/Deputy CEO		
				£250k to £500k Head of Service in consultation with CEO/Deputy CEO and Portfolio Holder. A Significant Operational Decision Form (SOD) must be completed and submitted to Democratic Services for inclusion in the Members Bulletin		
				Above £500k – approval by Cabinet		
Above EU Threshold	Invitation to tender to at least five Tenderers by advertisement on Contracts Finder via the SE Shared Services Portal and by advertisement in the Official European Journal.	<p>Tenders to be evaluated by a minimum of two officers.</p> <p>Where a restricted tender process has been used, approval of shortlist by Officer, and Head of Service</p>	As above	Approval by Cabinet	Sealing	<p>Publish details of contract award on SE Shared Services Portal.</p> <p>Publish details of all contracts on the Council's contract register*</p>

\* The Contracts Register is managed through the Procurement Team and Legal and Democratic Services. There is an eform available on the intranet that can be completed in order to provide details of the contract award.

## 23. DEFINITIONS AND FURTHER INFORMATION

These terms occur throughout this document and are purely to act as an aide memoir to refer to this glossary and do not alter or infer any meaning to the text of the document.

Abnormally Low Bid	DG III Working Group on Abnormally Low Tenders – <i>Prevention, Detection &amp; Elimination of ALTs in the European Construction Industry</i> (19 May 1999):- “A tender is assumed to be abnormally low if:- In the light of client’s preliminary estimate & of all the tenders submitted, it seems to be abnormally low by not providing a margin for a normal level of profit and In relation to which the tenderer cannot explain his price on the basis of the economy of the construction method, or the technical solution chosen, or the exceptionally favourable conditions available to the tenderer, or the originality of the work proposed”
Aggregated Contract Value	Relates to the TOTAL contract sum or the TOTAL amount of purchase. This means that any annual value must be multiplied by the number of years the contract is likely to be in operation for e.g. A purchase for £45,000 would fall under the £10,000 to £50,000 bracket, whereas a contract for £45,000 over a four year term would equal £180,000 and would therefore be subject to the EU Directives. It is not acceptable to either enter into separate contracts or select a method of calculating the total value in order to avoid or minimise the application of the Horsham Procurement Code. It is also not acceptable to lessen the contract term so that the contract falls into a lower threshold. When in doubt as to the length of a contract term, a four year period is assumed.
Award Criteria	The criteria by which the successful quotation or tender is to be selected
Best Value	The duty on local authorities to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
Bond; Performance Bond	An insurance policy. If the contractor fails to deliver 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 (usually 10% of the contract value). A bond is intended to protect the Council against any additional costs arising from the contractor’s failure or default.
Consultant	Any person (not an employee), agency or firm engaged for a limited period of time, on an ad-hoc and fee paying basis, to carry out a specific task or tasks. A consultant provides subject matter expertise and/or experience to the Council as required. This may, for example, be because the Council does not possess the skills or resources in-house or requires an independent evaluation/assessment to be made. Tasks would include investigating problems, providing analysis or advice or assisting with the development of new projects/systems.
Contract Award Procedure	The procedure for awarding a contract
Contract Manager	The individual appointed to manage the contractual relationship between the Council and the service provider. He/she is responsible for ensuring high quality and value for money services are maintained throughout the life of the contract.
Contracting Decision	Any of the following decisions: - withdrawal of an invitation to tender



	<ul style="list-style-type: none"> <li>- whom to invite to submit a quotation or tender</li> <li>- <i>short listing</i></li> <li>- award of contract</li> <li>- any decision to terminate a contract.</li> </ul>
EU Procedure	The procedure required by the EU where the total expected contract value of goods, works or services exceeds the relevant EU threshold.
EU Threshold	The financial threshold at which EU public procurement directives must be applied to a <i>Relevant Contract</i> . Refer to the Procurement Toolkit for current EU thresholds.
Financial Regulations	The financial regulations contained within the Constitution.
Invitation to Tender	Invitation to Tender documents in the form required by the Crawley Procurement Code.
Joint Procurement Board	This is the governance body that manages the Shared Procurement Service. It is made up of the Commissioning and Performance Manager, Horsham District Council, the Head of Partnership Services, Crawley Borough Council and the Head of Finance, HR and ICT Mid Sussex District Council.
Local Supplier	A local supplier is defined as a business that is either based in Crawley or has operational activity within Crawley (RH10 or RH11) that generates local employment and benefits. Whilst operational activity within Crawley is most preferable, it is acknowledged that Crawley may not have suitable businesses to meet the requirements, and would therefore encourage the use of businesses within the Gatwick Diamond or wider West Sussex/Surrey area. The Gatwick Diamond covers Epsom & Ewell, Mole Valley, Reigate & Banstead, Tandridge, Crawley, Horsham and Mid Sussex
Nominated suppliers and sub-contractors	Those suppliers specified in the contract for which the main contractor has discharged any part of its duties
Officers' Code of Conduct	The code regulating conduct of officers which forms part of the Council's constitution.
Parent Company Guarantee	An agreement which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract, they can require the parent company to do so instead.
Preferred Bidder	The penultimate stage of a procurement process when the supplier(s) to whom the council intends to award the contract has/have been identified but the confirmation of the award is subject to receipt of final clarification documentation and/or information from the supplier(s).
Procurement Toolkit	The Procurement Toolkit prepared by the Procurement Manager for guidance in conducting procurement activity.
Public Contract Regulations 2015; the Regulations	The UK Government transposition of the new EU Procurement Directives. Establishes the rules by which public bodies must abide when acquiring goods, works or services. In broad terms these are transparency, fairness and equal treatment of all potential bidders.
Quotation	A quotation of price and any other relevant matter without the formal issue of an Invitation to Tender.
Relevant Contract	Any arrangement made by, or on behalf of, the Council for the carrying out of work or for the supply of goods, materials or services. These include arrangements for: <ul style="list-style-type: none"> <li>- the supply or disposal of goods</li> <li>- hire, rental or lease of goods or equipment</li> <li>- execution of works</li> <li>- <i>third party contracts or Framework Agreements, or call-off contracts</i> awarded by another public sector body</li> <li>- the delivery of services, including those related to: <ul style="list-style-type: none"> <li>- the recruitment of staff</li> </ul> </li> </ul>

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- land and property transactions
- financial and consultancy services.

*Relevant Contracts* do **not** include contracts relating to:

- the direct employment of staff paid via the council's payroll system
- the engagement of Counsel
- the acquisition, disposal, or transfer of land (for which *Financial Regulations* shall apply).

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Short listing	Where Tenderers are selected from a list of interested parties to submit a quotation or tender.
Tender	A Tenderers proposal submitted in response to an Invitation to Tender.
Tenderer	Any person who asks or is invited to submit a quotation or tender.
Tender Record Book	The tender register maintained by the Democratic Services Officer to record details of tenders
Third Party Contracts, or Framework Agreements, or Call-Off Contracts	Contracts awarded by a third party which have been structured to allow authorised users to procure goods and services by quoting, to the contractors and suppliers, the appropriate contract reference details. The management and administration of the contract resides with the awarding authority. The use of these contracts may alleviate the necessity for staff to initiate their own tendering exercise.
Total Value	See Aggregated Contract Value
Transparency Code	The Local Government Transparency Code is a statutory obligation on local authorities to publish data include information on all tenders issued and contracts award of £5,000 or more in value.
Whole Life Cost	A way of evaluating which considers the whole life costs of a project from design through to decommissioning and disposal or recycling.

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