

Nuneaton & Bedworth



CONTRACT PROCEDURE RULES

PROCEDURE RULE 1: Introduction	3
PROCEDURE RULE 2: Scope	4
PROCEDURE RULE 3: Exemptions	5
PROCEDURE RULE 4: Steps Prior To Purchase	7
PROCEDURE RULE 5: Financial Limits	9
PROCEDURE RULE 6: Eu Public Procurement Legislation And Advertising ...	11
PROCEDURE RULE 7: Eligibility And Framework Agreements	13
Framework Agreements (EU Regulation 33).....	14
PROCEDURE RULE 8: Records (EU Regulations 83 and 84)	15
PROCEDURE RULE 9: Pre-Tender Market Research And Consultation (EU Regulation 40)	16
PROCEDURE RULE 10: Standards And Award Criteria	17
Standards.....	17
Evaluation criteria (EU Regulation 67) See also Procedure Rule 7.2.....	17
PROCEDURE RULE 11: Invitations To Tender/Quotations Over £B (£25k)	18
PROCEDURE RULE 12: Receipt And Opening Of Tenders/Quotations	20
PROCEDURE RULE 13: Post Tender Negotiation* For Contracts Valued In Excess Of £C (£125k)	20
PROCEDURE RULE 14: Evaluation, Award Of Contract And Debriefing Contractors (EU Regulations 67, 74 – 76, 87 and 108)	21
PROCEDURE RULE 15: Contract Documents	23
PROCEDURE RULE 16: Liquidated Damages, Bonds And Parent Company Guarantees	25
PROCEDURE RULE 17: Prevention Of Corruption	26
PROCEDURE RULE 18: Declaration Of Interests	26
PROCEDURE RULE 19: Contract Management (Section 6 EU Regulations 70 - 73)	27
PROCEDURE RULE 20: Extensions Of Existing Contracts	28
PROCEDURE RULE 21: Long Term Relationships	28
PROCEDURE RULE 22: Partnering	29
PROCEDURE RULE 23: Open Book Accounting	29
PROCEDURE RULE 24: Transfer Of Undertakings (Protection Of Employment) Regulations 2006	30
PROCEDURE RULE 25: Freedom Of Information Act 2000 Exemptions Section 43 – Commercial Interests	30
Glossary Of Terms	31

PROCEDURE RULE 1: Introduction

The purpose of these Procedure Rules is to:-

- Ensure that the Council promotes the probity and integrity of the procurement process;
- Provide employees involved in the procurement process a framework within which to work;
- Ensure fairness in allocating contracts and protect employees from allegations of corruption and/or collusion with suppliers and contractors;
- Promote public accountability;
- Ensure compliance with all legal requirements;
- Achieve value for money on behalf of the Council; and
- Support the Council's corporate aims and objectives in relation to procurement.

- 1.2 Procedure Rules must be complied with strictly. They are minimum requirements and any instances of non-compliance may result in disciplinary action being taken. A more thorough procedure may be appropriate for a particular contract such as where [The Public Contracts Regulations 2015](#) apply (EU Regulations). Please contact the Procurement Team or see the Procurement Toolkit on HPRM/Dash for guidance.
- 1.3 Any consultant, agent or contractor acting on behalf of the Council must comply with these Contract Procedure Rules and this must be a condition of their employment.
- 1.4 Contracts let on behalf of a consortium, association or similar body of which the Council is a member should comply with the rules of the body or lead authority.
- 1.5 The amounts £A to £D in these Procedure Rules have the initial values given to them as follows:-
 - £A = £7,500
 - £B = £25,000
 - £C = £125,000
 - £D = £3,500,000
- 1.6 All monetary values included in these Procedure Rules relate to the total value of the contract or framework agreement including extension options and shall be deemed to exclude any Value Added Tax applicable.
- 1.7 The Executive Director – Resources is designated as the responsible officer in accordance with [Section 151 of the Local Government Act 1972](#) (for the proper administration of the Council's financial affairs) and the designated officer in accordance with [Section 114 of the Local Government Finance](#)

[Act 1988](#) (incurring of unlawful expenditure) and is referred to in these Procedure Rules as the Chief Financial Officer.

- 1.8 The Chief Financial Officer shall review all monetary limits annually and any amendments, if appropriate having regard to inflation and other relevant factors, shall be reported to the Executive Director - Operations and Management Team.
- 1.9 Questions of interpretation of these Contract Procedure Rules should be referred to the Corporate Governance & Audit Manager, Strategic Creditors & Procurement Manager and the Chief Financial Officer.
- 1.10 References to the Chief Financial Officer shall include other employees authorised to undertake duties on behalf of the Chief Financial Officer, generally the Deputy Chief Financial Officer (Head of Financial Services).

PROCEDURE RULE 2: Scope

- 2.1 These Contract Procedure Rules relate to any arrangement made by, or on behalf of, the Council for the carrying out of work or for the procurement of goods, works or services. These include arrangements for:-
 - The supply or disposal of goods;
 - Hire, rental or lease of goods or equipment;
 - Execution of works; and
 - The delivery of services including those relating to the recruitment of temporary staff, land and property transactions and financial and consultancy services.
 - Service Concessions and Work Concessions ([The Concession Contracts Regulations 2016](#))
- 2.2 These Procedure Rules do not apply to:-
 - The employment of permanent staff ;
 - Agreements regarding the acquisition, disposal or transfer of land, for which Financial Regulations shall apply;
 - Insurance policies;
 - Treasury Management transactions.
 - Engagement of Legal Counsel
 - Grants from the Council (except where they are to buy services)
 - Public to Public cooperation and 'In House' contracts subject to fulfilling the test criteria in [Regulation 12](#) of the EU Regulations.
 - Engaging entertainment acts and performers where the value is lower than the [EU Regulation threshold](#) (EU threshold).

- 2.3 The use of e-procurement technology and Purchasing Cards does not negate the requirement to comply with all elements of these Contract Procedure Rules.

PROCEDURE RULE 3: Exemptions

- 3.1 Contract Procedure Rules are intended to protect the Council, and only under circumstances which are exceptional and unavoidable, shall authority be given to waive them. All exemptions must be requested using the Exemption Request Form in HPCM/Dash. Exemptions granted shall be recorded on the Contract Database – please contact the Procurement for further information.
- 3.2 Requests for all exemptions and the reasons for accepting or rejecting the request must be in writing (includes e-mail).

Generally, an exemption will only be approved if it is because of an unforeseeable emergency involving immediate risk to persons or property, disruption to council services or in the best interest of the service.

- 3.3 An exemption to these Contract Procedure Rules may only be made:-
- By the Chief Financial Officer in consultation with the Corporate Governance & Audit Manager and the Strategic Creditors & Procurement Manager for contracts estimated to be valued up to £C (£125k) or up to the [EU threshold](#) if on the Forward Plan. (If the Chief Financial Officer is applying for an exemption then he/she must consult with the Executive Director – Operations, Corporate Governance & Audit Manager and Strategic Creditors & Procurement Manager.)
 - In consultation with the relevant Portfolio holder for contracts estimated to exceed £C (£125k) if no decision has been made by Cabinet/Forward Plan;

Exemptions cannot be requested if the value of the contract exceeds the [EU threshold](#). However, an exemption may be allowed if the proposals are non-commercial and satisfy the 'Teckal' tests provided in EU [Regulation 12](#).

Advice on the 'Teckal' principle can be obtained from the Procurement Team.

- 3.4 Under the principles of Value for Money (VFM) the Council should discourage requests for the Council to obtain only one quotation or tender unless there is only one suitable supplier available. Where there is only one suitably qualified supplier such as for education services and embedded software licence

renewals, then all reasonable efforts to secure VFM must be made.

Collaborative Procurement Framework Arrangements

- 3.5 In order to secure VFM, the Council may enter into collaborative procurement arrangements. The Procurement Team must be consulted where a purchase is to be made using collaborative purchasing arrangements with a Local Authority, government department, statutory undertaker or public service purchasing consortium. Where the Council is acting as the lead authority in a consortium for the procurement of goods, works or services, these Contract Procedure Rules will be applicable.
- 3.6 All purchases made via a Local Authority consortium, such as CSW, ESPO, CCS, PFH or CBC, are deemed to comply with these Contract Procedure Rules and an exemption is not required. However, purchases above the [EU threshold](#) must be let under the EU Regulations, unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Regulations on behalf of the council as a named customer and other consortium members.
- 3.7 Framework agreements, due to their nature, may be comprised of several suppliers, and a robust selection process should be undertaken to ensure that the most economically advantageous is selected. When the price is pre-determined and fixed, with a pre-released pricing tariff which can be referred to, a direct award may be made. In any instance where the cost (or specification) of the contract requirement is not fixed, then **all** suppliers capable of performing the contract need to be contacted with an opportunity to bid (Further Competition).
- 3.8 Access to Frameworks will be defined by the Framework owner. Some may require an access agreement authorised as per Procedure Rule 15.6 (copy to be forwarded to the Procurement Team for recording on the Central Contract Database). Others may require that the framework contract number to be issued on purchase orders. Where neither are offered, the Service Unit should obtain a copy of the original framework contract and attach the Council's Form of Undertaking document, authorised as per Procedure Rule 15.6 (copy to be forwarded to the Procurement Team for inclusion on the Central Contract Database).

Please contact the Procurement Team for advice on suitable Framework Agreements.

Manual Tender Request

- 3.9 All Request for Quotes (RFQs) and Tenders for £B (£25k) or higher will be required to run through the Electronic process and any resulting Contract must be recorded on the Central Contract Database. If a manual process is preferred, an exemption request in line with Procedure Rules 3.2 and 3.3 will be required. Reasons may include supplier capability or specialist categories.

PROCEDURE RULE 4: Steps Prior To Purchase

- 4.1 Before beginning a purchase the employee responsible for it must appraise the purchase, in a manner commensurate with its complexity and value, by:-
- Referring to the Procurement Toolkit on HPRM/Dash or contacting the Procurement Team;
 - For Services above [EU threshold](#) consider how the contract might improve the economic, social and environmental wellbeing of the Borough and consider if external consultation is required ([Public Services \(Social Value\) Act 2012](#));
 - Checking to ensure that the Procurement Team do not already have a preferred supplier agreement for the product/service or if a local agreement would be suitable;
 - Completing the Procurement Checklist located with the Procurement Toolkit on Dash/HPCM.
 - Appraising the need for the expenditure and its priority;
 - Defining the purpose and objectives of the purchase;
 - Assessing the risks associated with the purchase and determine how to adequately manage them;
 - Considering what procurement method is most likely to achieve the objectives, including internal or external sourcing, partnering, and collaborative procurement arrangements with another Local Authority, government department, statutory undertaker or public service purchasing consortium;
 - Consulting users as appropriate about the proposed procurement method, contract standards and methods of performance and user satisfaction monitoring;
 - Selecting the terms and conditions that are to apply to the proposed contract in consultation with the Procurement Team and Legal Services Team;
 - Decide if the contract can be awarded in separate Lots and if so how many Lots an economic operator can tender for (contact the Procurement Team for advice).
 - Confirming that approval has been given for the expenditure and that an appropriate budget exists;
 - Ensuring that EU Regulations have been complied with, including the sending of a Prior Information Notice (PIN) (see Procedure Rule 6.3);
 - Identifying the evaluation criteria (see Procedure Rule 10.2);

Appendix A

- Ensuring that the purchase has been reported in the Forward Plan if it is a key decision, i.e. incurring expenditure or creating savings of more than £125k. If it has not been reported as part of the Forward Plan it will be necessary to seek approval from Cabinet for the spend; and
- Ensuring that the Business Case has been approved.

PROCEDURE RULE 5: Financial Limits

5.1 Minimum requirements for inviting competitive offers:-

Estimated Value of the Whole Contract*	Minimum Number of Suppliers to be Invited	Minimum Advertising Requirements	Procurement Method	Process Records Required	Form of Contract Required
Less than £A (£7.5k)	No minimum numbers, but must demonstrate VFM	Not Mandatory - Supplier selection based on Officer Knowledge	Verbal Quotation, or Written Quote where the contract value exceeds £1,000	Written record documenting the process (Including Written Quote submitted – if applicable)	Purchase Order and Invoice
£A to £B (£7.5k to £25k)	3 Written Quotations (4 if an internal Quotation is included)	Not Mandatory - Supplier selection based on Officer Knowledge	Written Quotation (E-Mail or Fax are also acceptable)	Quotations obtained	Purchase Order (PO) and Invoice
£B to £C or D if Works (25k to £125k or £3.5M if Works)	3 Sealed Quotations (4 if an internal Quotation is included)	Advertisement on the authorised eTendering Portal (and Contracts Finder if Open Advert)	Formal Sealed Written Quotations (Consult the Procurement Team)	Quotations obtained/ Clarification Register	Quotation Schedule, PO and Invoice (Record on Central Contracts Database)
More than £C (£125k) to EU threshold or more than D (£3.5M) if Works	3 Tenders (4 if an internal Tender is included)	Advertisement on the authorised eTendering Portal and Contracts Finder	Sealed Tenders (Consult the Procurement Team)	Tender Schedule, Tenders received and Clarification Register	Formal Sealed Contract (Record on Central Contract Database)
Above EU threshold	Not less than 5	Advertising in OJEU and Contracts Finder	Follow EU Regulations (Consult the Procurement Team)	Complete Log of entire Procedure	Formal Sealed Contract (Record on Central Contract Database)

* Including extension options and shall be deemed to exclude any Value Added Tax applicable to the contract.

- Definition of 'Whole Contract' – all capital and revenue costs payable to the supplier over the life of the contract
 - Procurement must be consulted if the contract is over £B (£25k) and the contract must be recorded on the Central Contract Database
 - Definition of 'Works' - the outcome of any works such as is of itself sufficient to fulfil an economic or technical function – [Part 6 Schedule 2](#) of The Public Contract Regulations 2015 contact the Procurement Team for advice.
 - Concession contracts have the same thresholds as 'Works'. In simple terms, a contract is a 'concession' when the economic operator is compensated by the ability to exploit a 'Work' or service on behalf of the authority (i.e. Leisure Centre Operator). However, concession contracts vary from standard service and 'Works' contracts in that, the operator must take a risk that no income is generated and a loss could be incurred. A full definition of what is meant by a 'concession contract' can be found in the [Glossary of Terms](#). If you believe your requirement could be a concession contract, please contact the Procurement Team for advice.
 - Identify if the Service can be reserved for certain qualifying organisations such as cooperatives ([EU Regulation 77](#)) contact the Procurement Team for advice.
- 5.2 Quotations must, as far as possible, be comparable by reference to a relevant British or equivalent internationally recognised Industry standard, or to an appropriately detailed specification.
- 5.3 Where it can be demonstrated that there are insufficient suitably qualified economic operators, suppliers or contractors to meet the competition requirement, all known suitably qualified suppliers or contractors must be invited.
- 5.4 For tenders which exceed £C (£125k) or £D (£3.5M) if Works, consideration should be given to re-tendering where two or fewer tenders are received, and where prices are high and VFM cannot be demonstrated.
- 5.5 An employee must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Contract Procedure Rules.
- 5.6 The splitting of contracts to avoid EU Regulations is prohibited. However, we may decide to award a contract as separate Lots as per EU [Regulation 46](#) . Contact the Procurement Team for advice.

- 5.7 Wherever possible, consideration should be given to contract mergers and aggregation with existing preferred contracts to encourage VFM for the Council. It is essential that if a contract already exists for the supply of the same goods, services or works, the existing contract must be used in the first instance.

PROCEDURE RULE 6: Eu Public Procurement Legislation And Advertising

- 6.1 EU procurement legislation is primarily based on directives. There are four directives, The Supplies Directive, The Services Directive, The Works Directive and The Concessions Directive. Each Directive provides for a threshold sum above which all procurement contracts become subject to stringent EU rules and regulations. For detailed definitions of the activities covered by each directive and the current thresholds please consult the Procurement Toolkit or the Procurement Team.
- 6.2 Services and Works are categorised by the EU via Common Procurement Vocabulary (CPV) Codes. All Services and Works subject to EU Regulation thresholds must follow the OJEU process. However, [Regulations 74 – 77](#) of the EU Regulations provide for a light touch regime on certain Services defined by CPV codes in [Schedule 3](#). Public bodies must still observe general EC Treaty principles so it is advisable to follow the process defined for all contracts valued at more than £C (£125k) or D (£3.5M) if Works.
- 6.3 At the start of each financial year each Director may consider whether there is any likelihood of a particular contract exceeding the financial threshold relating to Prior Information Notices (PIN), as set out in the EU Regulations and if so, notify the Strategic Procurement and Creditors Manager. If a PIN is required it shall be published by the Procurement Team in the Supplement to the Official Journal of the European Union as quickly as possible after the beginning of the financial year to indicate what they plan to tender for in the forthcoming year.
- 6.4 If the EU Regulations apply the Council must comply with the following procedures:-
- Not less than 5 economic operators shall be invited to tender in an Open or Restricted procedure;
 - The advertisement must be published in the Official Journal of the European Union before it is advertised in any specialised journals, on the Councils eTendering portal or on any other national portal. Advertising must be proportionate to the total value of the contract or framework agreement and be sufficiently wide enough so as not to give grounds for

ineffectiveness. EU [Regulation 110](#) requires the Council to advertise opportunities on Contracts Finder within 24 hours if advertised elsewhere. If below £C (£125k) we may invite a minimum of 3 economic operators without advertising on Contracts Finder where access is by invite only on a Closed basis (i.e. not advertised elsewhere).

- The timescale for inviting expressions of interest electronically shall be a minimum of 25 days (unless the urgency procedure is used in which case 15 days applies);
- The timescale for inviting tenders electronically shall be a minimum of 30 days (unless the urgency procedure is used). The Procurement Team shall be contacted for advice on Award letters and the standstill process in line with [Part 3 of the EU Regulations - Remedies](#).
- A Standstill period is compulsory on all tenders above £C (£125k) including Works sealed bids above £C (£125k);
- Once the contract has been awarded, the Procurement Team shall place a Contract Award Notice in the Official Journal of the European Union and Contracts Finder as per EU [Regulation 108](#). By using eTendering, timeframes are shortened and advertising requirements satisfied, please refer to the Procurement Team for information.
- Where a project was not registered with OJEU because it was estimated as being below the EU threshold, but then subsequently breaches the EU threshold, a voluntary Ex-Ante Transparency notice can be raised. Officers must seek advice of the Procurement Team as this is not recommended due to potential scrutiny by the Commission.

6.5 The penalties for non-compliance with EU Regulations are severe and failure to comply could expose the Council to legal action by contractors possibly resulting in setting aside the contract, fines, re-tendering costs and compensation. The Procurement Team should be notified of all EU tenders to ensure that the process is in line with The Public Contract Regulations 2015.

6.6. Following the UK's departure from the European Union, the EU Public Procurement Directives* and UK Public Procurement Regulations** (as amended) will continue to apply during the transition period (31 January 2020 until 31 December 2020). Any Procurement let under the Procurement Regulations on the open market during the transition period must comply with the Procurement Regulations throughout the entire process, even if the Award is due to be completed after 31 December 2020.

*EU Public Procurement Directives (as amended)

- [The Public Contracts Directive 2014](#)
- [The Concessions Contracts Directive 2014](#)
- [The Utilities Directive 2014](#)

**UK Public Procurement Regulations (as amended)

- [The Public Contracts Regulations 2015](#)
- [The Concession Contracts Regulations 2016](#)
- [The Utilities Contracts Regulations 2016](#)

PROCEDURE RULE 7: Eligibility And Framework Agreements

- 7.1 Procurement Policy Note (PPN) 8/16 sets out the revised standard Selection Questionnaire (SQ). It replaces the current standard Pre-Qualification Questionnaire (PQQ). Use of a PQQ is now prohibited. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the standard Selection Questionnaire, or the ESPD template, for all procurements above EU thresholds.

The standard Selection Questionnaire has been developed to simplify the supplier selection process for businesses, in particular smaller firms, across the public sector. In developing the SQ the opportunity has been taken to make the questionnaire compliant with the European Single Procurement Document (ESPD), and amended the rules on the selection of suppliers.

Supplier selection is a key stage in public procurement where we gather information on and make assessments of the prospective bidders' credentials, before considering tenders. This includes gathering information about companies' track records, financial credentials, whether they have been involved in corruption, whether they meet various selection criteria, and so on.

- 7.2 The standard Selection Questionnaire asks potential suppliers to initially just self-declare their status against the exclusion grounds and selection questions. Usually this will only be checked for the winning supplier.

The standard Selection Questionnaire is structured in 3 separate parts:

- Part 1 of the standard Selection Questionnaire covers the basic information about the supplier, such as the contact details, trade memberships, details of parent companies, group bidding and so on.

Part 2 covers a self-declaration regarding whether or not any of the exclusion grounds apply.

Part 3 covers a self-declaration regarding whether or not the company meets the selection criteria in respect of their financial standing and technical capacity

For below EU Threshold tenders the SQ questions can be used as a guide to assess suitability of suppliers in a one stage process (ITT/Sealed Quote). For works contracts valued between the supplies and services threshold and the works threshold we may use a two stage process and make use of the PAS91 PQQ.

European Single Procurement Document (ESPD) – (EU [Regulation 59](#))
The Council shall accept an ESPD as a declaration of preliminary evidence normally required in a PQQ or SQ (EU [Regulation 65](#)). For more details contact the Procurement Team.

Guidance on the use of Supplier Questionnaires/ESPD can be provided by the Procurement Team.

Framework Agreements ([EU Regulation 33](#))

7.3 A Framework Agreement means an agreement between one or more contracting authorities or one or more economic operators. An agreement may be entered into with one or more providers and must be awarded in accordance with the EU Regulations.

7.4 Contracts based on Framework Agreements may be awarded by either:-

- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a further competition in accordance with the procedure defined in the Framework. This should include the following:
 - Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders;
 - Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - Awarding each contract to the tenderer who has submitted the best tender on the basis of the

evaluation criteria set out in the specifications of the Framework Agreement.

PROCEDURE RULE 8: Records ([EU Regulations 83 and 84](#))

- 8.1 Where the total value is more than £B (£25k) but less than £C (£125k) the following documents must be kept (electronic records if using the electronic process):-
- Invitations to Quote;
 - Quotations received;
 - Log of Quotations opened to include date, time, and signatures of those present
 - A written record of any exemptions and the reasons for them;
 - If the most economically advantageous is not accepted the reasons why; and
 - Written records of communications with the successful contractor.
 - Award notice posted on Contracts Finder
 - All Contracts over £25k must be recorded on the Central Contract Database, please contact the Procurement Team for advice.
- 8.2 Where the total value exceeds £C (£125k), the following must be recorded:-
- The method for obtaining bids and method of advertising;
 - Details of any exemption and the reasons for them;
 - Any pre procurement discussions regarding compliance with the Public Services (Social Value) Act 2012 if above EU threshold
 - The evaluation criteria in descending order of importance and any weightings used;
 - The evaluation results;
 - A copy of the SQ (if above EU threshold or Works), the invitation to tender and a list of the contractors invited;
 - Tender documents received;
 - Details of any pre-tender market research;
 - Any clarification or post-tender negotiation (includes any minutes of meetings);
 - Name of successful tenderer and reasons for their selection
 - Details of unsuccessful tenderers and reasons why they were unsuccessful
 - Details of any Financial reports or accounts;
 - The contract documents;
 - Post contract evaluation and monitoring;
 - Details of all approved variations;
 - A full reconciliation of the contract sum and the amount(s) paid taking into account any variations to the original specification;

- Communications with contractors and with the successful contractor throughout the period of the contract; and
- Details of any site visits.

The Contract must be signed by an authorised officer of the Council as per the approved signatory list, and a copy of the contract must be forwarded to the Procurement Team to update the Central Contract Database.

NB In the event of a legal challenge all communications including e mails, may be requested by a Court as evidence. Therefore it is essential that all documentation is stored securely and all communications/notes are undertaken in a professional manner.

- 8.3 All records must be kept for at least 3 years after the final settlement of the contract, 12 years if the contract is under seal. However, tender documents, which relate to unsuccessful contractors, need only to be kept for a period of 12 months from award of the contract, provided there is no dispute about the award. In some cases it may be desirable to retain documents for a longer period by scanning or using some other suitable method. Where the cost of the contract is to be met in part or in whole, by sources of external funding, the written records shall be retained in accordance with any directions of the external funder.

PROCEDURE RULE 9: Pre-Tender Market Research And Consultation ([EU Regulation 40](#))

- 9.1 Employees may conduct market consultations prior to the issue of the Contract Notice/Advertisement in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential contractor. Informing economic operators of our plans and requirements is acceptable providing it does not distort competition.
- 9.2 An employee must not seek or accept technical advice on the preparation of an Invitation to Tender (ITT) or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential contractors or distort competition. If in doubt seek advice from the Director – Arts, Leisure & Democracy or the Strategic Creditors and Procurement Manager.
- 9.3 Where a Contracting Authority is having difficulty defining a specification or requires an innovative solution, it may decide to enter into a Competitive Dialogue or establish an Innovation Partnership with economic operators. The EU Regulations have

established new processes to facilitate this ([EU Regulations 29 - 31](#)) please contact the Procurement Team for further information.

**PROCEDURE RULE 10: Standards And Award Criteria
([EU Regulation 67](#))**

Standards

- 10.1 Employees must ascertain the relevant British or equivalent International Industry standard that applies to the contract and these must be used to properly describe the required quality. The Director - Arts, Leisure & Democracy must be consulted if it is proposed to use a proprietary brand.

Evaluation criteria ([EU Regulation 67](#)) See also Procedure Rule 7.2

- 10.2 The evaluation criteria must be defined and documented before tenders or quotations exceeding £B (£25k) are sought. The criteria must be designed to secure VFM for the Council. Generally, this shall be the 'most economically advantageous' where considerations other than purchase price or cost apply. If above EU thresholds and a Restricted Procedure is to be used (SQ) then generally criteria used at the SQ stage cannot be repeated during the following Invitation to Tender (ITT) stage.

- 10.3 Considerations other than price should be included, and examples of criteria are listed below:-

- Level of service;
- Quality of goods;
- Cost effectiveness;
- Delivery requirements;
- Environmental considerations;
- Functional characteristics, such as security, safety and control features;
- After sales service;
- Technical assistance
- Partnering;
- Long term relationships;
- Cessation of contract clause to recognise the potential of withdrawal costs in the event of cancellation; and
- Where appropriate, contractors will adhere to the Council's Complaints Procedure.

PROCEDURE RULE 11: Invitations To Tender/Quotations Over £B (£25k)

- 11.1 The invitation to tender or quote shall state that no tender or quotation will be considered unless it is received by the date and time stipulated in the invitation. No tender or quotation delivered in contravention of this procedure rule shall be considered.
- 11.2 Every invitation to tender or quotation shall include the following:-
- A specification that describes the Council's requirements in sufficient detail to enable the submission of a competitive offer;
 - The goods, services or works required together with the terms and conditions of contract that apply. Under EU Regulations you cannot specify the manufacturer or model of goods required but you can give a detailed description of the specific features required;
 - A statement that says that the Council is not bound to accept a tender or quotation;
 - A full description of the evaluation criteria, including sub criteria.
 - No guarantee of spend where discretionary works apply;
 - Reference to the Council's Whistleblowing Policy (Confidential Reporting Code); and
 - A signed declaration of non-collusion.
 - A statement that the successful tenderer agrees to support our compliance with the [Local Government Transparency Code 2015](#) and the [Freedom of Information Act 2000](#)
 - A statement regarding payment of undisputed invoices within 30 days for Contractors and their Sub contractors
- 11.3 If the contract is valued at over £C (£125k) the Invitation to Tender (or sealed quote for Works contracts) shall also include:-
- Provision for all tenders/quotes to be received electronically in accordance with e-tender procedures approved by the Chief Financial Officer. Faxed or e-mailed tenders shall not be considered;
 - Tender/Contract Timeframe;
 - The method by which any arithmetical errors discovered in the tender will be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa;
 - A requirement for tenderers to declare that the tender content, price or other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
 - A requirement for tenderers to complete fully and sign all tender documents including a Form of Undertaking and certificates relating to the Bribery Act 2010;

Appendix A

- Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense; and
 - A description and definition of the evaluation criteria and, weighting;
 - Standard and, where appropriate, any Special Terms and Conditions; and
 - Any Collaborative partner Councils by name.
- 11.4 All contractors invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 Contractors must be given an adequate period in which to prepare and submit a proper quotation or tender which is consistent with the urgency of the contract requirement. The EU Regulations lay down specific time periods in [Chapter 2, Section 3 - Procedures](#) (please contact the Procurement Team for advice). It is also best practice to comply with these time periods for all contracts that exceed £C (£125k).
- 11.6 Electronic tendering systems must be discussed and approved by the Chief Financial Officer and the Corporate Governance & Audit Manager. Electronic systems need to comply with the spirit of these Procedure Rules. Faxed or e-mailed tenders will not be accepted. In addition to the Council's e-tendering portal all tenders over £C (£125k) will be advertised and have contract award notifications posted on Contracts Finder.
- 11.7 Any shortlisting must have regard to the financial and technical standards relevant to the contract and the evaluation criteria. For example:

This may include mandatory grounds for exclusion

- Members of the organisation's senior management team found guilty of fraud/ corruption
- Non-payment of taxes

Or discretionary grounds for exclusion

- Violation of social/environmental laws
- Grave misconduct
- Anti-competitive agreements
- Persistent deficient performance of Public Contracts

The minimum yearly turnover that operators are required to have shall not exceed twice the estimated contract value as per [EU Regulation 58 \(9\)](#)

For further information, please contact a member of the Procurement Team.

PROCEDURE RULE 12: Receipt And Opening Of Tenders/Quotations

- 12.1 If a Quotation/Tender is subject to a sealed bid process, Quotes/Tenders received by Fax or e-mail, must be rejected.
- 12.2 All tenders with an estimated value greater than £B (£25k) but less than £C (£125k) received via the e-tendering portal may be opened by a member of the Procurement Team or the employee managing the contract.
- 12.3 All Quotations or Tenders valued at £C (£125k) or more received through the Council's authorised e-tendering solution which maintains a secure and fully auditable process, will be opened by a member of the Procurement Team and the employee responsible for managing the contract.

A summary of the tender opening information as detailed below shall be produced and retained with the contract documents:

- Title of the Contract
 - Names of all tenderers
 - The amount of each tender
 - Date and time of opening
 - Name of those present at opening
 - Verification that all documents are present
- 12.4 The Procurement Team will download the tender responses and make them available to relevant Members/Officers as required for record/audit/evaluation.

PROCEDURE RULE 13: Post Tender Negotiation* For Contracts Valued In Excess Of £C (£125k)

*Where a preferred bidder has been determined, but the contract has not been formally awarded.

- 13.1 Providing clarification of an invitation to tender to potential contractors or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a tender and before the award of a contract with a view to obtaining an adjustment to price, delivery or content (i.e. post tender negotiations) must be the exception rather than the rule. It must not be conducted in procurements above the EU threshold where it might distort competition, particularly with regard to price.

- 13.2 If post tender negotiations are necessary after a single stage tender or after the second stage of a two stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after the unsuccessful contractors have been informed. This may be required if tenders are higher than previously estimated or above the available budget. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in tender documents. A record of the minutes of negotiation meetings shall be kept on file and the changes agreed by both parties shall be in writing.
- 13.3 Where post tender negotiation results in a fundamental change to the specification or contract terms, or results in an increase in price of 10% or £50,000 (whichever is the least), the contract must not be awarded but re-tendered.
- 13.4 The Director – Arts, Leisure & Democracy must be formally consulted wherever it is proposed to enter into post tender negotiation. Negotiations must be conducted by a team of at least two employees, one of whom must be from the Legal Service Unit.

PROCEDURE RULE 14: Evaluation, Award Of Contract And Debriefing Contractors (EU Regulations [67](#), [74 – 76](#), [87](#) and [108](#))

- 14.1 Apart from the debriefing required or permitted by these Procedure Rules, the confidentiality of quotations, tenders and the identity of contractors must be preserved at all times and the information about one contractors response must not be given to another contractor. Freedom of Information Act 2000 [Sections 43](#) and [44](#) refer to exemptions for confidential and commercially sensitive information.
- 14.2 Contracts must be evaluated and awarded in accordance with the evaluation criteria by a minimum of two employees who have the technical ability to evaluate the submission. The Procurement Team are able to advise on the process, but shall not undertake the evaluation. During this process, employees shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. If any particularly low bids are received or if there are large discrepancies between the bids received, the Procurement Team and the Corporate Governance & Audit Manager must be informed. Where a bid is considered to be abnormally low the process detailed in [EU Regulation 69](#) shall apply:
- Where tenders appear to be abnormally low in relation to the works, supplies or services sought, the Council ask

tenderers to explain the price or costs proposed in the tender.

- The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

14.3 Any arithmetic within the tenders must be checked. If any errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the invitation to tender as being dominant, an amended tender price can be requested to accord with the rates given by the tenderer.

14.4 Where the total value of the contract exceeds £C (£125k) all contractors must be informed in writing via the electronic portal simultaneously and as soon as possible of the intention to award the contract, please refer to the Procurement Team for letter templates. Unsuccessful contractors must be given at least 10 calendar days (not ending weekend or bank holiday) in which to challenge the decision before the contract is awarded. If the decision is challenged by an unsuccessful contractor then the contract will not be awarded and advice must be obtained from the Director - Arts, Leisure & Democracy.

14.5 Unsuccessful contractors shall normally be informed in writing through the e-tendering portal of the reason for non-selection. No information, other than the following, should be given without taking the advice of the Director - Arts, Leisure & Democracy:-

- How the evaluation criteria was applied and comparison with the winning tender scores;
- the reasons for the decision, including the characteristics and relative advantages of the successful tender,
- The range of prices submitted for Framework Agreements
- The name of the winning contractor.

14.6 If a contractor requests in writing the reasons for a contracting decision, they must be given the reasons in writing within 15 days of the request. If requested, contractors who were deselected in a pre-tender short listing process (SQ) may be given the information in Procedure Rule 14.5 above.

14.7 The Principal Contract Officer may accept quotations or tenders provided that they have been fully evaluated and are the most economically advantageous to the Council. If the quotation or tender is not the most economically advantageous the approval of the relevant Portfolio Holder, or other Cabinet member, must be secured and the decision may be subsequently reported to the Cabinet.

- 14.8 Officers must ensure that all contracts tendered via the e-tendering portal have a contract record created in the Central Contract Database within 48 hours of the final award. Please contact the Procurement Team for support in doing this.

PROCEDURE RULE 15: Contract Documents

- 15.1 High level detail for all contracts valued at £C (£125k) or above (or £B £25k if open advert at the point of award), must be published on the Council's [Transparency Pages](#) and Contracts Finder in accordance with The Local Government Transparency Code 2015. Details include:

- Contract Reference Number
- Title of Agreement*
- Department
- Description*
- Start Date*
- End Date*
- Extension Options
- Review Date
- Last Extension Date
- Contract Value (Estimated Lifetime)*
- Supplier Name*
- Process Type
- Is the Supplier an SME?
- Is the Supplier a VCSE Organisation?
- VCSE Registration Number (If applicable)
- Unrecoverable VAT

*Only items marked with an asterisk are required for Contracts Finder

- 15.2 All contracts shall clearly specify:-
- The work to be done or the goods, materials or services to be supplied;
 - That all goods supplies and services used or supplied are to comply with any relevant Standards Specification or Code of Practice in force at the date of the tender (British or International equivalent).
 - The price to be paid with a statement of any discounts or deductions (amount and timing);
 - Any insurance requirements;
 - Any health and safety requirements;
 - Safeguarding vulnerable people requirements (if appropriate)
 - The terms of the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let;
 - Compliance with the Equalities Act 2010

Appendix A

- The time within which the contract is to be performed;
- The provisions for the Council to terminate the contract; and
- A mechanism for agreeing price escalation and or cost reduction requirements;
- That the supplier/contractor will comply with the provisions of the EU Regulation 2016/679 (GDPR) or any re-enactment of that Regulation insofar as any personal data supplied by the council or obtained on behalf of the council is kept secure and is not disclosed to any other party except in accordance with the contract. The contract shall define the data controller and processor responsibilities sufficient to comply with the Regulation.

For contracts valued at less than £C (£125k) an official purchase order form, approved by the Chief Financial Officer must be used wherever possible.

15.3 In addition, contracts valued greater than £C (£125k) must also state:-

- That the contractor may not assign or sub-contract without prior written approval;
- Any insurance requirements;
- Health and Safety requirements;
- Ombudsman requirements;
- That charter standards are to be met if relevant;
- Compliance with the Equalities Act 2010;
- Sustainability requirements;
- Confidentiality;
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant;
- Key Performance Indicators; and
- That the Freedom of Information Act 2000 and The Local Government Transparency Code 2015 may require the Council to release information provided by contractors

15.4 The formal advice of the Procurement Team must be sought for the following contracts:-

- Where the total value exceeds £B (£25k);
- Those involving leasing arrangements;
- Where it is proposed to use a supplier's own terms; and
- Those which are complex or high risk in any other way.

15.5 All contracts over £C (£125k) must be concluded formally in writing and signed by an authorised signatory and formally sealed before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written authority of the Director - Arts, Leisure & Democracy. An award letter is insufficient. All contracts should be given a unique number allocated by the Procurement Team who should also be supplied with a copy of the contract.

- 15.6 The employee responsible for obtaining the signatures on the contract must ensure that the person signing for the other contracting party has authority to bind it.
- 15.7 A contract must be sealed by the Council if:-
- The Council may wish to enforce the contract more than 6 years after its end;
 - The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
 - There is any doubt about the authority of the person signing for the other contracting party; or
 - The total value of the contract exceeds £C (£125k) .
 - For electronic contracts such as those on G Cloud please refer to the Procurement Team who will create a signed electronic copy on the Central Contract Database and forward this to Legal for an electronic seal.

PROCEDURE RULE 16: Liquidated Damages, Bonds And Parent Company Guarantees

- 16.1 A risk assessment and financial check of every contract for the purposes of determining the level of security needed, if any, must be made by the appropriate Director.
- 16.2 For every contract where it is considered that the Council would suffer loss if the contract works, supplies or services are not provided in the time specified, the contract shall provide for the payment of liquidated damages by the contractor to reflect the anticipated loss to the Council.
- 16.3 Employees must consult with the Chief Financial Officer to establish whether a Parent Company Guarantee is necessary when a contractor is a subsidiary company and:-
- The award is based on an evaluation of the parent company; or
 - There is some concern about the financial stability of the contractor.
- 16.4 Employees must consult with the Chief Financial Officer to establish whether a bond is needed where:-
- It is proposed to make stage payments during the life of the contract and there is some concern about the financial stability of the contractor; or
 - There will be a cost to maintain service delivery if the supplier or contractor goes into liquidation.

PROCEDURE RULE 17: Prevention Of Corruption

17.1 Employees must comply with the Employee Code of Conduct and the Council's policy on Gifts & Hospitality and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the employee to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.

17.2 All formal written contracts must include the following:-

"The Council may terminate this contract and recover all its loss if the contractor, its employees or anyone acting on the contractors behalf do any of the following:-

- 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
- Commit an offence under the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let
- Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

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

PROCEDURE RULE 18: Declaration Of Interests

18.1 If it comes to the attention of a member or employee of the Council that a contract, in which he or she has a financial or non-financial interest, has been or is proposed to be entered into by the Council, he or she must record it in the Interests Register which is maintained by the Monitoring Officer. Where necessary the Monitoring Officer will report such declarations to the relevant Officers and Members.

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

18.3 In the case of a member, a shareholder in a body not exceeding a total nominal value of £25,000 is not a financial interest for the purposes of this Procedure Rule.

- 18.4 The Monitoring Officer shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct and the local Member Code of Conduct and that all employees are aware of the Employee Code of Conduct.

PROCEDURE RULE 19: Contract Management ([Section 6 EU Regulations 70 -73](#))

- 19.1 A Principal Contract Officer must be nominated for all contracts over £B (£25k). The nominated person will be responsible for the planning, coordination, monitoring and controlling of the contract, and ensuring completion on time, within cost and to the required quality standards.
- 19.2 For all contracts with a value exceeding £C (£125k) the Principal Contract Officer must:-
- Maintain a risk register during the contract period;
 - Undertake appropriate risk assessments;
 - For each risk identified, ensure that contingency measures are in place; and
 - Confirm the financial stability and insurance cover of the contractor at least annually.
- 19.3 During the life of the contract the following issues must be monitored:-
- Performance;
 - Compliance with specification and contract;
 - Cost, quality and value for money;
 - User satisfaction and risk management; and
 - Customer complaints [Customer Feedback and Monitoring](#)
NB see [Procurement Toolkit Step 1 - Commissioning](#)
- 19.4 Where the total cost of any work carried out under a contract is expected to exceed the contract sum, this will be escalated in accordance with the virement limits procedure within the Financial Procedure Rules, in consultation with the Chief Financial Officer.
- The limits are:
- £5,000 Budget Holders;
 - £10,000 Section Heads
 - £50,000 Directors;
 - Any increase in excess of £50,000 will require Portfolio Holder approval
- 19.5 Contract modifications may be permitted by [EU Regulation 72](#) where:
- The modifications were provided for in the original procurement

- It is within the original scope, and significant disruption or cost would be incurred if not modified
- Within scope and unforeseen
- Any increase does not exceed 50% of the original value

Please refer to the Procurement Team or Director - Governance and Recreation for clarification ([EU Regulation 72](#))

PROCEDURE RULE 20: Extensions Of Existing Contracts

20.1 Subject to compliance with the EU Regulations, contract extensions can be awarded when:

- Value for Money can be demonstrated for the Council;
- The option to extend was written into the original contract;
- The extension period is less than the original contract term; and
- For Contracts subject to EU Regulations, the Notice and Award Notice included the option to extend

20.2 The extension must be approved in advance by the Chief Financial Officer in consultation with the Procurement Team and the Audit and Governance Manager. Before approval is given it must be satisfied that:-

- The total contract value including the extension is less than EU threshold or it will be subject to EU Regulations
- The existing contract was let following full competition in accordance with the Procedure Rules and less than 5 years have elapsed since the initial contract was awarded;
- Less than 4 years have elapsed if the contract is a Framework Agreement;
- The new work is sufficiently similar in nature and extent;
- The majority of the rates for the new work are directly based on the existing contract;
- Rates for work which cannot be based directly on the existing contract can be negotiated equitably. A written report should be compiled detailing the circumstances and outcome of these negotiations;
- That the likely benefit of further competition would be outweighed by the administrative cost and/or delay involved; and
- That the interests of the Council will not be compromised by the negotiation.

PROCEDURE RULE 21: Long Term Relationships

21.1 Better value for money and improved quality of service delivery can be achieved by entering into long-term agreements with contractors, suppliers and service providers. Therefore, you must package contracts in such a way that they reduce the

number of times that the Council needs to seek competitive tenders. This can be achieved by amalgamating similar types of supplies and services into single contracts and then seeking competitive tenders.

PROCEDURE RULE 22: Partnering

- 22.1 A partnership is an agreement between the Council and one or more independent legal bodies, organisations or individuals to work collectively to achieve a common purpose with specified aims and objectives.
- 22.2 Partnering arrangements which involve a joint venture or contractual arrangement with a private sector body are subject to the provisions of these Procedure Rules.
- 22.3 If the partnering agreement involves another Local Authority the Procedure Rules of the lead authority will apply.

PROCEDURE RULE 23: Open Book Accounting

- 23.1 Open book accounting provides transparent processes that support the development of collaborative working arrangements with a view to:
- Understanding expenditure;
 - Understanding the cost implications of decisions taken or being considered in delivering a project and forward investment;
 - Operating and managing a target contract to incentivise and drive improvements in cost efficiency
 - Encouraging clients, contractors and their supply chain to work together to develop and implement a proactive approach to project decision making.
- 23.2 Target contracts work on the basis that the contractor:
- Is reimbursed actual costs incurred in delivering a project. This includes the cost of labour, supervision, plant, equipment, materials, site preliminaries, site specific insurances etc.;
 - Is paid a reasonable allowance to contribute towards off site overheads and profit;
 - Works to a predetermined commercial target;
 - Is incentivised through shared savings to reduce cost without any loss in quality through the use of efficient designs and lean working practices.

PROCEDURE RULE 24: Transfer Of Undertakings (Protection Of Employment) Regulations 2006

- 24.1 All tenders must indicate how the Council intends to deal with [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (TUPE) where applicable
- 24.2 When the Council considers there to be a TUPE transfer from the Council, the advice of the Director – Arts, Leisure & Democracy shall be sought upon the terms of any transfer of employees, including any indemnities sought from a successful tenderer
- 24.3 All contracts shall require a successful tenderer to undertake to comply with its obligations under TUPE; in particular the contract shall apply the principles set out in Office of the Deputy Prime Minister Circular 03/2003 Annex D – Code of Practice on Workforce Matters in Local Authority Service Contracts

For further information and guidance, please visit this link - <https://www.gov.uk/transfers-takeovers>

PROCEDURE RULE 25: Freedom Of Information Act 2000 Exemptions Section 43 – Commercial Interests

- 25.1 [Section 43](#) exempts information where disclosure would be likely to prejudice the commercial interests of any person. It also includes a specific exemption for trade secrets. It protects not only the commercial interests of the public authority that holds the information.
- 25.2 In using this exemption, you should bear in mind that the commercial sensitivity, particularly the market sensitivity, of information will usually decrease in time.
- 25.3 More information and advice can be obtained from the Corporate Governance and Audit Manager or the Strategic Creditors and Procurement Manager.

Glossary Of Terms

- **“the Commission”** means the European Commission;
- **“contracting authorities”** means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;
- **“CPV”** means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002(b) as amended from time to time;
- **“economic operator”** means any [natural or legal] person or [public entity] or group of such persons [and/or entities], including any temporary association of undertakings, which offers the execution of [works and/or a work], the supply of products or the provision of services on the market;
- **Electronic Tender (portal)** means an electronic method of tendering using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire,[by] radio, [by] optical means or [by] any other electromagnetic means;
- **“EU Publications Office”** means the Publications Office of the EU;
- **“European standard”** means a standard adopted by a European standardisation organisation and made available to the general public;
- **“framework agreement”** has the meaning given by regulation 33(2); primarily a contract with one or more operators or clients
- **“innovation”** means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations [inter alia] with the purpose of helping to solve societal challenges or to support [the Europe 2012 strategy] for smart, sustainable and inclusive growth;
- **“International standard”** means a standard adopted by an international standardisation organisation and made available to the general public;
- **“invitation to confirm interest”** means an invitation which a contracting authority sends in order to comply with regulation 54(2);
- **Selection Questionnaire(SQ)** means a method of selecting suitable operators to fulfil the Contract
- **Invitation To Tender (ITT)** is the documents/ process used to define our specification and evaluation criteria in a suitable way to facilitate operators to tender for the opportunity
- **“life cycle”** means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the

provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

- **“national standard”** means a standard adopted by a national standardisation organisation and made available to the general public;
- **OJEU “Official Journal”** means the Official Journal of the EU;
- **“prior publication”** means prior publication of a call for competition;
- **“procurement document”** means any document produced or referred to by [the] contracting authority to describe or determine elements of the procurement or the procedure, including [the] contract notice, [the] prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;
- **“public contracts”** means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities [and having] as their object the execution of works, the supply of products or the provision of services;
- **“Public Contracts Directive”** means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014(c);
- **“public service contracts”** means public contracts which have as their object the provision of services other than [those referred to in the definition of “public works contract”];
- **“public supply contracts”** means public contracts which have as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations;
- **“public works contracts”** means public contracts which have as their object one of the following:—
 - the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2;
 - the execution, or both the design and execution, of a work;
 - the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;
- **“standard”** means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is an international standard, a European standard or a national standard;
- **“technical specifications”** means the matters referred to in regulation 42(2) to (7);
- **“tenderer”** means an economic operator that has submitted a tender;

Appendix A

- **“work”**, as a singular noun, means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function;
- **“working day”** means a day other than a Saturday, Sunday, Christmas Day, Good Friday or bank holiday within the meaning of the Banking and Financial Dealings Act 1971(c); and within a certain period and the last day of that period is not a working day, the period shall be extended to include the next working day.]
- **“Restricted process”** is a two stage process using a Selection Questionnaire to select suitable economic operators
- **“Open Process”** is a single stage process where an Invitation To Tender is issued without a Selection Questionnaire
- **“Exemption”** is where a particular procurement is not covered by the Regulations or below EU threshold where authorised officers can waive these rules
- **“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
- **“Open Advertisement”** – means if an opportunity that has been advertised on a National basis as opposed to where selected operators are invited
- **“ESPD”** means the European Single Procurement Document referred to in Regulation 59(1) conceived to reduce the need for multiple PQQ’s for economic operators
- **“Concession Contract”** means a contract where the contracting authority provides the economic operator with the opportunity to either;
 - I. Deliver and then exploit a ‘Work’, or,
 - II. provide management of an existing asset or other services required by the authority,
 - III. where consideration for delivering the contract shall result from their right to exploit the work/service or that right together with payment.

To qualify as a concession, the contract must;

- I. transfer the operating risk in exploiting the ‘Work’ or services to the economic operator, and
- II. the operator must be exposed to loss due to market forces and supply and demand, and
- III. there must be no guarantee that they can recoup the investment made, and the potential loss incurred shall not be merely nominal or negligible.