

# Procurement Rules

**February 2018**

## Contents

1. Introduction
2. General rules
3. Exceptions for Central Purchasing Bodies
4. Contract Conditions
5. Rules for identifying and selecting Contractors/suppliers to be invited to submit Tenders
6. Nominated Sub-contractors and Suppliers
7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers
8. Checks of financial standing
9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor
10. Rules for inviting Tenders where more than one Tender is required
11. Additional rules for inviting and accepting Tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher
13. Late receipt of Tenders
14. Alterations
15. Post-Tender Negotiations
16. Rules for accepting Tenders
17. Procurement Process (“Regulation 84”) Report
18. Contract Documentation and Retention
19. Rules for negotiated Contracts
20. Use of Consultants
21. Rules for the Contract Extensions
22. Contract monitoring
23. Final Accounts
24. Publication of procurement information
25. Disposal and freehold/leasehold property transactions

Appendix 1 Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Appendix 2 Glossary and Definitions of Terms used in the Procurement Rules

### Documents referred to in (and that support the Operation of) these Procurement Rules:

- |  |                                    |
|--|------------------------------------|
| (a) Council’s Procurement Toolkit  | <a href="#">[ Available here ]</a> |
| (b) Council’s Corporate Procurement Checklist  | <a href="#">[ Available here ]</a> |
| (c) A Basic Guide to Public Sector EU Procurement Legislation                                | <a href="#">[ Available here ]</a> |
| (d) Council’s Standard Pre-Qualification Questionnaire (PQQ)                                 | <a href="#">[ Available here ]</a> |
| (e) Council’s Procedure Note on Financial Checks for Tender Processes                        | <a href="#">[ Available here ]</a> |
| (f) Crown Commercial Service’s Guidance on Electronic Procurement & Electronic Communication | <a href="#">[ Available here ]</a> |
| (g) Council’s EFDC Guidance of Electronic Tendering  | <a href="#">[ Available here ]</a> |
| (h) Council’s Tender Return Label  | <a href="#">[ Available here ]</a> |
| (i) Council’s Certificate of Bona Fide Tendering   | <a href="#">[ Available here ]</a> |
| (j) Council’s Formal Declaration of Tender Offer   | <a href="#">[ Available here ]</a> |
| (k) EFDC Corporate MEAT Assessment Methodology   | <a href="#">[ Available here ]</a> |
| (l) Standard Procurement Process (“Regulation 84”) Report                                    | <a href="#">[ Available here ]</a> |
| (m) Council’s Standard Consultants Agreement   | <a href="#">[ Available here ]</a> |

**(Note: A Glossary and Definitions of Terms used in these Procurement Rules is provided at Appendix 2. Reference to such terms in these Procurement Rules are denoted with a capital letter)**

## **1. Introduction**

- 1.1 These Procurement Rules set out the procedures that must be followed by all officers for the procurement of Contracts for any Works, Supplies or Services on behalf of the Council, including Official Orders issued through the Council's Marketplace electronic ordering system. A serious/wilful failure to comply with these Procurement Rules could result in disciplinary action being taken.
- 1.2 They seek to adopt a modern and flexible approach to procurement, that is easy to follow and comply with, and are responsive to the Council's current and future procurement needs, whilst ensuring appropriate controls and probity to safeguard the use of public money. They are also set out in a logical, sequential order to help lead officers through the procurement process.
- 1.3 These Procurement Rules also relate to certain disposals of land and property, and other property transactions, which are covered in Section 25 below. Associated delegations to officers are covered by the Schedule of Officer Delegations within the Council's Constitution. However, these Procurement Rules do not relate to the acquisition of land or properties, which must be authorised through reports to the relevant Portfolio Holder or Cabinet as appropriate.
- 1.4 The transitional arrangements to apply when these Procurement Rules are first introduced is that, wherever possible, any procurement activities for procurements commenced before the adoption of these Procurement Rules must comply with these Procurement Rules. For example, if a Select List was formulated before the adoption of these Procurement Rules (under the Council's previous Contract Standing Orders), but Tenders had not been invited at the time of adoption, the Tenders should still be invited in accordance with these Procurement Rules.
- 1.5 These Procurement Rules represent the Council's Contract Standing Orders for the purposes of Section 135 of the Local Government Act 1972. The Council's useful Procurement Toolkit can be [\[downloaded here\]](#).

## **2. General rules**

### *(a) Responsibility*

- 2.1 It is the responsibility of the designated Spending Control Officer for the budget that will be used to fund the resultant Contract to ensure that these Procurement Rules are followed.
- 2.2 When the Total Contract Value of a Contract or Official Order to be issued is less than the minimum for Contract Category 1 at Appendix 1, subject to the requirements at Section 2.9 below (Total Contract Values over a 12-month period), these Procurement Rules do not have to be followed. However, it is the responsibility of all Spending Control Officers to try to obtain value for money, in terms of price and quality, through any Contract or Official Order that they issue, irrespective of its value. Spending Control Officers should therefore be aware of what constitutes appropriate price and quality for the Works, Supplies or Services sought.

### *(b) Approach to procurement*

- 2.3 In order to help ensure compliance, and to provide a documented audit trail, Spending Control Officers must use and complete the Council's **"Corporate Procurement Checklist"** which can be [\[downloaded here\]](#) throughout the procurement process for any Contracts with a Total Contract Value within Category 2 of Appendix 1 or higher. They must also keep a copy of the completed **"Corporate Procurement Checklist"** on

the relevant Contract file, both throughout the procurement process and for at least 3 years after the completion of the Contract.

- 2.4 Reference to “Directors” throughout these Procurement Rules also includes the relevant Assistant Director responsible for providing the service to which the relevant procurement relates, except where an Assistant Director is also the Spending Control Officer responsible for undertaking the procurement. Where a Director is responsible for a procurement, the Chief Executive will take the role of the Director.

*(c) Compliance with EU Regulations additional to these Procurement Rules*

- 2.5 These Procurement Rules do **not** set out or duplicate the legal requirements that must be followed for EU Regulated Contracts with Total Contract Values above the value thresholds set out in the Public Contracts Regulations 2015. For such EU Regulated Contracts, officers **must** comply with the requirements of the Public Contracts Regulations 2015. If there is any conflict between these Procurement Rules and the Public Contracts Regulations 2015 or any other legislation, then the relevant legal requirements take precedence. Advice on the Public Contracts Regulations 2015 can be obtained from the Corporate Procurement Officer. A **“Basic Guide to Public Sector EU Procurement Legislation”** can be [\[downloaded here\]](#). However, these Procurement Rules do set out the Council’s own requirements for complying with EU Regulated Contracts specified within the Public Contracts Regulations 2015, which are shown in italic text. Particular attention is drawn to Section 17 of these Procurement Rules, which explains the Council’s requirements, in respect of EU Regulated Contracts, for Spending Control Officers to complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015 throughout the procurement process.

*(d) Framework Agreements*

- 2.6 Where appropriate, Spending Control Officers are encouraged to use central contracts and existing Framework Agreements – either through the Essex Procurement Hub or with other organisations to which the Council has access. Where such central contracts or existing Framework Agreements are used, Spending Control Officers must inform the Council’s Legal Team of their proposed use, so that they can provide guidance and advice on the Council’s corporate legal requirements. Some parts of these Procurement Rules do not have to be followed – except where competitive tendering is undertaken amongst Contractors on Framework Agreement Select Lists. Spending Control Officers should seek advice, and receive confirmation in writing, from the Council’s Corporate Procurement Officer on which parts of these Procurement Rules do not have to be followed in such circumstances.

*(e) Exemption from Procurement Rules*

- 2.7 These Procurement Rules do not have to be followed in the following circumstances:

- (a) Where the relevant Director or Asst. Director obtains formal approval from the relevant Portfolio Holder or the Cabinet, confirming that he/she/it is satisfied that the work required could reasonably only be undertaken by one specialist contractor/supplier, together with the reasons.

Such approval is required from:

- (i) A Portfolio Holder for Contracts with a Total Contract Value within Contract Categories 1-3 at Appendix 1; and
- (ii) The Cabinet for Contracts with a Total Contract Value within Contract Category 4.

This provision does not apply for EU Regulated Contracts with a Total Contract Value within Contract Category 5 (i.e. above the EU Procurement Thresholds); or

(b) Where it is essential to meet an immediate need, subject to the Spending Control Officer seeking advice from the Corporate Procurement Officer where the Total Contract Value is within Contract Category 5 at Appendix 1 (i.e. above the EU Procurement Thresholds), which;

- (i) Has been created by a sudden emergency; or
- (ii) Is outside the Council's control (e.g. by order of the Courts or another body with an equivalent power), or
- (ii) Has some other over-riding urgency.

In such circumstances, the Spending Control Officer must provide a report to the next available meeting of the Corporate Governance Group explaining the reasons why the matter had to be treated as a matter of urgency and why these Procurement Rules could not be followed.

If it is necessary to incur expenditure outside of the Council's budgetary framework, Spending Control Officers must comply with the additional relevant requirements within the Council's Financial Regulations

2.8 In other circumstances, where a Spending Control Officer feels that there are good reasons why specific parts of these Procurement Rules should not be followed for a particular procurement, they may seek a waiver from compliance with that part of the Procurement Rules. Requests for such waivers must be made in writing by the Spending Control Officer. Approvals can only be given in writing (or through a Portfolio Holder Decision or Cabinet minute as appropriate) by the relevant person/body listed at Appendix 1 who is responsible for accepting Tenders for the Contract Category relating to the Total Contract Value of the proposed Contract.

*(f) Cumulative value of Contracts*

2.9 When seeking to procure a Contract, Spending Control Officers must:

- (a) Consider and assess the likely total value of Contracts and/or Official Orders to be provided to a potential Contractor by their Directorate over a 12 month period for similar Works, Supplies and/or Services *(or over a 4-year period where the total value would exceed the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015 and reproduced at Appendix 1)* that could, alternatively, be procured through one or more Contracts or Framework Agreements over that period; and
- (b) If the total value of such Contracts over any 12 month period is likely to be more than the threshold for Contract Category 1 listed at Appendix 1, seek Tenders and procure a Contract in accordance with these Procurement Rules.

2.10 Contracts must not be artificially separated to avoid compliance with either these Procurement Rules or the Public Contracts Regulations 2015.

*(g) Breaches of Procurement Rules*

2.11 If it comes to light that these Procurement Rules have not been followed, the relevant Assistant Director must submit a report to the next available meeting of the Corporate Governance Group (or successor officer group) explaining the reason for the breach and, if appropriate, the proposed remedy for correcting or mitigating the effects of the breach. The CGG will identify any breaches that it considers to be sufficiently serious to be reported to the Audit and Governance Committee (or successor member body).

2.12 The provision of in-house Council Services is excluded from the requirement of these Procurement Rules.

*(h) Suspension of Contractors*

- 2.13 Contractors can only be suspended from consideration for future contracts on the grounds of one of the mandatory and discretionary exclusions set out in the Public Contracts Regulations 2015 and only for the periods specified in the Public Contracts Regulations 2015.
- 2.14 If any Spending Control Officer considers that a Contractor should be suspended from consideration for future Contracts with the Council for a specified period, they must submit a report to the Corporate Governance Group;
- (a) Explaining the reasons for suspending the Contractor;
  - (b) Recommending a proposed period of suspension; and
  - (c) Seeking approval to such a decision.
- 2.15 If the Corporate Governance Group agrees that a Contractor should be suspended, the Spending Control Officer must:
- (a) Advise the Corporate Procurement Officer of the decision, who must in turn notify all Directors and Assistant Directors of the decision; and
  - (b) Advise the Contractor of the reasons for the suspension and the period of the suspension.

*(i) Conflicts of interest*

- 2.16 No person or body who has given material advice to the Council, or a Consultant acting on behalf of the Council, on a proposed Contract can then submit a Tender for that Contract, where more than one Tender is required (i.e. for Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 or higher).

*(j) Absence of post-holder*

- 2.17 In the absence of the post-holder, the responsibilities of specifically named posts within these Procurement Rules, can be discharged by:
- (a) Their Director or Assistant Director; or
  - (b) An officer designated by them.
- 2.18 All designations of committees, portfolio holders, other bodies and officers referred to in these Procurement Rules also include successor bodies and posts.

**3. Exceptions for Central Purchasing Bodies**

- 3.1 These Procurement Rules do not apply for the procurement of Contracts by a Central Purchasing Body, of which the Council is a member, or under which the Council is entitled to benefit by virtue of its status as a public authority. In such circumstances, the rules for procurement that relate to the member of the Central Purchasing Body undertaking the procurement on behalf of the Central Purchasing Body will apply.
- 3.2 However, where Tenders are invited by an officer of the Council on behalf of a Central Purchasing Body, these Procurement Rules must be followed.
- 3.3 In any event, if the value of the Works, Supplies or Services that the Council will be required to fund itself through a Central Purchasing Body or collaborative arrangement is:

- (a) Within Contract Categories 1 or 2 at Appendix 1 - The relevant Director or Asst. Director must be satisfied that the terms and conditions of the proposed Contract are appropriate under all the circumstances, taking any legal advice from the Asst. Director (Legal Services) that the Spending Control Officer, Director and/or Asst. Director considers necessary.
  - (b) Within Contract Category 3 at Appendix 1 or higher - The Spending Control Officer must report to the relevant Portfolio Holder on the proposed arrangements for the procurement of the Contract and obtain a formal Portfolio Holder Decision agreeing to the proposed arrangements;
- 3.4 Where the Council is considering sharing services with other public bodies or arranging for services to be provided to the Council by a company in which the Council has an interest, legal advice should be obtained.

#### **4. Contract Conditions**

##### *(a) Compliance with Procurement Rules by Consultants*

- 4.1 Where one or more Consultants are appointed to advise or act on behalf of a Spending Control Officer in respect of the procurement or administration of a Contract, the Contract for their appointment(s) must include a condition that the Consultant must comply with these Procurement Rules and the Consultant must be provided with a hard or electronic copy of these Procurement Rules.
- 4.2 It is the responsibility of the Spending Control Officer to ensure that Consultants appointed by them are aware of the requirements of these Procurement Rules, and that they comply with them.

##### *(b) Standard Contract terms*

- 4.3 If the Council's Standard Form of Contract or Official Order is used, no amendments can be made without consulting the Asst. Director (Legal Services). If the Council's Standard Form of Contract is not used, the Contract must include standard contract terms, which are available on the Council's Intranet, unless the Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines that individual standard terms are not required for a particular Contract.

##### *(c) Liquidated and Ascertained Damages*

- 4.4 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, and where late completion or non-completion of the Contract would result in a quantifiable financial loss to the Council, the Contract must include a condition that Liquidated and Ascertained Damages will be payable in such circumstances.
- 4.5 In such circumstances, the Contract must set out the level of Liquidated and Ascertained Damages that will be payable, which must be the Spending Control Officer's best estimate of the loss to the Council for each week of late or non-completion. Advice regarding the calculation can be obtained from the Council's Asst. Director (Accountancy) or his/her designated officer.

##### *(d) Performance Bonds and Parent Company Guarantees*

- 4.6 It is not a requirement of these Procurement Rules that contractors must provide either a Performance Bond for the Contract's due performance, or a Parent Company Guarantee or deposit as security. However, Spending Control Officers may consider it appropriate to use one of these arrangements for certain types of contracts - where they are considered to be both appropriate and beneficial for the Council.

If any of these arrangements are to be used, they must be arranged in consultation with the Asst. Director (Accountancy).

*(e) Retentions*

4.6 Where a Contract includes provision for a Defects Liability Period, a condition must be included within the Contract allowing the Council to hold a Retention for:

- (a) At least 5% of the Contract Sum during the course of the Contract Period; and
- (b) At least 2.5% of the Contract Sum on Practical Completion;

which must not be finally released until the end of the Retention Period.

*(f) Insurances*

4.7 Subject to Section 4.8 below, conditions must be included within:

- (i) All Contracts that require Contractors to have in effect, at the time of signing the Contract:
  - A minimum third party insurance cover of £5 million; and
  - A minimum employer liability cover of £10 million; and
- (ii) All appointments of Consultants that require them to have in effect, at the time of signing the Contract:
  - Professional Indemnity Insurance with a minimum cover of £2million for any one claim or such other sum as may be determined.

4.8 Subject to obtaining written advice from the Council's Insurance Officer, Spending Control Officers may include conditions within Contracts specifying lower levels of insurance than set-out at Section 4.7 above, dependent on the risk assessed by the Spending Control Officer, based on the advice of the Council's Insurance Officer.

4.9 The Contractor shall also be required:

- (i) To show to the Spending Control Officer evidence of all relevant insurance policies, both in place at the time of signing the Contract and any new policies obtained on the expiry of insurance policies, who must check that all required insurances are in effect throughout the duration of the Contract for the required levels of cover; and
- (ii) For construction contracts only, with Total Contract Values within Contract Category 4 of Appendix 1, to have the interest of the Council noted on the insurance policies.

*(g) Assignment*

4.10 A condition must be included within every Contract which prohibits the Contractor from transferring or assigning (directly or indirectly) any part of the Contract to another person or body without the written permission of the Council. *It should be noted that EU Regulated Contracts may only be assigned in limited circumstances.*

4.11 On receipt of a request from a Contractor to assign all or part of a Contract, the Spending Control Officer must undertake the checks of the proposed assignee required by Sections 7 and 8 below, before approving the assignment.

*(h) Cancellation*

- 4.12 All Contracts must include conditions relating to the cancellation of the Contract, in terms specified by the Assistant Director (Legal), either generally or for specific contracts.
- 4.13 *All EU Regulated Contracts must include a condition providing an express right for the Council to terminate the contract in specified circumstances, in the form prescribed in Regulation 73 of the Public Contracts Regulations 2015.*

*(i) Appointment of Sub-Contractors and alternative suppliers*

- 4.14 A condition must be included within every Contract which prohibits the Contractor from appointing a sub-contractor or alternative supplier to perform any part of the Contract without the prior written consent of the Council.

*(j) Access to sites and documentation for audit purposes*

- 4.15 All Contracts must contain a provision allowing an officer designated by the relevant Director, Asst. Director and/or Chief Internal Auditor access, for audit purposes, to:
- (i) A site where a Contract is being performed; and/or
  - (ii) Relevant documentation relating to a Contract.

*(k) Payments to Contractors*

- 4.16 In order to comply with Regulation 113 of the Public Contracts Regulations 2015, a condition must be included within every Contract requiring that all payments made by the Council to Contractors, and by Contractors to any sub-contractors, must be made no later than 30 days from the date a valid and undisputed invoice is received. Spending Control Officers must then ensure that this Contract condition is complied with.

## **5. Rules for identifying and selecting Contractors/suppliers**

- 5.1 Subject to 2.9 above, where a Total Contract Value is below Contract Category 1 at Appendix 1, there is no requirement for Spending Control Officers to obtain competitive Tenders for procurements. In such circumstances, Spending Control Officers can decide the most appropriate Contractor to select to perform the Contract. However, for the avoidance of doubt, Spending Control Officers can seek competitive Tenders if they consider it appropriate.
- 5.2 *Except for EU Regulated Contracts, where the procedure for inviting Tenders must comply with Public Contracts Regulations 2015, Spending Control Officers may use any of the following methods that they consider most appropriate, under all the circumstances, to determine which Contractors should form a Select List to be invited to submit Tenders, subject to a written explanation of the criteria adopted for selecting Contractors being held on the relevant Contract file and a copy being provided to the Corporate Procurement Officer at the time of formulating the Select List:*
- (a) Use of Constructionline – Spending Control Officers may reduce a Long List produced by Constructionline for the type and value of Contract required to an appropriate Short List (comprising the required number of Tenderers set out in Appendix 1) using a method previously considered appropriate, and approved in writing, by their Director or Asst. Director;
  - (b) Use of an existing or new Framework Agreement – including a Framework procured by the Essex Procurement Hub;

- (c) Use of Contractors known to be able to meet the Council's requirements to a good quality and to provide good value for money;
  - (d) Use of Contractors who have previously been successful in Tendering for similar work for the Council in the past; and
  - (e) Through the formulation of a Select List by:
    - (i) The inclusion of Contractors considered to be able to perform the Contract; and/or
    - (ii) Advertising for potential Contractors as appropriate (but note 5.3 below).
- 5.3 Where Contractors are invited to express an interest in being considered for specific procurements for Contracts with a Total Contract Value in excess of £25,000, through the placement of an advertisement in any media, the Corporate Procurement Officer must be notified and provided with the details of the procurement. The Corporate Procurement Officer must then publish the required information on the Government's Contracts Finder website, in accordance with the Public Contracts Regulations 2015.
- 5.4 Unless there are good reasons, if an in-house Council service can meet the requirements of the Specification to the required quality, they must be used in preference to an external Contractor. This includes the Council's Reprographics and Building Control Services.
- 5.5 When Spending Control Officers are deciding which Contractors should be invited to provide Tenders, they must take account of the following:
- (a) *If the Contract is for a Total Contract Value in excess of the thresholds for EU Regulated Contracts set out in the Public Contracts Regulations 2015, the selection of Contractors to Invite to Tender must be in accordance with these Regulations;*
  - (b) *With the exception of EU Regulated Contracts, where appropriate and possible, at least one business with its headquarters located in the Epping Forest District should be invited to Tender;*
  - (c) Contractors who have previously provided good quality Works, Supplies or Services with good value for money should be invited to Tender in preference to Contractors with whom the Council has not had any previous experience; and
  - (d) It may be appropriate to seek references for Contractors from other local authorities or public bodies for whom they have previously undertaken Works or provided Supplies or Services.
- 5.6 In accordance with the Public Contracts Regulations 2015, Pre-Qualification Questionnaires (PQQs) must not be used for any procurement exercises that are not EU Regulated Contracts. It is still possible to ask questions relating to Contractors' suitability, provided that they are relevant to the subject matter of the procurement, are proportionate and are only used to establish whether Contractors meet minimum requirements of suitability, capability, legal status and financial standing. All candidates meeting the minimum criteria must be invited to tender.
- 5.7 *For EU Regulated Contracts, if Pre-Qualification Questionnaires (PQQs) are used, unless there are good reasons, the "Council's Standard Pre-Qualification Questionnaire (PQQ)" should be used, which can be [downloaded here](#). If a different form of PQQ is required, or the questions in the Council's Standard PQQ are not considered to be reasonable or proportionate, the amendments must be agreed with the Council's Corporate Procurement Officer.*

## 6. Nominated Sub-Contractors and Suppliers

6.1 Nominations made by the Council to a main Contractor for a sub-contractor or a supplier must be made following Tenders being sought in accordance with these Procurement Rules to select the Nominated Sub-Contractor or Supplier, except where a supplier has previously been used by the Council and the likely overall cost to the Council of changing supplier is considered by the relevant Director or Assistant Director to be greater than any reduced costs that could reasonably be obtained through a further Tendering process.

## 7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers

7.1 If Tenders are to be invited from Contractors listed on Constructionline or an existing Framework Agreement no further checks are required, subject to the required checks of financial standing referred to in Section 8 below.

7.2 If Tenders are to be invited for Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 no checks of Contractors are required, subject to:

- (a) The required checks of financial standing referred to in Section 8 below; and
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and the adoption and use of satisfactory health and safety policies being obtained, to the satisfaction of the Spending Control Officer.

7.3 However, if the Spending Control Officer considers it appropriate, any (further) checks (including those listed at Section 7.3 and 7.4 below), can be undertaken for any Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 (provided that they are in line with Section 5.6 above).

7.4 For all Contracts with Total Contract Values covered by Contract Category 3 in Appendix 1 or higher, the following checks must be undertaken of all Tenderers intended to be invited to submit Tenders, prior to issuing Invitations to Tender, in a form considered appropriate by the Spending Control Officer. *For EU Regulated Contracts, the wording provided by the Crown Commercial Service's Standard Pre-Qualifying Questionnaire (PQQ) must be used:*

- (a) Details of each potential Tenderer's previous experience and ability to undertake the work - to ensure that they are able to perform the Contract to the required standard;
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and adoption and use of satisfactory health and safety policies;
- (c) The financial standing of proposed tenderers, if/as required by the Council's "**Procedures for Financial Checks of Contractors**" referred to in Section 8 below, which can be [\[downloaded here\]](#);
- (d) Details of each Contractor's approach to equality and diversity, to ensure that both the Contractor and the Council comply with the requirements of the Equality Act 2010; and
- (e) If the Contractor or their staff are likely to identify any Safeguarding issues relating to the wellbeing of either adults with care and support needs or children in the performance of the Contract, details of each Contractor's approach to Safeguarding, to ensure that the Contractor and its employees are able to assist the Council to comply with its legal requirements under the Care Act 2014 and the Children Act 2004.

## 8. Checks of financial standing

8.1 Checks of Contractors' financial standing should be undertaken as shown below, for the types of Contracts set out below:

- (a) **Supplies** Not required.
- (b) **Works** For all Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher.
- (c) **Services** For all Contracts with a Total Contract Value within Contract Category 5 of Appendix 1.

8.2 If checks of Contractor's financial standing are required in accordance with Section 8.1 above, the checks must be undertaken in accordance with the Council's "**Procedures for Financial Checks of Contractors**", which can be [\[downloaded here\]](#), and which sets out:

- (a) At what point in the procurement process financial checks should be undertaken;
- (b) Who has responsibility for undertaking the checks;
- (c) What checks should be undertaken and the methodology to be followed; and
- (d) What action should be taken based on the outcome of the checks.

## 9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor

9.1 Tenders are not required from more than one Contractor for Contracts with a Total Contract Value below the Total Contract Values of Category 1 at Appendix 1. However, Tenders can still be sought in such circumstances - with the manner in which such Tenders are sought being determined by the Spending Control Officer and which does not have to comply with these Procurement Rules.

9.2 If Spending Control Officers do not seek Tenders from more than one Contractor, they must still take reasonable and appropriate steps to ensure that the Council obtains good value for money from Contractors, in terms of price and quality.

## 10. Rules for inviting Tenders where more than one Tender is required

10.1 For Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher (including the value of any potential Contract Extensions), Spending Control Officers must invite Tenders from at least the number of Contractors shown in Appendix 1 for the relevant Contract Category.

10.2 Where Spending Control Officers consider that increased value for money may be obtained by inviting more Contractors to Tender for a Contract than the number required for the relevant Contract Category at Appendix 1, they should invite more Contractors to Tender as appropriate.

10.3 Where the Total Contract Value (including the value of any potential Contract Extensions) is close to the upper threshold for a Contract Category in Appendix 1, Tenders should be sought based on the Contract Category with the higher Total Contract Values.

10.4 Spending Control Officers must give Tenderers sufficient time to properly complete and return Tenders before the Tender Return Date.

- 10.5 For EU Regulated Contracts with a Total Contract Value above the thresholds within the Public Contracts Regulations 2015 (i.e. within Category 5 of Appendix 1), Spending Control Officers must comply with the e-communication requirements of Regulations 22(8-21) and 53 of the Public Contracts Regulations 2015. With effect from 18<sup>th</sup> October 2018, Spending Control Officers must comply with the full e-communication requirements of Regulation 22 and any other provisions of the Public Contracts Regulations 2015 relating to e-communications. A copy of the Crown Commercial Service’s **“Guidance on Electronic Procurement & Electronic Communication”**, to comply with the Public Contracts Regulations 2015, can be [\[downloaded here\]](#).
- 10.6 Any electronic procurements undertaken by Spending Control Officers on behalf of the Council must comply with the **“Council’s Guidance on Electronic Tendering”** which can be [\[downloaded here\]](#).
- 10.7 For procurements within Categories 1-4 of Appendix 1, Invitations to Tender can be issued either by post or electronically. However issued, Invitations to Tender provided in accordance with this Section must:
- (a) Include a copy of the Council’s standard **“Tender Return Label”** (which can be [\[downloaded here\]](#) ) within the Tender Documents, giving:
    - (i) A brief description of the Tender;
    - (ii) The designation of the person listed in Appendix 1 to whom the Tender must be returned;
    - (iii) The time (which must be Noon) and date by which the Tender must be received by the person designated within Appendix 1; and
    - (iv) Notification in large letters that the return document is a “TENDER”.
  - (b) Include, in the form prescribed by the Asst. Director (Governance and Performance Management):
    - (i) A **“Certificate of Bona Fide Tendering”** (which can be [\[downloaded here\]](#) ); and
    - (ii) A **“Formal Declaration of Tender Offer”** (which can be [\[downloaded here\]](#) ).
  - (c) Advise Tenderers that Tenders must be returned:
    - (i) In a plain envelope;
    - (ii) Which must be securely sealed; and
    - (iii) Which must not bear any distinguishing matter or mark to indicate the identity of the sender.
  - (d) Advise Tenderers that details of their Tender may be published:
    - (i) In the public agenda or minutes of the Council or become available as a background paper; or
    - (ii) By means of a request under the Freedom of Information (FOI) Act 2000 or the Environmental Information (EI) Regulations 2004, in response to which the Council would provide any information which is not covered by any of the statutory exemptions of the FOI Act or EI Regulations.
- 10.8 At the same time as sending the Invitations to Tender, Spending Control Officers must:
- (a) Advise the person listed in Appendix 1, to whom the Tender must be returned, of the return details of the Tenders; and
  - (b) Request the person to whom Tenders must be returned to arrange a time, date and venue for a Tender Opening.
- (a) Invitations to Tender by post*
- 10.9 Invitations to Tender must be sent to all Tenderers on the same date.

- 10.10 On the same day as sending the Invitations to Tender by post, Spending Control Officers must also send an email to all the Tenderers, but not revealing the names of other tenderers, to:
- (a) Advise them that Invitations to Tender have been despatched; and
  - (b) Request Tenderers to confirm safe receipt of the Tender Documents when received.
- 10.11 If safe receipt is not confirmed by a Tenderer within 3 working days of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned again to check receipt, and must continue to make appropriate periodic checks until all Tenders have been safely received.
- 10.12 Where it is apparent that Tender Documents have not been received by a Tenderer within a reasonable period, the Spending Control Officer must make appropriate arrangements to send duplicate Tender Documents as soon as reasonably possible (e.g. by hand or by courier).
- (b) Invitations to Tender by email*
- 10.13 Where Invitations to Tender are emailed to Tenderers, they must all be sent on the same date.
- 10.14 The email Invitation to Tender must require Tenderers to notify the Spending Control Officer of the safe receipt of the Tender Documents when received.
- 10.15 If safe receipt of Tender Documents is not confirmed within 24 hours of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned by telephone (not email) to check receipt.
- 10.16 Where it is apparent that Tender Documents have not been received by a Tenderer, the Spending Control Officer must make appropriate arrangements to immediately re-send the Tender Documents, either by email again or by post as appropriate, and then check receipt in accordance with Section 10.14 above.
- 11. Additional rules for inviting and accepting tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates**
- (a) Most Economically Advantageous Tenders (MEATs)*
- 11.1 If the assessment of Tenders is to be based on an evaluation to assess the Most Economically Advantageous Tender (MEAT), i.e. taking account of both price and quality, Spending Control Officers must follow the Council's "**Corporate MEAT Assessment Methodology**", which can be [\[downloaded here\]](#).
- 11.2 Prior to Invitation of Tenders being issued, a MEAT Evaluation Assessment must be formulated by the Spending Control Officer and:
- (i) (A copy) must be provided to the Corporate Procurement Officer, prior to the Invitation of Tenders being issued, for audit purposes;
  - (ii) Must not be changed after Invitations to Tender have been issued; and
  - (iii) Must be held on the relevant Contract file for at least 1 year after the Contract has been let.
- 11.3 A copy of the MEAT Evaluation Assessment must be provided to Tenderers as part of the Tender Documents.
- (b) Schedule of Rates*
- 11.4 Where Tenders are based on a Schedule of Rates, a reasonable Pre-estimate of Quantities for each of the rates contained in the Tender must:

- (i) Be produced prior to Invitations to Tender being issued;
- (ii) Be lodged with the Corporate Procurement Officer for audit purposes;
- (iii) Not be changed after Invitations to Tender have been issued;
- (iv) Be held on the relevant Contract file for at least 6 years after the Contract has been let;
- (v) Be used to multiply the rates provided by Tenderers to reach an Estimated Tender Sum, which shall be the Tender Sum reported for consideration of acceptance by the relevant person/body specified in Appendix 1.

## **12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher**

- 12.1 All Tenders received through electronic procurements must be received, held and opened in accordance with EFDC's **"Guidance on Electronic Tendering"** which can be [\[downloaded here\]](#).
- 12.2 For Tenders with Total Contract Values within Category 1 of Appendix 1 or higher, the Assistant Director (Governance) must:
- (a) Make appropriate arrangements to hold returned Tenders in a secure location; and
  - (b) Maintain a Record of Tenders received by the Council, together with their time and date of receipt.
- 12.3 Unless it is known that all expected Tenders have been received, Tenders must not be opened on the same day as the Tender Return Date. This is to ensure that any Tenders that may have been delivered to the Civic Offices in time still reach the Asst. Director (Governance & Performance Management) before the Tender Opening.
- 12.4 Tenders must be opened, all at the same time, by the person(s) listed in Appendix 1 for the Contract Category related to the expected Total Contract Value and, if possible, the Spending Control Officer or their representative.
- 12.5 Tenders must not be accepted if they:
- (a) Are not in a plain envelope;
  - (b) Are not securely sealed;
  - (c) Do not have a **"Tender Return Label"**;
  - (d) Bear any distinguishing matter or mark to indicate the identity of the sender;
  - (e) Do not include a **"Certificate of Bona Fide Tendering"**; or
  - (f) Do not include a **"Formal Declaration of Tender Offer"**.
- 12.6 The Asst. Director (Governance & Performance Management) must ensure that a Democratic Services Officer maintains a record of all Tenders opened, which must be signed by all those in attendance at the Tender Opening.

### **13. Late receipt of Tenders**

- 13.1 Any Tenders received after the Tender Return Date must be examined, unopened, by the person designated within Appendix 1 to open the Tenders and shall be dealt with in accordance with this section.
- 13.2 Where Tenders have been received after the Tender Return Date, but the other Tenders have not yet been opened, and the person responsible for opening the Tenders is satisfied that there is evidence that the Tender was sent in time for delivery by the Tender Return Date, a Late Tender can be opened at the same time as the other Tenders, provided that:
- (a) The details relating to the Late Tender are noted in the Record of Tenders kept by the Democratic Services Officer at the time the Tenders are opened; and
  - (b) The circumstances are reported to the body or individual responsible for accepting the successful Tender.
- 13.3 Where other Tenders have already been opened or, in the opinion of the person responsible for opening the Tenders, there is no evidence that the Tender was sent in time to reach the Council by the Closing Date:
- (a) The Tender must be opened by the Asst. Director (Governance & Performance Management), in the presence of a Democratic Service Officer and, if possible, the Spending Control Officer or their representative;
  - (b) The Record of Tenders received must be annotated with details that a Late Tender was received, but was disqualified;
  - (c) The relevant Spending Control Officer must advise the Tenderer, as soon as reasonably possible, of the disqualification and the reason; and
  - (d) The circumstances must be reported to the body or individual responsible for approval of the successful Tender.

### **14. Alterations**

- 14.1 Tenders must not be altered after they have been opened. However, *except in the case of EU Regulated Contracts*, the Spending Control Officer can recommend to the person or body responsible for accepting the Tender that it is appropriate to accept the correction of Arithmetical Errors, if the Spending Control Officer is satisfied that such errors were made inadvertently. *For EU Regulated Contracts, any proposed alterations to Tenders after they have been opened must be discussed with the Council's Legal Services.*
- 14.2 If an error is identified within the Tender Documents before the Tender Return Date, all the Tenderers must be informed of the error and invited to adjust their Tenders prior to submission.
- 14.3 If an error in the Tender Documents is identified after the Tender Return Date, all Tenderers must be given details of the error and afforded the opportunity of withdrawing their Tender or submitting an amended Tender.

### **15. Post-Tender Negotiations**

- 15.1 No Post-Tender Negotiations are permitted, unless the Contract has been advertised and Tendered under the Competitive Dialogue Procedure and the relevant Director or Asst. Director is satisfied, and determines, that Post-Tender Negotiations are appropriate to the procurement process.

- 15.2 Seeking clarification from Tenderers on queries related to their Tenders does not constitute Post-Tender Negotiations. However, the Spending Control Officer must first consult with the Corporate Procurement Officer for advice and, if necessary, seek further legal advice.
- 15.3 If the Specification for a Contract needs to be amended, due to the lowest Tender exceeding the available budget, or if the Council's requirements have changed since the Tenders were invited, all Tenderers must be given the opportunity to submit revised Tenders based on the revised Specification.
- 16. Rules for accepting Tenders**
- 16.1 Tenders must only be accepted by the person/body listed in Appendix 1 for the relevant Contract Category relating to the Total Contract Value.
- 16.2 The report to the person/body listed in Appendix 1 on the proposed award of a Contract must seek approval from that person/body to the proposed arrangements for any proposed Contract extensions, including a recommendation on whether subsequent decisions to extend Contracts, in accordance with the Contract Terms, will be agreed by the:
- (a) The Spending Control Officer;
  - (b) The relevant Director (or Assistant Director);
  - (c) The relevant Portfolio Holder; or
  - (d) The Cabinet.
- 16.3 Where the actual Total Contract Value of the Tender to be recommended for acceptance exceeds the expected Total Contract Value for the relevant Contract Category at Appendix 1, and results in Tenders not having been invited and/or opened in accordance with the higher Contract Category, the Tenders must be reported to, and approved by, the person/body authorised to accept Contracts for the higher Contract Category, together with an explanation of why the actual Total Contract Value is above the expected Contract Value.
- 16.4 For Contracts that are not EU Regulated Contracts, if a Tender, other than either:
- (a) The lowest Tender (for Tenders based only on price); or
  - (b) The Tender with the highest weighted Tender Evaluation Score (for procurements undertaken to assess the Most Economically Advantageous Tender (MEAT))
- is recommended by the Spending Control Officer, it may only be approved by:
- (c) A Director or the relevant Asst. Director - where the Tender would normally be accepted by the Spending Control Officer;
  - (d) The relevant Portfolio Holder - where the Tender would normally be accepted by a Director, Asst. Director or the Portfolio Holder; or
  - (e) The Cabinet - where the Tender would normally be accepted by the Cabinet.
- 16.5 *For EU Regulated Contracts, there are only limited circumstances when a Tender, other than either the lowest-priced Tender or having the highest weighted Tender Evaluation Score, can be accepted. If acceptance of a different Tender is proposed, Spending Control Officers are required to seek the advice of the*

*Corporate Procurement Officer and follow the requirements of the Public Contracts Regulations, and/or undertake a further Tender exercise.*

- 16.6 For audit purposes, where the circumstances in Sections 16.3 and 16.4 above apply, the Spending Control Officer must provide an explanation in writing to the person/body accepting the Tender of why the lowest Tender or highest weighted Tender Evaluation Score should not be accepted, and must retain a copy of the written explanation on the Contract file.
- 16.7 Prior to a Tender being accepted, evidence of valid satisfactory insurances required under Section 4.8 above to the amount, and on the terms, determined by the Council's Insurance Officer must be received from the Preferred Tenderer by the Spending Control Officer.
- 16.8 Spending Control Officers are authorised to enter into Contracts or issue Official Orders that have been Tendered and approved in accordance with these Procurement Rules.
- 16.9 For all procurement exercises with Total Contract Values in excess of £25,000, Spending Control Officers must provide details of all Tenders received, and the name of the successful Tenderer, to the Council's Corporate Procurement Officer within 5 working days of a Contract being entered into, in order to:
- (a) Maintain a central record of all procurement exercises; and
  - (b) Enable the Corporate Procurement Officer to provide the required information to the Contracts Finder website, in order to comply with the requirements of the Public Contracts Regulations 2015.
- 16.10 On receipt of the information provided by the Spending Control Officer, the Corporate Procurement Officer must upload the required information to the Crown Commercial Service's Contracts Finder website as soon as reasonably possible.

## **17. Procurement Process ("Regulation 84") Report**

- 17.1 *For EU Regulated Contracts undertaken with a Total Contract Value within Category 5 of Appendix 1, throughout the procurement process, Spending Control Officers must complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015. At the same time as informing Tenderers that their Tenders have been either successful or unsuccessful, Spending Control Officers must provide a copy of the completed Report to the Corporate Procurement Officer, in order to maintain a central record. A template for the "Procurement Process ("Regulation 84") Report" can be [\[downloaded here\]](#).*

## **18. Contract Documentation and retention**

- 18.1 Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 can be dealt with by the use of an Official Order, provided that the relevant Director or Asst. Director is satisfied that there is no need for more extensive terms and conditions to be specified in order to protect the interests of the Council. An Official Order (or formal Contract) is required for all Council Contracts.
- 18.2 All Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher must:
- (a) Be in a standard form of an appropriate formal legal agreement approved by the Council's Asst. Director (Legal Services); and
  - (b) Be under seal, unless the Council's Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines otherwise. This would be on the basis that the period of liability for breach of contract does not need to be extended from six to twelve years.

- 18.3 Spending Control Officers (and their successors) must ensure that:
- (a) All appropriate Contract Documentation is retained in a secure location for a minimum period, following the date of final payment, of at least:
    - (i) Six years if the Contract is not executed as a deed under seal;
    - (ii) Twelve years if the Contract is executed as a deed under seal; and
  - (b) Documentation relating to unsuccessful Tenders is retained in a secure location for a period of at least two years.
- 18.4 Original signed Contracts with Total Contract Values within Contract Category 2 of Appendix 1 or higher must be forwarded to the Asst. Director (Legal Services) for secure storage within 28 days of signing/sealing. Original signed Contracts with Total Contract Values within Contract Category 1 of Appendix 1 can also be forwarded to the Asst. Director (Legal Services) for secure storage if the Spending Control Officer wishes.
- 18.5 The Asst. Director (Governance & Performance Management) must ensure that Records of Tenders are retained indefinitely in a secure location.

## **19. Rules for negotiated contracts**

- 19.1 Contracts with Total Contract Values within Contract Category 1 at Appendix 1 or higher may only be negotiated where the relevant Portfolio Holder (or, for Contracts within Contract Category 4, the Cabinet) has resolved that competitive Tenders need not be invited and that a Contract may be negotiated with just one Contractor.
- 19.2 In such circumstances, the reason for not inviting competitive Tenders must be set out in the report to the Portfolio Holder or Cabinet, which can be for any reason considered appropriate by the relevant Director or Asst. Director, including the following reasons:
- (a) The Contract is urgent and there is insufficient time to invite Tenders;
  - (b) The requirements of the Contract are of a specialist nature, where no other Contractor is known to provide them;
  - (c) No demonstrable material benefit would be obtained from inviting competitive Tenders; or
  - (d) Tenders have previously been sought for a similar Contract within the previous 6 months and no Tenders were received.
- 19.3 *For EU Regulated Contracts, procurements must be undertaken in accordance with the Public Contracts Regulations 2015 in all circumstances.*

## **20. Use of Consultants**

- 20.1 The definition of a “Consultant” is provided at Appendix 2.
- 20.2 The procurement of all Consultants must be undertaken in accordance with these Procurement Rules *and, where appropriate, the EU Regulations.*

- 20.3. Spending Control Officers are responsible for ensuring that any Consultants acting on behalf of the Council comply with these Procurement Rules in full.
- 20.4 Except where a recognised national Form of Contract or other accepted and standard type of agreement is used for the appointment of a Consultant, or where the Asst. Director (Legal Services) determines otherwise, the Council's "**Standard Consultants Agreement**" must be used for the appointment of any Consultant. A template for the "**Standard Consultants Agreement**" can be [\[downloaded here\]](#).
- 20.5 Where a national Form of Contract or other accepted and standard type of agreement is to be used for the appointment of a Consultant, Spending Control Officers must take the advice of the Asst. Director (Legal Services (or staff designated by him/her) on any specific provisions to be included or excluded within the Contract / agreement.

## **21. Rules for Contract Extensions**

- 21.1 Where Contracts allow one or more Contract extensions, Spending Control Officers are authorised to extend existing Contracts up to the maximum period allowed by the Contract in accordance with the decision of the person/body listed in Appendix 1 when they formally accepted the original Tender, as required under Section 16.2 above..
- 21.2 Where a Contract allows a Contract extension, but the original decision to award a tender did not specify the arrangements for proposed extensions in accordance with Section 16.2 above, and the Contract has a Total Contract Value within Category 4 of Appendix 1, Spending Control Officers must consult the relevant Portfolio Holder, in writing, on any intention to extend the Contract prior to the Contract being extended. In response, the Portfolio Holder may either raise no objections to the proposed extension or require that a formal decision on the proposed extension is made through a formal Portfolio Holder or Cabinet Decision.
- 21.2 Spending Control Officers must ensure that arrangements are made for any decisions about whether or not a contract should be extended in compliance with Sections 21.1 and 21.2 above in sufficient time to enable the works, goods, supplies or services to be procured through a new Contract, instead of through the extension of an existing Contract if that is the decision made.

## **22. Contract monitoring**

- 22.1 For all Contracts with a Total Contract Value within Category 4 of Appendix 1, the Spending Control Officer must provide a written progress report to the relevant Portfolio Holder(s) at least every three months, between the Tender Return Date and the date of Practical Completion. The Progress Report must report on the progress with the required Works or Services and the current financial position, in relation to:
- (a) Contract and fee expenditure to date;
  - (b) The latest anticipated Total Contract Cost and the anticipated total cost of all fees;
  - (c) Any variations between the budget approved at the time of the acceptance of the Tender and the latest anticipated Total Contract Cost and anticipated total cost of all fees; and
  - (d) The use of any contingency sums to date and the amount of any contingency sums remaining.
- 22.2 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, where the latest anticipated Total Contract Cost is in excess of 20% of the Tender Sum, the Spending Control Officer must submit a written report to the next available meeting of the Council's Corporate Governance Group

after the date the excess has been identified, explaining the reasons for the increase and, if appropriate, any remedial action to be taken to reduce the excess.

## **23. Final Accounts**

- 23.1 The Spending Control Officer responsible for any Contract with a Total Contract Value within Contract Category 4 of Appendix 1 or higher must produce a written Final Account, and provide a copy to the Asst. Director (Accountancy), within 3 months of all financial transactions relating to the Contract being completed. The Final Account must include details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extensions of time awarded and any claims agreed with the Contractor.
- 23.2 If considered necessary, the Chief Internal Auditor may examine and audit the Final Account and associated Contract Documentation to satisfy that the Final Account is correct and represents an accurate and appropriate summary of Contract payments and deductions.

## **24. Publication of procurement information**

- 24.1 In order to comply with the Local Government Transparency Code 2015, the Corporate Procurement Officer is responsible for ensuring that the information required by Part 2.1 of the Code is published every 3 months in accordance with the Code.

## **25. Disposal and freehold/leasehold property transaction**

- 25.1 For the purposes of these Procurement Rules:
- (a) All disposals and freehold/leasehold property transactions, including interests in land (such as acquisitions, disposals, new lettings, lease renewals, lease surrenders, rent reviews, sub-lettings, assignments, licences, deeds of variations, easements, wayleaves and land covenants on land) must be dealt with in accordance with the Schedule of Delegation set out in Part 3 of the Council's Constitution and any procedures required by law; and
  - (b) References to Total Contract Value within these Procurement Rules (including in Appendix 1) mean:
    - (i) The anticipated purchase price or premium for the disposal or freehold/leasehold property transaction; or
    - (ii) The annual rent.
- 25.2 Disposals or freehold/leasehold property transactions involving Council land and property may be through:
- (a) Formal tendering (providing for an initial deposit and binding contract if the Tender is successful);
  - (b) Formal tendering (providing for no initial deposit and no binding contract if the Tender is successful);
  - (c) Private treaty; or
  - (d) Public auction.
- 25.3 These Procurement Rules must be followed in full for all disposals or freehold/leasehold property transactions where Tenders from potential purchasers are sought in accordance with Section 25.2 (a) or (b) above.

- 25.4 If the method of disposal or property transaction set-out in Section 25.2(a) or (b) above is followed, the person/body that will be asked to accept the Tender may pre-determine that the relevant sale particulars should make provision for a two-stage offer process, that provides the Council with the option of inviting best and final offers after receipt of initial offers, where this is demonstrated to them to be appropriate:
- (a) By the relevant Spending Control Officer making such a recommendation in a written report to the person/body that will be asked to accept the Tender; and
  - (b) Having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value.
- 25.5 Disposals or other freehold/leasehold property transactions involving Council land or property sought through the methods set-out in Section 25.2 (c) or (d) above can only be approved:
- (a) In exceptional circumstances and if the person/body that will be asked to accept the Tender has considered a report prepared by the relevant Spending Control Officer which justifies the proposed procedure as the most suitable method of achieving best consideration; and
  - (b) If the transaction is for less than the open market value, the report referred to in Section 25.5(a) above contains an estimate of what the value of the transaction would be if advertised on the open market.
- 25.6 Where disposals or other freehold/leasehold property transactions involving Council land or property are sought through the methods set-out in Section 25.2 (c) or (d) above:
- (a) The relevant Director or Asst. Director may determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 2 of Appendix 1 or lower;
  - (b) The relevant Portfolio Holder must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 3 of Appendix 1; and
  - (c) The Cabinet must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 4 of Appendix 1 or higher.
- 25.7 The arrangements referred to in Section 25.6 above may include:
- (a) Determining the most appropriate method of disposal to achieve the Council's statutory duty of obtaining best consideration; or
  - (b) Deciding to sell for less than the open market value, provided that all statutory procedures are complied with, including (where necessary) obtaining the consent of a Secretary of State.
- 25.8 The Chief Estates Officer or Director of Neighbourhoods may agree, on behalf of the Council, to all estates acquisitions, disposals and licences set out within the Schedule of Officer Delegations in Part 3 of the Council's Constitution, where it would be in accordance with good estate management and would not adversely affect the premises concerned.
- 25.9 The relevant Portfolio Holder may take decisions under delegated authority for all estates management matters that, individually, have a cumulative value of between £500,001 and £999,999, subject to all other matters within these Procurement Rules being satisfied and undertaken in accordance with Article 14 (Decision Making) of the Council's Constitution.

Alan Hall/May 2016

Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Contract Category	Total Contract Value <sup>(*)</sup>	Minimum no. of tenders to be invited <sup>(+)(@)</sup>	Designation of person to whom tenders must be addressed	Designation of person required to open tenders	Designation of person/body required to accept tender
1	£25,000 - £50,000	Three	Assist. Director (Governance & Performance Mgt)	Spending Control Officer <sup>(#)</sup> + Democratic Services Officer	Spending Control Officer <sup>(#)</sup>
2	£50,001 - £250,000	Three	Assist. Director (Governance & Performance Mgt)	Director or Asst. Director + Democratic Services Officer	Director or Asst. Director
3	£250,001 - £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Portfolio Holder
4	Over £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Cabinet
5	Above the relevant EU Threshold for Works, Supplies or Services	Five	As 1-4 above (dependent on contract value)	As 1-4 above (dependent on contract value)	As 1-4 above (dependent on contract value)

**Notes:**

(\*) Total Contract Value means the total value of the Works, Services and Supplies over the total period of the Contract, including all potential Contract Extensions to the initial Contract Period.

Where the Total Contract Value is within Contract Category 5, the arrangements for Contract Category 5 should be followed, and not the arrangements for any of the other Contract Categories that may also apply to the Total Contract Value.

**(+) If the estimated Total Contract Value is in excess of the value thresholds for Works, Supplies or Services, above which the Public Contracts Regulations 2015 apply, the required number of Tenders determined by the Regulations must be applied.**

(@) Includes any in-house Tenders submitted.

(#) Spending Control Officer means the person who is the named person responsible for the budget heading under which payments for the contract will be made, and is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.

**Current EU Procurement Thresholds (with effect from 1<sup>st</sup> January 2018)**

<b>Contract Type</b>	<b>EU Threshold</b>
Services / Supplies	£181,302
Works	£4,551,413
Light Touch Regime Services	£615,278

The EU Thresholds are updated at regular intervals. The latest Thresholds can be [\[ downloaded here \]](#)

## Glossary and Definitions of Terms used in the Procurement Rules

Term	Definition or Explanation
Arithmetical Error	An error in addition, subtraction, multiplication or division within a submitted Tender.
Cabinet	The Leader of the Council and other councillors appointed by the Leader to form a group of councillors authorised by the Council's Constitution to make decisions on certain issues.
Central Purchasing Body	A contracting authority which either: <ul style="list-style-type: none"> <li>• Acquires supplies and/or services intended for contracting authorities; or</li> <li>• Awards public contracts (concludes framework agreements) for works, supplies or services intended for contracting authorities</li> </ul>
<b><i>“Certificate of Bona Fide Tendering”</i></b>	A form that Tenderers must complete, sign and return with their Tender to confirm that the Tender they are putting forward is the true offer that will be available to the Council if the Tender is won by the Tenderer (i.e. to confirm that the offer is genuine and is not just a competitive offer to push them forward through the Tender process). The Council's Standard <b><i>“Certificate of Bona Fide Tendering”</i></b> can be obtained from the Council's Intranet, and can be <a href="#">[ downloaded here ]</a> .
Competitive Dialogue Procedure	A formal and complex process, allowed by the Public Contracts Regulation 2015, for procuring a Contract through discussions with Contractors in a structured way.
Constructionline	The UK's leading procurement and supply chain management web-based service that collects, assesses and monitors standard company information through a question set that is aligned to the standardised pre-qualification questionnaire developed by the British Standards Institute, to reduce duplication within the construction industry.
Consultant	A person or organisation who is not employed by the Council, included on the Council's payroll or covering an establishment post, who is procured directly - through a company (or similar commercial undertaking) or an agency and is engaged to perform a specific task over a predetermined period.
Contract Award	The decision to enter into a Contract with a Contractor
Contract Documentation	All documents related to the administration of a Contract, not just the Tender Documents
Contract Extension	The continuation of a Contract for a further period of time allowed by the Contract. There can be more than one Contract Extension for a Contract.
Contracts Finder	A service provided by the Crown Commercial Service, and referred to in the Public Contracts Regulations 2015, that enables Contractors to search

	for information about Contracts worth over £25,000 with the Government, Government agencies and local government.
Contract Period	The period commencing with the date a Contract specifies that the provisions of the Contract are to start to the date the Contract comes to an end.
Contract Sum	The amount to be paid to a Contractor to perform a Contract, prior to any Contract Extensions, and referred to in the formal Contract between the Council and the Contractor.
Contracts	Contracts, agreements or orders for Works, Supplies or Services.
Contractors	Works contractors, Suppliers, Service providers and Consultants.
Corporate Governance Group	A group of officers, chaired by the Chief Executive, comprising members of Management Board, the Chief Internal Auditor and the Deputy Monitoring Officer.
Corporate Procurement Officer	The officer designated by the Director responsible for procurement arrangements within the Council, who co-ordinates procurement matters on the Director's behalf.
Crown Commercial Service	A Government Agency that brings together policy, advice and direct buying information in a single organisation and provides commercial Services to the public sector and saving money for the taxpayer. Much of the CCS's advice gives formal detailed guidance on the operation of the Public Contracts Regulations 2015.
Defects Liability Period	A set period of time after a Works Contract has been completed, during which a Contractor has the right to return to the site to remedy any defects at the Contractor's own cost.
Director	A Director, Assistant Director or the Chief Executive.
e-Communications	The method of using electronic communications, including email and web-based applications, to provide and receive documents and communications to and from Contractors, in accordance with the Public Contracts Regulations 2015 – detailed in the <b>"Guidance on Electronic Procurement &amp; Electronic Communication"</b> produced by the Crown Commercial Service, which can be <a href="#">[downloaded here]</a>
Essex Procurement Hub	A Central Purchasing Body of six local authorities in Essex, including Epping Forest DC, that provides strategic and operational procurement support, advice and guidance in order to add demonstrable value to the procurement process to its members. The Hub lets and manages a number of national Framework Agreements that are accessible to any UK Public Authority.
Estimated Tender Sum	A Tender Sum formulated by applying rates submitted by a Tenderer to Pre-Estimated Quantities that are estimated to apply over the Contract Period and used to compare the Tenders received from different Contractors. This is nearly always different from the Total Contract Cost.

EU Regulated Contracts	Procurements by public bodies in the UK that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Public Contracts Regulations 2015, which stipulate the way in which any procurements above the financial thresholds must be undertaken. A <i>“Basic Guide to Public Sector EU Procurement Legislation”</i> can be <a href="#">[downloaded here]</a> .
Final Account	A written statement that includes details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extension of time awarded and any claims agreed with the Contractor.
<b><i>“Formal Declaration of Tender Offer”</i></b>	The form that Tenderers must complete, sign and return with their Tender to state and confirm their Tender Sum. The form includes a number of statements that Tenderers sign to confirm their compliance. The Council’s Standard <b><i>“Formal Declaration of Tender Offer”</i></b> is available on the Council’s Intranet, and can be <a href="#">[downloaded here]</a> .
Framework Agreement	An agreement with Contractors to establish terms governing Contracts that may be awarded during the life of the Framework Agreement, or a general term for agreements that set out terms and conditions for making specific purchases (referred to as “call-offs”).
Insurance Officer	The officer designated by the Director responsible for insurance arrangements within the Council, who co-ordinates insurance matters on behalf of the Director.
Invitations to Tender	A letter, email or other communication sent to Tenderers – either by post or electronically – together with Contract Documents, that invites Tenderers to submit a Tender by the Tender Return Date.
Late Tender	A Tender that has not been received by the Asst. Director (Governance & Performance Management) by the Tender Return Date.
Light Touch Regime (LTR) / Procurement	A specific set of rules introduced by the Public Contracts Regulations 2015 for certain Services contracts that tend to be of lower interest to cross-border competition, that replace the previous distinction between “Part A” and “Part B”. These include certain social, health and education services, defined by the Regulations. A relatively high financial threshold is applied to the LTR, below which contracts do not need to be advertised in the OJEU. For LTR contracts above the threshold, contracting authorities have to follow a new light-touch set of procurement rules, set out in the Regulations.
Liquidated and Ascertained Damages	Fixed damages stated in a Contract, and usually set as an amount per week (or part of a week), which the Contractor must pay the Council (or which the Council may deduct from payments to the Contractor) if completion of the Contract is delayed beyond the Contract completion date, as adjusted by any extensions of time. Note that they are void as a penalty if they are not a "genuine pre-estimate" of the Council’s potential loss, in which case the Council can usually recover normal, unliquidated damages for breach of Contract.

Long List	A list of all Contractors expressing an interest in receiving an Invitation to Tender, before any selection process has been undertaken by the Council to produce a Short List.
Most Economically Advantageous Tender (MEAT)	A Tender for a Contract that has been evaluated not only on the basis of the price submitted by a Tenderer, but also on the basis of the assessed quality of both the submitted Tender and the Tenderer. This is in accordance with a pre-determined MEAT Assessment Methodology, with Tenders evaluated using a pre-determined MEAT Evaluation Assessment, which usually provides for pre-determined weightings to be applied to the price and the quality of various aspects of the Tender.
<b><i>“MEAT Assessment Methodology”</i></b>	The pre-determined approach agreed by the Council, and available on the Council’s Intranet, to assess the Most Economically Advantageous Tender (MEAT). The Council’s current Methodology can be <a href="#">[ downloaded here ]</a> .
MEAT Evaluation Assessment	The document that sets out the pre-determined weightings to be applied to the price and the quality of various aspects of the Tender, and used to calculate the relative scores of all the Tenders received.
Nominated Sub-Contractors and Suppliers	Sub-contractors and suppliers that the Council requires a Works Contractor, Service provider or other Supplier to use to perform the Contract.
Official Order	A standard form of Contract placed with a Works Contractor, supplier, service provider or Consultant, that is usually issued through the Council’s Marketplace System or the Northgate Open Housing Management System (OHMS)
Parent Company Guarantee	A guarantee by the parent company of a Contractor in respect of the Contractor’s performance under its Contract with the Council, where the Contractor is a subsidiary of the parent company
Partnering Contract	A broad term used to describe a collaborative management approach that encourages openness and trust between the parties to a Contract. The parties become dependent on one another for success, which often requires a change in culture, attitude and procedures throughout the supply chain. Most commonly used on large, long-term or high-risk contracts, Partnering Contracts can be adopted for a one-off project, or can be a long-term relationship over a number of projects (such as a Framework Agreement).
Performance Bond	A means of insuring a Contractor against the risk of the Contractor failing to fulfil its contractual obligations to the Council. The Performance Bond provides compensation, guaranteed by a third party, up to the amount of the Performance Bond (which is typically set at 10% of the Total Contract Value), to enable the Council to overcome difficulties that have been caused by non-performance of the Contractor, such as, for example, finding a new Contractor to complete Works.
Portfolio Holder	A Councillor appointed by the Leader of the Council as a member of the Cabinet with responsibility for a particular portfolio of services, as set out

	in the Council's Constitution.
Post-Tender Negotiations	Discussions that take place with one or more Tenderers on price and/or other terms of the Contract or Specification after Tenders have been received and opened.
Practical Completion	The completion of all the Works required to fulfil a Contract.
Pre-estimate of Quantities	A Spending Control Officer's best estimate of the quantities of items relating to the Contract that will arise over the Contract Period, that are applied to rates submitted by Tenderers to produce an Estimated Tender Sum, which is used to compare the Tenders received from different Contractors.
Preferred Tenderer	A Tenderer that is being recommended to be awarded a Contract.
Procurement Toolkit	An EFDC Toolkit, that can be <a href="#">[ downloaded here ]</a> , that provides advice and guidance on procurement issues, that supports and complements the Council's core financial procedures and clearly sets out the Council's corporate processes for procurement. In no circumstances should these be overlooked and all guidance should be considered alongside the relevant procedures.
<b><i>"Procurement Process ("Regulation 84") Report"</i></b>	A requirement of Regulation 84 of the Public Contracts Regulations 2015, relating to procurements where the Total Contract Value is above the EU thresholds for EU Regulated Contracts, which is completed throughout the procurement process and is a written statement, in a defined format, that provides information on different aspects of the procurement and must be made available to Tenderers on request. A template for the <b><i>"Procurement Process ("Regulation 84") Report"</i></b> can be obtained from the Council's Intranet, and can be <a href="#">[ downloaded here ]</a> .
Professional Indemnity (PI) Insurance	A liability insurance that helps protect individuals and companies (usually Consultants) from bearing the full cost of defending a negligence claim in respect of professional advice provided to the Council by the Consultant.
Public Contracts Regulations 2015	Regulations made by the UK Government to exercise the powers given by the European Communities Act 1972, relating to procurements by public bodies in the UK and, in particular, for EU Regulated Contracts that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Regulations.
Record of Tenders	A record of Tenders received for every procurement, where the Total Contract Value is within Contract Category 1 of Appendix 1 or higher, listing the Tender Sums submitted by each Tenderer, together with the Tenderer's names, completed by a Democratic Services Officer and held by the Asst. Director (Governance & Performance Management).
Retention	A percentage of the amount certified as due to a Contractor following their completion of a Contract, which is deducted from the amount due and retained by the Council. The purpose of holding a Retention is to ensure that the Contractor properly completes the activities required of them under the Contract.

Retention Period	The period during which a Retention is held by the Council.
Safeguarding	Ensuring the wellbeing of either adults with care and support needs or children in accordance with the requirements of the Care Act 2014 and the Children Act 2004 respectively.
Schedule of Rates	A list of prices provided by a Tenderer against items within a list produced by the Council for Tenderers to complete. The prices are multiplied by the Pre-Estimate of Quantities to produce an Estimated Tender Sum.
Select List	A list of selected Contractors to which Invitations to Tender are issued.
Services	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public Contracts, means matters which have as their object the provision of services other than those defined as Works.
Short List	A list of Contractors that has been reduced, following a selection process, from a Long List of Contractors expressing an interest in receiving an Invitation to Tender. The Short List often then forms a Select List.
Specification	A document that sets out the detailed requirements of the Council for the undertaking or provision of Works, Supplies or Services, and forms an important part of the Tender Documents and the subsequent Contract issued to a Contractor.
Spending Control Officer	The officer designated by a Director as being responsible for a specified Council budget, from which payments for a Contract will be made, who is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.
Supplies	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public contracts, means a matter that has as its object the purchase, lease, rental or hire-purchase (with or without an option to buy) of a product or products.
Tender	A written tender, quotation or fee submission submitted by a Tenderer in accordance with these Procurement Rules, that sets out the Tenderer's proposed price for performing a Contract, together with any other information required by the Council and these Procurement Rules.
Tender Documents	A set of documents sent to Contractors with an Invitation to Tender, which explains the Council's requirements for a proposed Contract and includes documents to be returned to the Council for consideration
Tenderer	A person or organisation that is invited to submit a Tender to the Council.
Tender Evaluation Score	The score that results from a MEAT Evaluation Assessment of a Tender, which is used to rank Tenders in order of the Most Economically Advantageous Tender in terms of best price and quality. A Contractor with the highest Tender Evaluation Score is usually offered the Contract.
Tender Sum	The total price set out in a Tender that a Contractor would charge to perform the required Contract, before any Contract Extensions are

	applied. An Estimated Tender Sum is calculated where a Contractor prices a Schedule of Rates.
Tender Opening	A meeting between those designated within Appendix 1 to be present when Tenders received for a Contract are opened, and which must be held no earlier than the day after the Tender Return Date.
Tender Return Date	The time and date specified within an Invitation to Tender by which Tenders must be returned and received by the Council. The time must always be specified as Noon, in order to minimise the potential for Tenders not being received by the Asst. Director (Governance & Performance Management) or his/her staff on the day of the Tender Return Date and to provide time for Tenders received at the Civic Offices before Noon to be passed to the Asst. Director (Governance & Performance Management) before the Tender Opening
<b><i>“Tender Return Label”</i></b>	A label provided by the Council to Tenderers to affix to the envelope in which they return their Tender - which gives details of the Contract, the Tender Return Date and the name of the officer to whom the Tender must be returned. A copy of the Council’s <b><i>“Tender Return Label”</i></b> can be obtained from the Council’s Intranet, and can be <a href="#">[downloaded here]</a> .
Total Contract Cost	The actual total cost of the Contract at the end of the Contract Period, after any Contract Extensions have been applied.
Total Contract Value	The total value of the Works, Services, and/or Supplies over the Contract Period, including all potential Contract Extensions to the initial Contract Period.
Works	<p><i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> 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.</p> <p>In relation to public contracts, means matters which have as their object any one of the following:</p> <ul style="list-style-type: none"> <li>(a) The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 to the Public Contracts Regulations 2015;</li> <li>(b) The execution, or both the design and execution, of a work; and/or</li> <li>(c) 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”.</li> </ul>