

**HIGH PEAK BOROUGH COUNCIL  
&  
STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL**

**JOINT  
PROCUREMENT PROCEDURE  
RULES**

***REVISED: September 2017***

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## 1 Background

- 1.1 Procurement can be defined as... *“the process of acquiring supplies, works or services from third parties. The process spans the whole cycle from the identification of need, through to the end of a service contract or the end of the useful life of an asset. It involves options appraisal and the critical “make or buy” decision, which may result in the provision of services in-house in appropriate circumstances.”*
- 1.2 The Procurement Procedure Rules cover the processes that should be followed for all purchasing, licensing, leasing, contracting, commercial partnering or commissioning of works, supplies or services from third parties.
- 1.3 Commissioning Officers are required to follow and adhere to the requirements as set out in these procedure rules and in the regulatory framework to which it fits.

## 2 Introduction

- 2.1 High Peak Borough Council and Staffordshire Moorlands District Council adopted a joint set of rules and procedures for procurement in 2012, since then the Councils have developed and strengthened a comprehensive approach to Procurement.
- 2.2 The Councils continue their commitment to a number of key objectives which fit against both Councils Corporate Plan priorities, key objectives include;
  - Constantly reviewing and improving procurement practices to achieve better value for money and maximising on savings opportunities.
  - Making best possible use of e-procurement, purchasing power and economies of scale
  - Ensuring that sourcing activity complies with all legal requirements, including UK and EU legislation in force in England
  - Promoting accessibility to Council business for local small and medium-sized enterprises
  - Ensuring non-discriminatory, fair and compliant process for the selection of suppliers
- 2.3 The Procurement Procedure Rules - which support the Joint Procurement Strategy - underpin the objectives of effective Procurement across both High Peak Borough Council and Staffordshire Moorlands District Council.
- 2.4 The Procurement Procedure Rules apply to:
  - All officers, Members, agents and contractors of the Alliance
  - High Peak Borough Council and Staffordshire Moorlands District Council individually when undertaking procurement exercises independently outside the Alliance.
- 2.5 Procurement activity will be carried out in conjunction with the Procurement Unit unless prior approval is granted by the Executive Director (Transformation) & Chief Finance Officer. Authorised Officers responsible for purchasing or disposal must comply with the Procurement Procedure Rules, Financial Regulations, Code of Conduct and with all UK and European Union binding legal requirements

2.6 Failure to comply with the requirements as set out will be treated seriously and may result in disciplinary action being taken.

### **3 Key Responsibilities**

3.1 Member responsibility for procurement and its strategic implementation resides with the Executive at High Peak Borough Council and the Cabinet at Staffordshire Moorlands District Council.

3.2 Officer responsibility for overall compliance with the Rules rests with Executive Directors and the Chief Executive. Specifically they are required to:

- Take responsibility for all contracts awarded within their directorate
- Ensure compliance in respect of the Procurement Procedure Rules and Public Sector Contract Regulations
- Award contracts up to their appropriate financial 'approval value' level
- Ensure value for money is achieved; and
- Take immediate action if the Procurement Procedure Rules are breached

3.3 The Procurement Unit is required to:

- Provide support and advice to Officers and Elected Members on Procurement Procedures
- Maintain an awareness of procurement activity within both Authorities and establish and maintain a Procurement Forward Plan. The Procurement Forward Plan is to be presented as part of the Medium Term Financial Plan & Budget Setting report in February annually.
- Act as a best practice conduit for Procurement procedures
- Act impartially and fully support procurement projects including ensuring appropriate selection of suppliers
- Provide quarterly Procurement performance reports to Committee
- Maintain the Procurement Forward Plan, Contracts Register and Supplier records
- Prepare draft Contract agreements for legal instruction
- Request Variations and Extensions be included to original contract documentation, where agreements permit
- Provide Contract Management Support and guidance

3.4 The Legal Service is required to:

- Give legal advice to instructing officers on contractual issues in relation to existing and future contracts including advice on the interpretation of EU law and domestic legislation when applied to these rules and procurement processes
- Review any proposed contractor terms and conditions against the service requirements as set out by the instructing officers

3.5 The HR Service is required to:

- Provide support and advise on the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) related matters

3.6 The Finance Service is required to:

- Provide financial spend analysis and associated budget information

- Provide credit checks and financial appraisals to support supplier selection
- Enable savings achieved through Procurement activity to be taken from Service budgets towards the Efficiency Programme
- Provide advice on suitable levels of Insurance covers for Professional Indemnity and Public Liability
- Complete funding options appraisals where fixed assets are being procured to ensure value for money is achieved – looking at outright purchase (utilising available funding), external borrowing, leasing and any other alternative funding options.
- Where a leasing arrangement is procured, ensure information is collated from the supplier to ensure lease arrangements are accounted for on the correct basis

3.7 The Corporate Health and Safety Adviser is required to:

- Provide a professional assessment of tenderer's Health and Safety arrangements at selection stage
- Provide updates on Health and Safety legislations to incorporate into Procurement documentation for qualification of suppliers
- Ensures that the Health and Safety for Contractors handbook is reviewed as legislation changes

#### **4 Procurement Reviews**

4.1 The Procurement Business Partners will meet with Service leads on a regular basis to agree their requirements for procurement support on a rolling programme. The outputs of these reviews are to:

- Identify and challenge the need for purchase against the operational / business requirement
- Populate the Joint Procurement Forward Plan and ensure Procurement support resource is available
- Agree suitable sourcing approaches to achieve optimum outputs and benefits to the Council
- Ensure compliance measures are in place
- Identify and monitor any contract management issues

4.2 The Procurement Unit has the responsibility for sourcing the requirement and where appropriate applies the principles of category management to ensure the most advantageous route is taken.

4.3 A Procurement Board is also established, with key senior officers in attendance focusing on high level procurement activity, overall performance and addressing any specific procurement/contractual issue.

#### **5 Specification of Requirement**

5.1 A "Specification of Requirement" (SOR) must be produced prior to tender or requests for quotations for all supplies, services or works required.

5.2 No specific technical specifications, product range or brand names should be used unless there is no other suitable market alternative available.

5.3 The specification must be accurate as to the requirements of the contract. A poor description may mean that the product or service is not delivered to the required standard and late changes to a specification may result in additional or abortive costs. The specification should be:

- Outcome focussed – fit for purpose
- Standardised and the use of specific detail that would limit tender bids should be avoided
- Form part of the terms of reference of the contract and;
- include the agreed evaluation criteria

5.4 When the SOR is being developed by the Service, it is important that the users of the product or service are consulted to ensure that what is actually needed is clearly described (and *not* the perception of what is needed). The Councils are committed to working with public, private and voluntary sector organisations to develop co-operative procurement arrangements and develop supplier effectiveness. Consideration should be made to engaging and involving communities in the procurement process where relevant, it may be appropriate to undertake a consultation exercise prior to the procurement. Guidelines for producing a SOR are included in ANNEX A.

## **6 Procurement Thresholds and Process**

6.1 The table in ANNEX B summarises the basic procurement process applied to each category value of spend for the sourcing of supplies, services and works. The minimum requirements are to ensure that the Council achieves best value and compliance against its sourcing activity.

## **7 Authorisation to procure and award**

7.1 Procurement activity must not commence without verification of budget available. The value of the contract should be based on the related whole life costs (WLC) of the supplies, services or works being commissioned during the 'lifetime' of the contract.

7.2 The Joint Procurement Forward Plan will be reported within the Medium Term Financial Plan and Budget Setting Report in February each year. This will identify all registered procurement activity to be completed in the following financial year. This will be agreed on an annual basis and approval sought to commence procurement of all activity listed. Performance and activity (including confirmation of award) against the forward plan will then be monitored and reported within the Quarterly Procurement Report to Committee.

7.3 The approval limits to be applied to authorise the award of contracts and apply exemptions are detailed in ANNEX C.

7.4 Any procurement activity undertaken during the year which was not included on the forward plan will also follow the authorisation rules (to procure/award) detailed in ANNEX C and detail will be included within the Quarterly Procurement Report.

7.5 Irrespective of the total contract value, Committee reports may be presented to Executive/Cabinet to obtain authority to procure and award where considered appropriate due to the nature of the procurement or where it relates to a key decision.

## 8 Contract Terms, Permitted Contract Extensions and Variations

- 8.1 Contract terms usually should not exceed five years in total, including an initial fixed term and possible extensions. In more complex contracts e.g. Management of services or strategic operational contracts, it may be permitted that the terms of agreement will extend beyond five years.
- 8.2 The Council's adopt a set of Standard terms and conditions and Consultants Agreements for use when contracting outside of industry standard (Construction) or framework terms and conditions. The intended form of agreement should be made available at publication or invite to tender stage. Deviation, amendments or adopting supplier terms and conditions must be referred to the Procurement Unit in consultation with Legal Services.
- 8.3 Where appropriate 'Break Clauses' must be agreed and included into Contract documents.
- 8.4 Extensions to existing contracts should only be entered into if they are included in the contract conditions and must be agreed by both parties in writing. Any other 'roll-overs' will be classed as off-contract expenditure as there is no binding contract and are therefore discouraged unless justified.
- 8.5 For EU related tenders, the extension must have been identified in the original EU Notice.
- 8.6 When an operational manager proposes to extend a contract to include additional works, services, goods or materials, similar to those included in the original contract, they can do so only where all of the following criteria are met:
- (a) The original contract has been undertaken to a satisfactory standard
  - (b) The proposed additional works, services, goods or materials are substantially similar to those included in the original scope of the contract. Where additional works, services or supplies were not included in the initial procurement, the following must apply (in addition to the other criteria listed):-
    - A change of supplier cannot be made for economic or technical reasons such as requirements of interchangeability with existing equipment, services or installations
    - A change of supplier would cause significant inconvenience or substantial duplication of costs for the contracting Authority
  - (c) The original contractor has submitted a further offer to the Council for the proposed additional works, services, goods or materials and that tender does not exceed the contract value of the original successful tender by more than 50%, (e.g. where original value of contract is £100,000 an extension can be granted up to a value of £50,000 giving a total final contract value of £150,000) **However, the total final contract value must have been procured compliantly in line with the Council's Procurement Procedure rules.**
  - (d) The original contract has not been completed more than 18 months prior to the submission of the further offer
  - (e) The original Contract has not previously been extended under this Rule; and
  - (f) The duration of any contract, including extensions, shall not exceed five years.

- 8.7 A new agreement must not be entered into directly with a supplier without consultation with, the Procurement Unit and approval granted by the relevant Executive Director.
- 8.8 Subject to the provisions of these procedures, variations to a Contract will be considered and permitted, subject to this variation not constituting 'material change' to the character, nature or subject matter of the Contract and do not breach the requirements set out under Public Contract Regulations.
- 8.9 For contract variations up to £2,000, the Service Manager shall have delegated power to approve the variation. For values exceeding this, authorisation must be obtained in line with the authorisation thresholds set out in ANNEX C.
- 8.10 No Officer shall give any instruction to a supplier/contractor, which materially varies or changes the Contract without confirming first the financial and/or legal effect.

## **9 Performance Bonds / Parent Company Guarantees**

- 9.1 A Performance Bond or adequate security may be required where:-
- The total contract value is over £250,000 **AND**
  - There would be a significant financial risk to the Authority if the supplier defaulted **OR**
  - The nature of the procurement is deemed 'high risk' **OR**
  - Payments in advance of works/services are required **OR**
  - There is uncertainty as to the financial strength of the supplier
- 9.2 The bond will represent 10% of the total contract value unless otherwise agreed by the Executive Director (Transformation) & Chief Finance Officer or Executive Director (People) & Monitoring Officer. Works shall not begin until the bond has been provided unless there is a provision in the contract entitling the Council to retain 10% of the value of any interim payments until the bond has been executed.
- 9.3 Affordability and proportionality must always be taken into consideration when deciding whether some form of financial security is appropriate.
- 9.4 A Parent Company Guarantee must be considered when the successful bidder is a subsidiary of a parent company and:-
- the estimated contract value exceeds £250,000 **AND**
  - award is based on evaluation of the parent company **OR**
  - there is a degree of uncertainty as to the financial strength of the subsidiary
- 9.6 Consideration of requesting a performance bond or parent company guarantee for contracts under the threshold above (<£250,000) should still be undertaken if there is a significant financial risk to the Authority if the supplier defaulted.
- 9.7 Justification as to whether a bond/parent company guarantee is required is to be documented and held with the procurement documents. Where a supplier matches the criteria for a performance bond/parent company guarantee, the requirement can only be waived following discussion with Executive Director (Transformation) & Chief Finance Officer or Executive Director (People) & Monitoring Officer (or delegated officer) and signed off accordingly.



9.8 Tender documents must make reference to the potential for a performance bond/parent company guarantee to be required

## **10 Procurement Electronic Webform Portal**

10.1 Procurement activity over £2,000 must be supported by an electronic procurement webform item, accessed from the Council's Intranet.

10.2 The Procurement webform enables the following:

- Registration of work item activity, including stepped process workflow
- Unique numeric reference to be applied as contract reference
- Overview of requirement(s) and estimated value
- Authorisation to proceed and award

## **11 Permitted Exemptions to the Rules**

11.1 There are permitted exemptions to the Procurement Procedure Rules provided the value is below the EU tender level and is within the discretionary powers of the Chief Executive and Executive Directors – see ANNEX D

11.2 A direct award to a single supplier outside of competitive procedure or compliant contract arrangement will be required to have a 'single source' exemption form completed and authorised in accordance with the thresholds set out in ANNEX C.

11.3 The Procurement Unit must be made aware of any intended exemption to the Procedures Rules before commissioning, a procurement webform must be submitted and the 'Exemption to Rules' form must be completed and authorised. This will be issued by the Procurement Unit.

11.4 Exemptions will only be considered if the following apply:-

- No contravention of any statutory or EU requirement(s) (as set out in the Public Contract Regulations) will arise and:-
- The Chief Executive or responsible Executive Director is satisfied that the requirement of the relevant exemption as detailed in Annex D are met in relation to the Contract in question

## **12 Procurement Procedures**

12.1 The general principles of public procurement should be observed when sourcing a provider;

- Transparency
- Integrity
- Economy
- Openness
- Fairness
- Equality
- Competition and
- Accountability

12.2 The Procurement Unit will provide advice on the most appropriate sourcing route to apply to ensure compliance to the Procurement Procedure Rules.

- 12.3 *Under no circumstances should Contracts be broken down to make two or more orders so as to avoid the requirement for a Quotation, Tender or the requirement to comply with Public Contract Regulations (OJEU procedures). This will be treated as a direct breach to the procedure rules and reported to the Procurement Board.*
- 12.4 During the bidding process, suppliers may request further information before responding to an Invitation to Tender (ITT) or Request for Quotation (RFQ). This information must be documented and disseminated to participants.
- 12.5 Public advertising of contract opportunities is required for values exceeding £5,000 if the contract nature permits. If however, there are justified reasons not to publically invite bids in an open procedure and choose to select providers direct, this must be agreed with the Procurement Unit.
- 12.6 Contract Opportunities will be published via the following means (dependable on the value banding):
- E-tendering Portal (HPBC/SMDC sourcing portal)
  - High Peak BC and Staffordshire Moorlands DC websites
  - Regional Sourcing portals
  - National Government Contracts Finder Database
  - Supplement to the Official Journal of the European Union (OJEU)
  - Specialist publications (where applicable)
- 12.7 To ensure a fair opportunity for potential suppliers to respond to RFQs or ITTs, sufficient time should be allowed for the advertising period. Open advertising timescales must not be less than the recommended minimum periods detailed in ANNEX B.

### **13 Late Submissions**

- 13.1 Tender submissions made after the stated response deadline will be referred to the Finance & Procurement Manager for review. Bids received after the deadline will usually only be accepted in exceptional circumstances if;
- i. The other tenders have not been opened
  - ii. There has been a failure of the approved e-tendering system
  - iii. The failure to comply is the fault of the Council
  - iv. Other justifiable reason as authorised by the Finance & Procurement Manager

### **14 Acceptance of Quotations & Tenders**

- 14.1 For Quotations (RFQ) and Tenders published via the Electronic tendering portal, the opening procedures will be conducted by the Procurement Unit.
- 14.2 All submissions received (RFQ / Tenders) must be opened at the same time, after the closing date.
- 14.3 Amendments or alterations to bids once received and opened will not normally be allowed. However, where the examination of tenders reveals errors or discrepancies in calculations which would affect the bid figure in an otherwise successful application, the participant is to be given details of such errors and discrepancies and

afforded an opportunity of confirming or withdrawing the offer. In addition abnormally low bids must be investigated.

- 14.4 A tender may not be amended where for a particular requirement the lowest price exceeds the service's budgeted allowance (in this situation the process should be stopped, reviewed and re-stated if necessary). In the event that no supplier is able to meet the budget provision, negotiation on price is permitted to take place with all tenderers who are able to meet the defined minimum specification. The revised price must be uploaded to the ITT in the E-tendering portal.
- 14.5 A tender may be amended where the successful tenderer agrees to reduce the tender price after negotiation because the original tender includes goods or services provided covering a greater range of requirements than originally expected and, although lowest overall, negotiation might allow further savings to the benefit of the Council(s).

## **15 Evaluation Criteria and Selection**

- 15.1 Quotation and tender responses must be evaluated against the criteria set out in the published documentation for that contract opportunity.
- 15.2 Qualification assessment is standard to published exercises, this is to determine the suitability of the potential provider in consideration of the following (but not limited to);
- Mandatory / Discretionary Exclusions
  - Litigation
  - Financial and Economic suitability
  - Insurances
  - Health & Safety
  - Sub-contractor arrangements
- 15.3 Qualification questions will be set proportionate to the value and nature of contract. For Procurement exercises that are subject to the requirements under Public Sector Contract Regulations the Standard Questionnaire (SQ) must be used.
- 15.4 The Councils are keen to support and procure from suppliers who meet the standard qualification criteria listed, although some exceptions can be granted to Third Sector suppliers (e.g. a Social Enterprise). The standard model should be included but be flexible and relevant to the nature of the contract.
- 15.5 For tenders evaluation weightings must be based on the minimum % proportion for Technical (Quality) and Commercial (Price). The standard minimum weighting applied is 40% Technical and 60% Commercial, an increase to the commercial element is permitted, however deviation from the minimum commercial % to a reduced commercial % element below 60% will require approval from the respective Executive Director or Head of Service.
- 15.6 Technical sub criteria must be clearly set out with the proportionate % weightings applied.
- 15.7 All tender evaluations must be undertaken by a minimum of two officers, using the standard scoring methodology and in accordance with the pre-published criteria.

- 15.8 The standard procurement evaluation matrix document must be used for evaluation of all responses. The scores will be used to determine the potential supplier against the *Most Economically Advantages Tender* (MEAT). This is based on highest score across both Technical and Commercial Scoring overall.
- 15.9 In the event that a supplier fails to meet the minimum specification, as detailed in the specification brief, the potential supplier will be rejected from the tender process.
- 15.10 The Supplier response which scores highest in the evaluation matrix should be recommended for acceptance. Provided that the supplier is judged to be financially sound (based on a satisfactory credit rating and/or a wider financial assessment) and offers best value..
- 15.11 Quotations are permitted to be based on 100% price provided that the specification clearly states the minimum requirements / outputs are detailed and can be met.

## **16 Sub-contractors**

- 16.1 The intended use of sub-contractors must be disclosed in the tender response and forms part of the qualification requirements for completion.
- 16.2 The Councils reserve the right not to approve the use of any sub-contractor if there are valid reasons and evidence, which conflict with the Procurement Procedure Rules.

## **17 Insurances**

- 17.1 Suppliers will be required to evidence that they hold the required levels of Insurance cover to undertake business with the Council(s). As standard they must have Employers Liability and Public / Product Liability Insurance cover. In addition, for Consultancy based contracts, Professional Indemnity Insurance will be required.

The following levels are required as standard:

- Employers Liability Insurance £5M
- Public / Product Liability Insurance £10M\*
- Professional Indemnity Insurance £2M\*

*\*The above levels may be changed to reflect the contract nature and should be set proportionate to the nature, delivery and risk of the supplies, services or works being procured.*

- 17.2 For contracts below £2,000 requiring supplier Public Liability Insurance cover. Supplier insurance documents must be requested and verified by the Officer responsible for the contract prior to commencement. A copy should be retained by the Officer responsible and reviewed on an annual basis thereafter for the lifetime of the contract.
- 17.3 For values between £2,000 to £5,000, a copy of the Public Liability Certificate should be uploaded and attached to the webform in addition to the quotation evidence.
- 17.4 For contracts which are published through the Council's e-tendering portal, copies of supplier insurances will be obtained through the qualification requirement.

- 17.5 Single source appointments are subject to the same protocols for obtaining and verifying that suitable / adequate insurance cover is in place. This is the responsibility of the commissioning officer to upload the insurance cover document with the single source webform.
- 17.6 Contract Managers should review supplier public liability insurance documents at renewal dates in accordance with contract management procedures on an annual basis. The Procurement Officers will also discuss this with Service Managers at review meetings.

## **18 Contract Award and Completion**

- 18.1 Notification of award and debriefings will be completed by the Procurement Unit for values exceeding £5,000.
- 18.2 For awards made requiring formal contractual agreement, once the sourcing procedure is completed, the contract should be executed in duplicate, the two copies of the contract must be signed by both the contractor and the Council(s) (in accordance with those listed on the authorised signatory list). One copy of the contract will be retained by the contractor and the other signed copy will be retained by Legal Services in the secure Legal file store. Contracts should only be executed in counterpart in urgent cases and with the authorisation of the relevant Executive Director.
- 18.3 Where the contract exceeds £100,000, both parties shall sign the contract under seal, except where the Monitoring Officer is satisfied that in the circumstances it is not necessary or in the best interests of the Council(s) for the contract to be executed under seal such reasons shall be recorded in writing.

## **19 Construction Procurement (Works Contracts)**

- 19.1 The generic procurement process does not fully translate to the procurement of construction contracts; there are a whole host of other considerations. In particular, technical and project expertise and capacity will be required commensurate with the project (either in-house or externally). Other considerations include:
- Additional Tendering Requirements – e.g. to comply with industry guidance or procedural codes
  - Whole-Life Costing – not only should the initial cost of creating a building or structure be considered but also the cost of servicing and maintenance etc. over its lifetime. In appropriate circumstances, higher initial capital expenditure can be justified if it significantly reduces future servicing, maintenance and other operational costs
  - Estimating and Cost Control – robust estimating and cost control procedures are essential to avoid project overspend
  - Risk Management – potential risks must be identified at an early stage and an appropriate risk management strategy – including a risk register – put in place
  - Additional Statutory Obligations – these can be wide ranging including planning permissions, Building Control Regulations, Health and Safety requirements etc.; and
  - Sustainability – the Government's National Procurement Strategy requires local authority construction projects to adequately consider social, economic and environmental factors (e.g. through protecting the natural environment).

19.2 PAS91 Construction Qualification will apply for OJEU works contracts.

## **20 Frameworks Agreements**

20.1 A Framework agreement is a type of contract that has already been tendered by another organisation (by a third party buying organisation) and is a permissible contracting route for public sector organisations. It is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

20.2 Framework agreements differ widely in their terms particularly as to whether the client accepts some contractual commitment without immediately placing orders or whether contractors are free to decline orders. Contracts based on framework Agreements must always be awarded in accordance with the rules set out within the framework agreement documentation. This may be either:

- a) By undertaking a 'direct call-off' from the framework agreement, where the terms are sufficiently precise to cover the particular call-off requirements without re-opening competition and a contract can be awarded directly to a framework supplier; or
- b) By holding a 'further competition' in accordance with the rules set out in the framework, where the requirements are provided to the framework suppliers in the relevant lot of the framework, and the framework suppliers provide their responses and price in return.

20.3 Binding contracts are made only when an unconditional offer by one party has been accepted by the other. A framework agreement is therefore a loose collective term covering:

- Framework arrangements (no binding commitment); and
- Framework contracts (commitment by both parties to one another).

20.4 The provisions of the Procurement Procedure Rules apply equally to these types of agreement, and specifically:

- The use of the framework must be approved and verified as providing value for money (some frameworks – especially construction – charge a % management fee) by the relevant Executive Director / Chief Executive.
- The framework must be available to public sector bodies
- The Procurement Unit must approve the contract within the framework as adequate for the procurement.

## **21 E-Procurement**

21.1 The Councils recognise the importance of electronic trading and have or are in the process of implementing the following e-procurement tools enabling electronic sourcing, ordering, receiving goods and making payments.

- Corporate purchasing cards
- Electronic tendering portal and contract management modules
- Electronic auctions ("e-auctions")

- Purchase to pay systems

21.2 Where an e-auction is used, the usual thresholds and authorisation procedures must be used as with a standard procurement processes.

21.3 An official purchase order must be raised prior to the supplies, goods and services being commissioned.

## **22 Purchase to Pay (P2P) Process**

22.1 The purchase to pay cycle covers the process of purchasing goods from the initial identification of the need to procure goods or services to the payment of the supplier. When a need to purchase goods or services is identified, ANNEX E details the steps which should be followed.

## **23 Contract Management**

23.1 All contracts must have a named contract manager including position, for the entirety of the contract.

23.2 All contracts must contain dispute resolution provisions and these must be used at the earliest sign of something going wrong or the failure of Key Performance Indicators (KPIs).

23.3 Records of all contract performance discussions and liaison with contractors should be kept and retained as evidence at all times in the event of any issues arising.

23.4 Contracts should be effectively managed to ensure value for money is achieved, potential risks are avoided and the outcomes and benefits identified in the business case are delivered.

a. Day-to-day contract review should be carried out within the service area by an officer nominated by the relevant Executive Director. For contracts that involve an ongoing relationship (i.e. are not one off in nature for the supply of goods or services), the Client and Supplier should hold mutually agreed regular meetings either quarterly or biannually with a set agenda and notes of the meeting kept. The frequencies of the meetings should be set appropriately to the delivery and nature of the contract arrangements in place.

b. Contracts should not be terminated without first taking legal advice from the Executive Director & Monitoring Officer or delegated officer.

c. Any decision to proceed to termination requires the authorisation of the relevant Executive Director / Head of Service.

## **24 Collaborative Working**

24.1 Potential contracts as part of a consortium with other local or public authorities or the private sector must have the agreement of the Procurement Unit and may only be entered into if it is in the best interests of the Councils and it complies with the Procurement Procedure Rules of at least one of the other authorities (which must be at least as rigorous as those included in these Procedure Rules) and that of the

requirements as set out in the Public Contract Regulations for above threshold activity. All consultations and decisions should be recorded in writing.

## **25 Transparency**

- 25.1 A register of all contractual agreements must be maintained centrally by the Procurement Unit, by means of a central record / database. The register is open for inspection by any Member or Officer of the Council(s), upon request.
- 25.2 In addition, a public extract from the Contracts Register (covering supplier details, start/end dates and options to extend) shall be made available on the Council(s) websites.
- 25.3 Under the Transparency Code 2015 requirements, all opportunities for work exceeding £5,000 must be made available by open competition and advertising. In addition all details of invites to tender and awards made over this value must be published quarterly by the Authority. Purchase Card spend(s) must be published monthly.
- 25.4 The annual procurement forward plan will be available on the Council(s) websites. This will list all planned forthcoming procurement events for the current year.
- 25.5 Detailed documentation must be retained by the Procurement Unit to support the procurement and evaluation process (clearly detailing the evaluation scores and contract award) for the duration of the contract and after in accordance with the Document Retention Policy. All related data must be retained in the electronic tendering portal applicable to the completion of the exercise
- 25.6 Evaluation feedback (supplier debriefs) should be issued to all unsuccessful tenderers immediately upon conclusion of the evaluation and award process as standard protocol.

## **26 Fraud and Corruption – Officer Interests**

- 26.1 Councillors and officers must not accept any form of hospitality from any Candidate during a tendering (or similar exercise). Hospitality from suppliers, service providers or contractors who may or may not have current contracts with the Council may only be accepted in accordance with the Code of Conduct for Elected Members” and “Code of Conduct Employees, for officers, both of which form part of the Council’s Constitution. For both Members and officers the appropriate Declaration or Register of Gifts and Hospitality should be completed in accordance with this guidance.
- 26.2 Prior and on the receipt of tenders, officers involved in the procurement will be required to complete the webform declaration disclosing any interests in the contract. All relevant Interests must be disclosed and the Procurement Unit (in discussion with the Monitoring Officer where required) will determine if it is appropriate for the officer to be involved in the subsequent procurement.
- 26.3 The Monitoring Officer shall record and keep the particulars of any notice given by an officer of the Alliance under Section 117 of the Local Government Act 1972, of any pecuniary interest in a Contract.



## **27 Fraud & Corruption – Supplier**

- 27.1 A (standard) contract clause is included in the standard terms and conditions to protect the Council(s) and secure entitlement to cancel the contract and recover any loss resulting from such a cancellation, if the contractor, his employees or agents with or without his knowledge:
- Does anything improper to influence the Alliance or its employees in relation to the contact; or
  - Commits any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them; or
  - Provides a fee or reward, the receipt of which is an offence under section 117(2) of the Local Government Act 1972 (Article 45).
- 27.2 All potential suppliers should be made aware of the Councils' Anti-Fraud and Corruption and Whistle Blowing policies.
- 27.3 Suppliers will be required to sign a declaration [Non-Canvassing and Collusion] relating to the Prevention of Corruption (to indicate that they understand and agree to abide by the Council's policies, including a standard clause on the Prevention of Bribery).

## **28. Legislation – The legal Framework**

- 28.1 There are several legislative Acts which come into force in relation to procurement. The Procurement unit and Legal Services will provide guidance on the requirements of these acts and if they are applicable to the procurement activity being undertaken;

### **Localism Act 2012 - Community Right to Challenge**

The Community Right to Challenge is the right for community organisations to submit an expression of interest in running services of local authority and fire and rescue authorities on behalf of that authority.

### **Public Services Social Value Act 2012**

The Public Services (Social Value) Act came into force on 31 January 2013. The act requires consideration at the pre-procurement stage how the procurement activity may improve the social, environmental and economic well-being of the area in which the contract will be applied, how it might secure any such improvement and to consider the need to consult.

### **Bribery Act 2010**

The Act defines bribery as giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith

### **Modern Slavery Act 2015**

The Modern Slavery Act 2015 is an Act of the Parliament of the United Kingdom. It is designed to tackle slavery in the UK and consolidates previous offences relating to trafficking and slavery

### **Late Payment of Commercial Debts Regulations 2013**

Amended late payment legislation came into force on 16 March 2013, implementing European Directive 2011/7/EU on combating late payment in commercial transactions.

### **Equality Act 2010**

In accordance with the Equality Act 2010, Contracting Authorities must comply with the Public Sector Equality Duty when conducting public procurement.

### **Local Government Transparency Code 2015**

This Code is issued to meet the Government's desire to place more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services

## **29 Freedom of Information**

- 29.1 The Freedom of Information (FOI) Act 2000 gives people the right to see information that is held by any public organisation. It is intended to make public authorities more open and responsible for their actions. The Act recognises that there are some valid reasons for withholding information. Contractors are required to complete a Freedom of Information Schedule identifying any confidential or commercially sensitive information in their tender response.

## **30 Data Protection**

- 30.1 Procuring Officers must consider the information governance requirements of the contract if they anticipate any Personal Data is to be processed as part of the contract e.g. data protection, security of information, records management.
- 31.2 Where Personal Data may be processed as part of the contract Procuring Officers must seek further advice from the Legal services section.
- 32.3 Where Personal Data may be processed as part of the contract, a Privacy Impact Assessment tool must be completed. This will help the Council identify the most effective way to comply with their data protection obligations, and meet individuals' expectations of privacy.
- 33.4 Where requirements are identified by the Privacy Impact Assessment, Procuring Officers must ensure that any requirements are considered and built into the specification, and assessed where necessary as part of the contract evaluation including assurance that the contractor can comply with the General Data Protection Regulation and seeking indemnities from contractors for breaches of the same.

## ANNEX A – SPECIFICATION OF REQUIREMENT GUIDANCE

Specifications will vary in length and complexity depending on the nature of the product or service being procured. However the following are common areas in most specifications, and should be included unless there is valid reason why not:

- **Title Page** – Clearly describe the project and identify the Alliance and the main contact person (or contract administrator)
- **Table of Contents** – Ensure that the document is well set out and easy to read, using plain language
- **Definitions** – In addition to the definitions in the contract part of the tender, it is important that there is a list of definitions, or a glossary of terms, to ensure that technical words and phrases in the specification are mutually understood. Failure to define key words and phrases may lead to misunderstandings and inappropriate solutions
- **Introduction** – The introduction should briefly explain the requirement and the context of that requirement
- **Scope** – The scope will address areas such as anticipated demand or volumes, whether the supplier is to supply only, supply and install, provide training, provide supporting documentation, etc. and, where appropriate, should identify specifically what is not to be included
- **Background** – The more information a tenderer has, the better able he or she is to respond to the tender. Background information may cover, where appropriate, the reason the Alliance is tendering, its expectations, the implications for the Alliance of implementing the solutions and other options which have been considered by the Alliance (and if dismissed, why). It may also explain how the solutions may link into other requirements and applications whether already implemented or planned for the future
- **Service Conditions and Environmental Factors** – Explain any factors which may have a bearing on the operation of the goods or services. For example, if the physical environment may impact on the output design or performance, the specification must highlight these conditions. Examples include:
  - Operating and storage conditions
  - The need for interchange ability or compatibility with existing services and equipment
  - Personnel and health and safety aspects
  - Existing facilities to be maintained throughout a contract period and what has to be done to ensure this; and
  - Any sustainability requirements, for example, energy usage and the recycling capability of the goods.
- **Statement of Requirements** – The Statement of Requirements (SOR) must contain a description of the outputs for services or functionality and performance requirements for goods. Details of the performance indicators and benchmarks that will be monitored

during the contract period must also be included. The SOR will vary significantly in scale and complexity depending on the size and nature of the contract but may contain some or all of the following:

- **Services:** Required outputs and/or outcomes
  - Performance measures
  - Targets
  - Management of the contract
  - Transfer of assets and personnel
  - The hand-over process
  - Transition between service providers
- **Goods:**
  - Design and performance criteria
  - Functional characteristics
  - Performance characteristics
  - Technical characteristics
  - Reporting requirements
  - Standards
  - Compatibility and standardisation
  - Acceptance testing
  - Trade-ins
- **Works:**
  - List drawings and other guidance provided
  - Details of access, ground conditions and preparation work
  - Performance criteria including contractors' designs
  - Relationships with subcontractors and suppliers
  - Employer's contractual and legal requirements
  - Insurances of works and indemnities
  - Works management including completion and defects
  - Control of time and cost
  - Quality control, standards and checks required
  - Health and safety; and
  - Temporary facilities.

There are also strict rules in the EU procurement regulations about naming proprietary brands in specifications; it is not possible to specify brand names since this may distort competition.

- **Technology, systems and management techniques** – The specification may need to state where the Alliance expects improvement in the use of systems and other management techniques. This will help ensure that the supplier continues to adopt best practice throughout the course of the contract
- **Quality Requirements** – The specification should address the quality processes and standards expected of the supplier. For supply contracts, the quality of the goods required must be clearly defined
- **Whole of Life Support** – This section should state what maintenance is required and any modifications or upgrades that may be required in the future plus any warranties required

- **Security** – If security is an issue then this section should ask suppliers about how the confidentiality of personal and commercial information will be handled. It may also address security issues such as theft-reduction measures
- **Training** – Any training which is required for the product or service in question should be clearly identified and the supplier should be required to state what will be provided, plus the cost of any additional training requirements that may be above the levels agreed in the tender process
- **TUPE** – The specification must clearly state any potential TUPE and pension implications that suppliers would need to consider when submitting a tender; and

**Implementation Timetable** – The implementation timetable should be fully detailed including the commencement date, delivery date(s), milestones, and a completion date. The Alliance must specify the required dates and not ask the supplier when he or she can deliver, although the supplier can be asked to provide (costed) variations if deemed appropriate.

## ANNEX B – SUMMARY OF SOURCING THRESHOLDS

	Value £	Sourcing Method	Min No. of bids *	Sourced by	Advertising Timescales**	Method / Means
<b>HPBC / SMDC DISCRETIONARY LEVELS</b>	<b>NOTE: All Supplier purchases unless made via a Purchase Card transaction must have a valid Purchase Order raised on the Council's Purchase order system</b>					
	0 – 500 (one off spend)	Purchasing Card	1	Service	n/a	Purchase Card for one offs
	0 – <2,000	Best Value	1	Service	n/a	Officers should be able to demonstrate best value has been achieved
	>2,000 – <5,000	Request for Quotations (RFQ)	3	Service	No min period (sufficient time should be allowed for preparation of quotes)  Advertise on Websites if required	Procurement Webform  Quotations obtained uploaded to Webform
	>5,000 – <25,000	Request for Quotations (RFQ)	3	Procurement	No less than 2 wks	Procurement Webform & E-tendering / Advertising portals
	>25,000 - EU (PCRs) thresholds	Tender (ITT)	4	Procurement	No less than 3 wks (depending on the complexity of the contract)	Procurement Webform & E-tendering / Advertising portals

\*where practicable

\*\*unless exceptional circumstances dictate – insufficient time is not exceptional

### European Union [EU Directive - OJEU] Thresholds (Jan 2016 – update every 2 yrs)

The EU Directives for goods and supplies, services and works specify certain procedures and time scales that must be followed, which include Advertisement in the Official Journal of the European Union.

Procurement Unit must be consulted and will be responsible for all activity exceeding these thresholds.

<b>Public Contract Regulations Apply</b>	Value £	Category	Procedure	Advertising Timescales (min applies)
	<b>&gt; £164,176</b>  > 62,842 Small Lots	<b>Supplies / Services</b>	Open	ITT 30 days
			Restricted	PQQ 30 days ITT 30 days
			Competitive with Negotiation	EOI 30 days ITT 30 days
			Competitive Dialogue	EOI 30 days
			Innovation Partnership	EOI 30 days
	<b>&gt; £4,104,394</b>  > £785,530 Small Lots	<b>Works</b>	As above	As above

**ANNEX C– SUMMARY OF AUTHORITY TO PROCURE AND AWARD THRESHOLDS**

**Award and Exemptions Authorisation Limits:**

<b>Total Contract Value (£)</b>	<b>Authorisation</b>	<b>Authorisation By</b>
<b>&lt;25,000</b>	Head of Service / Executive Director	Webform
<b>&gt;25,000 - &lt;164,176 (EU Service Threshold)</b>	Executive Director / Chief Executive	Webform
<b>&gt;164,176 (EU Service Threshold) - &lt;1,000,000</b>	Delegated Member Decision	Delegated Member Report (Portfolio Holder for Procurement and the relevant service area)
<b>&gt;1,000,000*</b>	Cabinet SMDC Executive HPBC (with prior Scrutiny Committee)	Committee Report

\* Committee reports may be presented where the total contract value is less than £1,000,000 - where considered appropriate due to the nature of the procurement or where it relates to a key decision

## ANNEX D - PERMITTED EXEMPTIONS TO THE RULES

When applicable and justified, the Procurement Procedure Rules relating to the obtaining of quotation and tenders shall not apply when:-

<b>Exemption 1</b>	In the case of contracts for the supply of work, goods, services or materials, the goods or materials are proprietary, patented or specialised articles or are sold only at a fixed price and no reasonably satisfactory alternative is available
<b>Exemption 2</b>	The prices of the goods or materials are wholly controlled by trade organisations or Government order and no reasonably satisfactory alternative is available
<b>Exemption 3</b>	If in the opinion of the Chief Executive/Executive Directors, there would be no genuine competition
<b>Exemption 4</b>	The work to be executed, or the goods or materials to be supplied, will be procured through an extension to an existing contract, where the contract specifically includes for the extension
<b>Exemption 5</b>	The work to be executed, or the goods or materials to be supplied, will be procured through a variation to an existing contract, where the contract specifically provides for that variation
<b>Exemption 6</b>	The procurement of goods or services is required to react to, or to prevent, an emergency situation. An emergency situation is one: <ul style="list-style-type: none"> <li>○ Which is likely to involve risk of serious damage to or destruction of property</li> <li>○ Where repairs or maintenance are required to property and delays to the procurement would result in the Alliance incurring further significant costs; or</li> <li>○ Which is likely to involve risk of injury, or danger to health or life</li> </ul>
<b>Exemption 7</b>	The Alliance is joining a contract that has been awarded by another public body, which the Alliance can legally join
<b>Exemption 8</b>	It can be evidenced that the goods or services to be purchased are offered to the Alliance at a price substantially less than the lowest price at which the Chief Executive/Executive Directors would reasonably expect through completing a tendering exercise
<b>Exemption 9</b>	The procurement of a good or service is required for an interim period (no longer than 12 months) to enable the alignment of contract dates with a public sector partner, and where to do so enables a collaborative procurement to be completed which, it can reasonably be anticipated, will deliver savings.
<b>Exemption 10</b>	Any other justified reason as authorised and fully documented by the Chief Executive/Executive Directors up to the EU Services Threshold.

In all cases above a written record must be kept of the reasons why an exemption was applied.



## ANNEX E – PURCHASE TO PAY CYCLE

