

5
Contract Procedure Rules

CONTENTS

1.	Introduction	2
2.	Compliance with the Rules	3
3.	Authority to Purchase	3
4.	Valuation of Contracts	4
5.	Defining the Need	4
6.	Use of Existing Contracts / Frameworks	5
7.	Use of Nominated Sub-contractors	5
8.	Quotation and Tender Process	5
9.	Receiving and Opening Tenders	9
10.	Evaluating Quotations and Tenders	9
11.	Awarding Contracts and Audit Trails	10
12.	Ordering and Paying for Supplies, Services & Works	11
13.	Parent Company Guarantees and Performance Bonds	11
14.	Conditions of Contracts	11
15.	Contracts Register	11
16.	Variations and Extensions	11
17.	Conflicts of Interest and Corruption	12
18.	Gifts and Hospitality	13
19.	Exemptions from the Rules	13#

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4- Introduction

1. Introduction

1.1 These contract procedure rules are the Council's rules (the "Rules") for buying for the Council and are part of the Council's Constitution. The Rules govern the method by which the Council must select suppliers to provide goods, services or works. The Rules do not apply to:

1.1.1 internal purchases or internal service provision (including where the contracting authority awards a contract to an entity which it controls)

1.1.2 contracts which establish or implement co-operation between contracting authorities;

1.1.3 contracts which cover flows of money or pooling of funds between the council and health bodies (section 75, 76 and 256 agreements under the National Health Service Act 2006 (as amended));-

1.1.4 grants which the Council may receive or make except where the grant results in payment to a third party for a contract for good, works or services where the Council clearly specifies the output or outcomes to be delivered;

1.1.5 the purchasing of land or to any interest in land where the Property Procedure Rules apply.

1.2 If in doubt about whether or how the Rules apply, advice must be sought from the Procurement Services Team acting on behalf of the Service Director – Digital and Business Operations who will be able to advise whether the Rules apply in a particular case.

4.1

4.21.4 Every contract for the purposes of goods, services or works made entered into by or on behalf of the Council including its Executive and Cabinet Members shall must comply with:

- these Rules;
- the Council's Financial Regulations Constitution;
- all relevant statutory provisions including in particular the Local Government Act 1988 Part II, Local Government Act 1999, Local Government Act 2000, the Public Contracts Regulations 2006, the Public Contracts Regulations 2015 ("the PCR 2015"), the Local Government (Contracts) Act 1997, and the Localism Act 2011 and the Public Services (Social Value) Act 2012 and the Contracts Concession Regulations 2016 ("the CCR 2016");
- European Union treaties and European Council Directives;
- the rules on State Aid;
- any direction by the Council, the Executive Cabinet Member or Committee having appropriate delegated authority and
- Council policies-.

4.31.5 Senior Managers Service Directors will beare responsible for ensuring that their officers comply with these Rules.

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~~4.41.6 The Chief Financial Officer/Service Director – Digital and Business Operations will investigate any incidences of non-compliance with assistance from the Procurement Services Team.~~

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~~4.51.7 The Service Director – Digital and Business Operations Chief Financial Officer is responsible for providing advice on these Rules with assistance from the Procurement Services Team.~~

~~1.6 The Rules govern the method by which the Council spends money on the supplies, services and works which the Council needs to deliver its services. They do not apply to internal purchases or service provision, only where you need to buy something from outside the Council.~~

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~~1.7 The Rules apply to any contract (including a purchase order) that results in a payment being made by the Council. It also applies to some types of contracts where a service is being provided for the Council which results in income being generated for the Council.~~

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~~1.8 The Rules do not cover grants which the Council may receive or make except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered.~~

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~~1.9 The Rules do not apply to the purchasing of land or to any interest in land where the Property Procedure Rules apply.~~

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~~If you are in any doubt about whether the Rules apply, you must always check with Procurement Services acting on behalf of the Chief Financial Officer.~~

~~The Council has a duty to obtain 's "Best Value duty" is very important. This It means that the Council we must always consider how each procurement (including in respect of concession arrangements) is consistent with the Council's duty to secure continuous improvement in what we do having regard to economy, efficiency and effectiveness. We therefore need to question whether we should be buying anything at all and if we should do, whether we can do it ourselves, or jointly, or rely on someone else to get better value.~~

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~~1.10 Government and EU public procurement policy require that the Council must permit, and be seen to be permitting, freedom of opportunity to trade with the Council and to be open and transparent about how we buy things. If we fail in this duty, an external party may have cause for a complaint against us and may be able to claim damages~~

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~~4.11.8 The Rules have three main purposes:~~

~~4.11.1 a) To ensure compliance by the Council comply with the obligations that govern the spending of public money such as the EU Procurement Directives with public procurement law; as implemented into UK law by the Public Contracts Regulations 2006;~~

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~~4.11.2 b) To obtain Best Value in the way the Council we spends money, so that we may in turn offer better and more cost effective services to the public; and~~

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~~4.11.3 c) To protect people-officers who follow the Rules.~~

~~4.121.9 This document contains the Rules-Guidance on how the Rules are applied can be located on the Council's intranet and from the Procurement Services Team. and~~

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~~refers to guidance, such guidance being the Council's procurement guide. The Council's procurement guide may be updated from time to time by the Chief Financial Officer.~~

~~1.13 In these Rules, certain sections are marked in bold and underlined. These sections are compulsory and **must** always be followed whatever you are buying for the Council.~~

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~~1.14 In these Rules "Senior Managers" has the meaning given to the phrase by the Council's Employment Procedure Rules.~~

~~1.10 Officers must not engage with a supplier without first engaging with the Procurement Services Team.~~

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~~2. **2. Compliance with these Rules**~~

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~~2.1 The Code of Conduct requires that you **must** follow these Rules when buying for the Council. If Officers you ~~who~~ do not follow these Rules and/or fail to enter into a contract on behalf of the Council in accordance with them may be subject to you will have breached the Code of Conduct and this could be a disciplinary proceeding ~~effence.~~~~

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~~2.2 You **must** follow the guidance provided in the Procurement Guide even where an exemption to these Rules has been granted (see Section 19 of these Rules).~~

~~3. **3. Authority to Purchase**~~

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~~3.1 Senior Managers **must** ensure that procurements undertaken by themselves or their authorised officers comply with the requirements of the Council's Scheme of Delegation and Financial Procedure Rules.~~

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~~3.23.1 The Service Director: Finance & Commercialisation Chief Financial Officer maintains a list of ~~Agresse~~ authorisation limits which details the limits within which Senior Managers Service Directors and their authorised officers may buy things for the Council. This document also specifies a maximum financial limit for each transaction for each authorised officer. These limits **must** not be exceeded.~~

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~~3.33.2 Senior Managers Service Directors must ensure that procurement is undertaken by authorised officers who can demonstrate knowledge and understanding of these Rules and skills appropriate to the task. These officers should already have authority under the list of ~~Agresse~~ authorisation limits and if not **must** be granted authority by the Service Director: Finance & Commercialisation, Chief Financial Officer.~~

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~~3.4 Notwithstanding the authority granted to Senior Managers by the Chief Financial Officer, all procurements for works, supplies and services where the estimated contract value is £100,000 or above **must** be managed by the Chief Financial Officer (or such other person or department as the Chief Financial Officer may direct).~~

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~~3.53.3 You **must** ensure that you have the funds in the budget and the necessary budget approval prior to commencing a procurement procedure. Officers must ensure that the appropriate budget holder has the funds in place for the contract and that the necessary budget approval from Finance has been obtained prior to~~

commencement of the procurement process. This must be validated when a decision has been made to award a contract.

4. Valuation of contracts

4.1 An estimated contract value **must** be established at the start of everythe procurement process.

4.2 The contract value is the estimated total value over its full duration (not the annual value) and must include the value attributable to any extension options and contractually permissible variations.

4.3 Where the duration of the contract is indeterminate, the contract value must be the estimated value of the contract over a period of four years.

4.14.4 The contract value must be referenced within the "request for contract" form, which must be issued by the procuring officer to the Procurement Services Team prior to the commencement of any procurement for a contract of £1,000 or above in value.

4.24.5 If the procurement is related to another procurement or is for suppliesgoods, services or works which are, or may also be, procured by another division of the Council or on a recurring basis, this could affect the contract value for the purpose of these Rules (i.e. that is the requirements for aggregation may apply). In such circumstances Officers must therefore you should obtain seek guidance from the Procurement Services Team before commencing any procurement activity.

~~4.3 The contract value means the estimated total value over its full duration, including any extension options. It is not the annual value.~~

~~4.4 Where the duration of the contract is indeterminate, the contract value should be the estimated value of the contract over a period of four years.~~

~~4.5 Where the contract does not indicate a total price, the contract value should be the expected value of payments over its full duration or over four years where the contract duration is indeterminate.~~

4.6 The value of contracts **must never** be deliberately or artificially underestimated or split to avoid the application of procedures set out in these Rules. Deliberately or artificially underestimating or disaggregating the contract value as part of any procurement procedure is a clear breach of the Rules and, where they apply, the PCR 2015 and may lead to disciplinary proceedings being instigated.

5. Defining the need

5.1 Prior to commencing a procurement, all options for the delivery of the requirement must be considered. The procuring officer must engage with the Procurement Services Team as soon as a requirement is identified.

5.15.2 As a minimum, in partnership with PST, you **must** clearly and carefully identify and specify the suppliesgoods, services or works required together with the terms for payments and any other terms and conditions.

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~~5.25.3~~ The size, scope and specification of the ~~suppliesgoods~~, services or works required **must** be decided in advance of the procurement process.

~~5.35.4~~ You **must** define ~~T~~the duration of the contract that ~~is likely to will~~ provide the most economically advantageous outcome for the Council ~~and not to avoid or delay the requirement to conduct a subsequent future procurement process. This decision must be determined, made in advance of the procurement process.~~

~~5.45.5~~ Under Best Value legislation ~~the procuring officer you~~ **must** consider ~~all~~ the options for the delivery of the required ~~suppliesgoods~~, services or works. The options ~~are~~include:

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~~5.4.45.5.1~~ Not buying the ~~supplies-goods~~ or services or having the works done at all;

~~5.4.25.5.2~~ Providing the ~~suppliesgoods~~, services or works ourselves using pre-existing internal resources;

~~5.4.35.5.3~~ Contracting with third party suppliers ~~Getting someone else~~ to provide the ongoing ~~suppliesgoods~~, services or works;

~~5.4.45.5.4~~ Providing the ~~suppliesgoods~~, services or works in partnership with someone else;

~~5.4.55.5.5~~ By Commissioning jointly with another ~~Council~~ contracting authority; and/or

~~5.5.6~~ Shared service delivery with another ~~c~~Council or public sector entities:-

~~5.4.6~~

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~~5.6~~ Where the procurement relates to services, an assessment of the required services ~~shall be undertaken by the procuring officer in conjunction with the Procurement Services Team to ensure compliance with the Public Services (Social Value) Act 2012.~~

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~~5.7~~ If having completed this process it is determined that a procurement is required, the ~~procurement documentation shall be developed to reflect size, scope and type of specification (i.e. input versus output) required and any other specific terms and conditions which are key to the subject-matter.~~

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~~6.~~ **6. Use of existing contracts/Framework Agreementss**

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~~6.1~~ The ~~Chief Financial Officer/Service Director – Digital and Business Operations~~ will ~~must~~ approve ~~the use of f~~framework ~~a~~greements (including ~~Crown Commercial Services those available under Catalyst from OGCbuying solution~~) for use within the Council following an assessment of the terms of the framework ~~undertaken by the Procurement Services Team to ensure~~ing that it offers ~~B~~est ~~V~~alue and legal compliance.

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~~6.2~~ You **must** check the "I need" catalogue published by the Chief Financial Officer on the Procurement Intranet to see if there is an existing contract or a framework agreement that has been approved for use within the Council suitable for the proposed procurement.

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~~6.2~~ Existing contracts or approved framework agreements (including those available from the Crown Commercial Services and other Public Purchasing Organisations) ~~ought~~ may be used by the Council (as part of the procurement procedures in

~~section 8 of these Rules) where, following an assessment of the terms of the framework by the Procurement Services Team and/or Legal Services as appropriate, such frameworks are considered to offer Best Value for the requirement in question ordinarily to be used wherever they exist (subject to satisfactory performance on previous/current contracts by the relevant framework contractors)-~~

6.3 ~~Officers must engage with the Procurement Services Team at the earliest opportunity (regardless of the estimated contract value) to ensure that any appropriate framework agreements are identified at the start of the procurement procedure.~~

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~~7. Use of Nominated Sub-contractors~~

7.1 ~~You Officers must not~~ nominate the use of specific sub-contractors without the prior written consent of the ~~Chief Financial Officer~~ ~~Service Director – Digital and Business Operations~~. Any ~~approved nominated~~ sub-contractors ~~must~~ have been selected through use of the appropriate tender or quotation procedure as if the Council were contracting directly with the sub-contractor.

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~~8. Quotation and Tender and Quotation Procedures~~

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8.1 The Rules ~~and the associated procurement procedures~~ vary according to the value of the contract, with stricter more rigorous procedures for higher value transactions. This is to ensure that the benefits of a more thorough, complex process are not outweighed by the cost relative to the value of ~~supplies goods~~, services or works in question.

~~8.2 Notwithstanding the contract value or procurement procedure utilised, all procurements undertaken by the Council must adhere to public procurement principles of equality of treatment, non-discrimination, transparency, mutual recognition and proportionality and such adherence must be demonstrable if challenged.~~

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~~8.3 Procurement for concession contracts (contracts where operational risk lies with the provider and payment consists of the right to exploit the services or works or those right along with payment) are governed by the CCR 2016 equal to or above the financial threshold of £4,104,394. Officers must obtain advice from the Procurement Services Team at the earliest opportunity if the letting of a concession contract is being considered.~~

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~~8.4 For the highest value contracts procurements with an estimated contract value at or above the OJEU Thresholds (see section 8.5 of these Rules below), the Council is legally obliged to follow the comply with all EU Procurement Directives as implemented into UK law by the Public Contracts Regulations 2006 PCR 2015. These opportunities are published in the Official Journal of the European Union (OJEU).~~

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~~8.2~~

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~~8.3.5~~ The table below indicates the relevant procedure to be followed for different levels of contract value:

Estimated Contract Value	Procedure to be followed
<ul style="list-style-type: none"> £164,176,173,934* or over for supplies, goods and services* £4,104,394,348,350* or over for works 	You <u>must</u> follow the OJEU Procurement Procedure set out below.
<ul style="list-style-type: none"> £100,000 and over up to £164,176,173,934* for supplies, goods and services £100,000 and over up to £4,104,394,348,350* for works 	You <u>must</u> follow the Procedure for High-Value Transactions set out below.
<ul style="list-style-type: none"> £10,000 and over up to £99,999 for supplies, goods, services and works 	You <u>must</u> follow the Procedure for Intermediate-value Transactions set out below.
<ul style="list-style-type: none"> Up to £9,999 for supplies, goods, services and works 	You <u>must</u> follow the Procedure for Low-value Transactions set out below.
<p>* Please note that these are the OJEU Thresholds ("OJEU Thresholds"), and are correct as at January 2016 but are amended biennially in January. You <u>must</u> check the Procurement Intranet for the latest thresholds.</p>	

8.6 Certain health, social and other services (as listed in Schedule 3 of the PCR 2015) are subject to a "light touch regime" if the value of the contract is £589,148 or above. Regulations 74 - 77 of the PCR 2015 set out the "light touch regime" and permit certain deviations from the OJEU Procurement Procedure described below. Advice must be sought from the Procurement Services Team in advance of commencing a procurement process for Schedule 3 services who will advise the compliant route to market.

OJEU Procurement Procedures

8-48.7 Officers must engage with the Procurement Services Team as soon as a need is identified and for transactions valued at £173,934* or over for supplies or services (£4,348,350* or over for works) the procurement **must** be conducted in accordance with the EU procurement procedures specified in the Public Contract Regulations PCR 2015.

8-58.8

All OJEU Procurement Procedures **must** be approved and managed by the Chief Financial Officer/Service Director – Digital and Business Operations or such other person or department as he or she may direct.

A Request for Contract form **must** be completed and signed by an officer authorised in accordance with the Officer Scheme of Delegation and submitted to the Procurement Services Team for supplies and services and to Property Services for works unless otherwise directed by the Service Director – Digital and Business Operations/Chief Financial Officer.

8-68.9

8-78.10 All Contracts above the EU procurement procedures thresholds **must** be tendered under using an appropriately compliant procurement route as specified in the PCR 2015 the Open, Restricted, Competitive Dialogue or, in exceptional circumstances, the Negotiated procedure, in accordance with the Public Contract Regulations 2006. The Procurement Services Team will through a formal options appraisal conducted in conjunction with the procuring officer, advise on the most appropriate type of procurement procedure based on the particular requirement.

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~~8.8~~ The type of EU procurement procedure to be used **must** be approved by the Chief Financial Officer.

~~8.98.11~~ For each contract, a Contract Notice **must** be published in the Supplement to the Official Journal of the European Union (OJEU) and Contracts Finder. Advertisements published additional to this (for instance in the local press or trade journals):

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~~8.9.1~~ ~~8.11.1~~ **must** not appear on Contracts Finder or in any form before a Contract Notice is ~~published by the EU Publications Office and transmitted to OJEU;~~ and

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~~8.9.2~~ ~~8.11.2~~ **must** not contain any information additional to that contained in the Contract Notice in OJEU.

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~~8.108.12~~ Minimum timescales relating to tender procedures are governed by the Public Contract Regulations PCR 2015 and these **must** always be followed.

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~~8.118.13~~ For all contracts tendered under the OJEU Procurement Procedures, a ten or fifteen calendar day 'standstill period' **must** be observed between the decision to award and contract conclusion. The ten calendar day period applies where ~~fax or~~ electronic communication has been used to communicate the decision. If, however, some other form of communication has been used, a fifteen calendar day 'standstill period' must be observed. In each case the 'standstill period' is calculated as starting on from the day following the date on which the contract award decision is sent to tenderers. Once the decision to award a contract is made, each tenderer and candidate **must** be notified in writing of the outcome of the tender process. This notification **must** include:

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~~8.11.18.13.1~~ details of the contract award criteria;

~~8.11.28.13.2~~ the reasons for the decision, including the characteristics and relative advantages of the successful tender and where practicable the score the tenderer and the successful tender obtained against those award criteria;

~~8.11.38.13.3~~ where practicable the score the winning tenderer obtained;

~~8.11.48.13.4~~ the name of the winning successful tenderer; and

~~8.11.58.13.5~~ a statement as to the precise date the standstill period applicable is due to expire.

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Special rules apply where a tenderer or candidate requests a de-brief on the tender process. Even if a tenderer asks for a de-brief outside of the standstill period ~~we are the Council is~~ still obliged to provide this ~~-(see the procurement guidance)-~~. In this instance, advice **must** be sought from ~~the Chief Financial Officer~~ the Procurement Services Team at the earliest opportunity and before feedback is provided to the requesting tenderer.

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~~8.14~~ All contracts awarded under the OJEU Procurement Procedures **must** be announced by means of a Contract Award Notice in OJEU transmitted no later than ~~48-30~~ calendar days after the date of the contract award.

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~~8.12~~ Further guidance is provided in the Procurement Guide.

Procedure for High-value Transactions

~~8.15 Officers must engage with the Procurement Services Team.~~

~~8.13 For transactions valued from and including £100,000 to £173,933* for supplies and services or £100,000 to £1,348,349* for works, the high-value transactions procurement procedure **must** be followed where a formal tender process **must** be conducted as described below.~~

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~~8.148.16 For all high-value transactions, the tender process **must** be managed by the Chief Financial Officer Service Director – Digital and Business Operations or such other person or department as he or she may direct, working with the relevant client departments / directorates.~~

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~~8.15 A Request for Contract form **must** be completed and signed by an officer authorised in accordance with the Officer Scheme of Delegation and submitted to the Procurement Services Team for supplies and services and to Property Services for works unless otherwise directed by the Service Director – Digital and Business Operations Chief Financial Officer.~~

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~~8.168.17 The contract opportunity **must** be advertised by the Procurement Services Team at the start of the tender procedure. Information on the contract opportunity **must** be published on Contracts Finder within 24 hours of being advertised elsewhere.~~

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~~8.178.18 The tender procedure **must** be selected shall be that identified as the most appropriate by the Procurement Services Team in conjunction with the from the following options prior to advertising: Service Director – Digital and Business Operations or such other person or department as he or she may direct.~~

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~~8.17.1 Open tender (all interested suppliers submit a tender in response to an advertisement);~~

~~8.17.2 Restricted tender (expressions of interest from interested suppliers submitted in response to an advertisement, with a selection of those contractors (chosen on the basis of an evaluation of their expressions of interest) invited to submit a tender); or~~

~~8.17.3 Where a relevant Framework Agreement exists, tenders shall be invited from all capable suppliers according to the arrangements provided in the Framework Agreement and having regard to the principles of Best Value.~~

~~8.18 For all contracts tendered under the high-value transaction procurement procedures, a ten or fifteen calendar day 'standstill period' **must** be observed between the decision to award and contract conclusion. The ten calendar day period applies where fax or electronic communication has been used to communicate the decision. If, however, some other form of communication has been used, a fifteen calendar day 'standstill period' **must** be observed. In each case the standstill period is calculated from the day following the date on which the contract award decision is sent to bidders. Once the decision to award a contract is made, each tenderer **must** be notified in writing of the outcome of the tender process. This notification **must** include:~~

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~~8.18.1 details of the contract award criteria;~~

~~8.18.2 where practicable the score the tenderer obtained against those award criteria;~~

~~8.18.3 where practicable the score the winning tenderer obtained;~~

~~8.18.4 the name of the winning tenderer; and~~

~~8.19 a statement as to the precise standstill period applicable.~~

~~8.20 Special rules apply where a tenderer requests a de-brief on the tender process. Even if a tenderer asks for a de-brief outside of the standstill period we are still~~

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~~obliged to provide this (see the procurement guidance). In this instance, Advice must be sought from the Procurement Services Team at the earliest opportunity and before any feedback is provided to a requesting tenderer or candidate. Chief Financial Officer at the earliest opportunity.~~

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~~8.21 Where a competition has been undertaken in accordance with this procedure and only a single tender has been received, the Service Director – Digital and Business Operations may approve the award of a Contract, subject to a value for money review being undertaken and an audit trail being available for inspection. The award of the Contract cannot proceed without this authorisation.~~

~~8.21 Further guidance is provided in the Procurement Guide.~~

Procedure for Intermediate-value Transactions

~~8.22 Officers must engage with the Procurement Services Team as soon as a need is identified.~~

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~~8.23 A request for contract form must be completed and signed by an officer authorised in accordance with the Officer Scheme of Delegation and submitted to the Procurement Services Team unless otherwise directed by the Service Director – Digital and Business Operations Chief Financial Officer.~~

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~~8.24 In respect of procurements with a contract value of between £1,000 and £9,999, the Procurement Services Team will invite For transactions valued from and including £10,000 to £99,999.99 for supplies, services and works, the intermediate value transactions procurement procedure must be followed where at least three written quotations must be invited from capable suppliers before a supplier can be selected and purchase order can be issued.~~

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~~8.25 Where the contract value for a contract for goods or services is between £10,000 and £24,999, a request for quote the contract opportunity must be advertised on the council's e-portal at the start of the procurement procedure, for a contract for supplies or services where the contract value is more than £50,000.~~

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~~8.26 Where the contract value for a contract for goods or services is £25,000 or over, a request for quote must be advertised on the council's e-portal and Contracts Finder within 24 hours of the time when the procurement is advertised in any other way. A contract award notice must also be published on Contracts Finder.~~

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~~8.23 Where a relevant Framework Agreement exists, subject to its specific terms a mini-competition must be conducted with quotations invited from capable suppliers according to the arrangements provided in the Framework Agreement and having regard to the principles of Best Value.~~

~~8.248.27 The purchase order must specify the supplies, goods, services or works to be provided, the price to be paid and the terms of payment.~~

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~~8.258.28 In addition to the purchase order must contain SCC's the Council's standard form of terms and conditions of purchase. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.~~

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~~8.26 If only one quotation is received you **must** seek more quotations or obtain an exemption from the Rules in accordance with Section 19 of these Rules.~~

~~8.27 8.29 Emailed quotations are acceptable but copies **must** be retained in the relevant file.~~

~~Further guidance is provided in the Procurement Guide.~~

~~8.30 Where a competition has been undertaken in accordance with this procedure and only a single quote has been received, the Service Director – Digital and Business Operations may approve the award of a Contract, subject to a value for money review being undertaken and an audit trail being available for inspection. The award of the Contract cannot proceed without this authorisation.~~

~~8.28~~

Procedure for Low-value Transactions

~~8.31 For transactions valued up to £9,999.99 for supplies, services and works, the low-value transactions procurement procedure **must** be followed where Officers will inform Procurement Services Team of their need is identified. This is to ensure that any existing contractual arrangements which may be appropriate and/or suppliers who have previously expressed an interest in the requirement being procured are identified and involved as appropriate.~~

~~8.32 Officers must obtain at least one written quotation **must** be obtained from a capable supplier before a formal purchase order can be issued.~~

~~8.29~~

~~8.30 8.33 Officers must be able to demonstrate and record that the written quotation and resulting contract represents Best Value.~~

~~8.31 Where a relevant Framework Agreement exists, subject to its specific terms a mini-competition **must** be conducted with quotations invited from capable suppliers according to the arrangements provided in the Framework Agreement and having regard to the principles of Best Value.~~

~~8.32 8.34 The purchase order **must** specify the supplies/goods, services or works to be provided, the price to be paid and the terms of payment.~~

~~8.33 8.35 In addition the purchase order **must** contain SCC's the Council's standard form of terms and conditions of purchase. A quotation and a purchase order will create a legally binding contract. The purchase order is used to formalise the terms of the contract.~~

~~8.34 Emailed quotations are acceptable but copies **must** be retained in the relevant file.~~

~~Further guidance is provided in the Procurement Guide.~~

9. Receiving and opening tenders and quotations

9.1 Responses to an invitation to tender or quote **must** be received according to the format of response specified in the invitation to tender or quote and no later than the time specified for submission of ~~tenders~~ tenders or quotes in the invitation to tender or quote.

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~~9.2 Emailed quotations received as part of the Procedure for Intermediate-value Transactions and Procedure for Low-value Transactions are acceptable but copies **must** be retained in the relevant file.~~

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~~9.29.3 Tenders or quotations received for all procurement procedures (except the Procedure for Low-value Transactions) may beshall be managed by the Procurement Services Team conducted via the secure Supply Southampton using the Council's on-line tendering system portal for electronic tendering. Electronic tender responses received via the portal **must** be received, time stamped and opened in accordance with the approved procedures implemented in that system.~~

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~~9.3 For tenders conducted through paper-based methods, tender responses **must** be retained in a secure place until the time specified for their opening. Two officers of the Council (as determined by the Chief Financial Officer) **must** open all tenders at the same time, one of whom **must** work in a department other than the one for which the procurement is being carried out. Late tenders **must** be retained unopened until after the tenders properly received have been opened. The supplier **must** be notified of its exclusion on account of submitting its tender late. If no response from that supplier is received within a reasonable period then the unopened late tender **must** be returned to the supplier but if the supplier challenges the decision then the unopened late tender **must** be retained until Procurement Services and Legal Services confirm that it may be returned to the supplier.~~

~~9.4 Opened and rejected tenders and quotations as well as invited bidders/candidates who did not submit a tender or quotation **must** be recorded on a list of tenders or quotations invited.~~

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~~10- 10. Evaluating quotations and tenders and quotations~~

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~~10.1 An appropriate evaluation model that states the basis for how the contract will be awarded **must** be determined in partnership with the Procurement Services Team prior to the issue of the invitation to quote or tender or quote and must include mandatory and desirable requirements linked to the subject matter of the contract. The evaluation criteria **must** be detailed in the document used to invite bids/tenders or quotations and must not be changed during the procurement process. Variant bids (i.e. a proposal for a solution that differs from the solution set out by the Council) must be scored against the same evaluation criteria as a tender or quotation which meets the Council's stipulated requirements.~~

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~~10.2 For quotations and tenders where price is the only discerning factor, the resulting contract **must** be awarded to the bidder submitting the lowest price compliant bid. Contracts awards must be based on the identification of the most economically advantageous tender or quotation and the For quotations and tenders where price is not the only discerning factor, a more complex Best Value evaluation based on the identification of the Most Economically Advantageous quotation or tender **must** be used. criteria must reflect this.~~

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~~10.310.2 An evaluation to determine the most economically advantageous tender or quotation most economically advantageous evaluation involves scoring tenders or quotations or tenders objectively by a panel of three or more using criteria which **must**:~~

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10.2.1 be relevant to the particular procurements size and scope;

~~10.3.4~~10.2.2 be pre-determined and listed in the invitation to submit a tender or quotation ~~or tender~~ documentation, as the case may be, in order of importance;

~~10.3.2~~10.2.3 be strictly observed at all times throughout the procurement procedure;

~~10.3.3~~10.2.4 reflect the principles of Best Value;

~~10.3.4~~10.2.5 include price;

~~10.3.5~~10.2.6 consider whole-life costings, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal ~~should~~must be taken into account;

~~10.3.6~~10.2.7 indicate how the Council will score tenders or quotations and be capable of objective assessment;

~~10.3.7~~10.2.8 be weighted according to their respective importance which must be detailed in the document used to invite ~~bid~~tenders or quotations;

~~10.3.8~~10.2.9 include, where applicable, the quality of the bidder's proposal to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and

~~10.3.9~~10.2.10 avoid discrimination or perceived discrimination on the basis of nationality or other cause contrary to the any of the Council's policies.

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~~10.3~~ Where the most economically advantageous evaluation is used, Any resulting contract must be awarded to the ~~bidder~~tenderer who submits the ~~Most~~Most Economically Advantageous Tender or quotation (i.e. bid that is the quotation or tender that achieves the highest score in the objective assessment).

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10.4 The Council must obtain clarification or explanation from suppliers who submit tenders or quotes which appear abnormally low and may reject a tender or quote if the evidence supplied is not satisfactory to justify the low tender or quote.

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10.5 The results of the evaluation process must be recorded in writing.

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10.6 The evaluators must not disclose information contained within tenders or quotes returned by a supplier to any third party not involved with the procurement process. Disclosing information relating to a bid to a competing supplier is a breach of the PCR 2015 and any failure to comply with this may lead to disciplinary proceedings being instigated.

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~~14.~~ 11. Awarding contracts and Audit Trails

Senior Managers

11.1 Service Directors must ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.

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11.2 A contract must only be awarded and signed by ~~an person officer~~an officer authorised to do so in accordance with the Officer's Scheme of Delegation subject to receipt of confirmation from a ~~Chief Officer~~Service Director (prior to award) that the appropriate budget holder has the funds in place to sustain the contract ~~prior to award~~.

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11.3 For all contracts where the contract value exceeds the OJEU Thresholds or in the case of a works contract, £200,000 -£400,000, the contract must either:

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11.3.1 be made under the Council authority's seal in accordance with Article 13.05 of the Constitution; or

11.3.2 signed by at least two duly authorised Officers of the authority Council authorised by the Service Director: Legal & Governance.

The decision as to whether to sign or to seal a contract shall rest with the Service Director: Legal & Governance. For the avoidance of doubt, no contract shall be either be attested by or signed by any member.

11.4 A full and complete audit trail of all procurement activity resulting in the award of a contract, framework or dynamic purchasing system, must be retained in electronic as required by regulation 84 of the PCR 2015 and in accordance with the Council's Records Review and Retention Schedule, or hard copy format as appropriate.

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11.5 In respect of the OJEU Procurement Procedure, High Value Transaction Procedure and Intermediate Value Transaction Procedures, the Council must produce a report containing information including contract value, the names of bidders rejected at the prequalification stage and the reasons for their rejection (for OJEU Procurement Procedure) and conflicts of interest identified and how they were addressed. This report will be produced and retained by the Procurement Services Team.

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11.6 An audit trail of the procurement and decision making process in respect of any procurement which is withdrawn prior to contract award shall also be retained by the Procurement Services Team.

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11.4 In respect of all contracts awarded exceeding £25,000 in contract value (including those awarded from of call-off contracts under framework agreements), the name of the contractor, the date on which the contract was entered into and the value of the contract must be published on Contracts Finder within a reasonable time of the contract award.

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12. 12. Ordering and Paying for ~~Supplies~~Goods, Services and Works

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~~12.1 Notwithstanding the fact that a contract may have been awarded, official orders **must** still be placed on suppliers in accordance with the Council's Financial Procedure Rules.~~

~~12.1 No pre-payment for ~~supplies goods~~, services or works may be allowed above the value of £5,000, ~~and~~ without the prior written consent of the ~~Chief Financial Officer and the Monitoring Officer~~Service Director: Finance & Commercialisation and the Service Director: Legal & Governance.~~

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13. 13. Parent Company Guarantees and Performance Bonds

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13.1 The requirement for a bond, parent company guarantee or other security **must** be determined in conjunction with the ~~Chief Financial Officer~~Service Director – Finance and Commercialisation and the Procurement Services Team.

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14. 14. Conditions of Contract

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~~14.1 Unless expressly agreed by the Service Director: Legal & Governance, **all** transactions regardless of value must use a model form ~~an appropriate model form of~~ conditions of ~~contract~~contract provided and approved by the Chief Financial Officer~~Service Director: Finance and Commercialisation and the Service Director: Legal & Governance, or a form determined after consultation with the Service Director: Legal & Governance~~~~

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~~14.2 Before inviting tenders for all contracts for supplies, services or works estimated at £100,000 or over the Service Director: Legal & Governance **must** be consulted to verify that a suitable set of conditions of contract is being proposed.~~

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~~14.3~~14.1 The Chief Financial Officer~~Service Director – Digital and Business Operations~~, in conjunction with the Service Director: Legal & Governance, **must**:

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~~14.3.1~~14.1.1 keep a list of all model forms of conditions of contract that gives details of when the conditions were last updated;

~~14.3.2~~14.1.2 review all current model forms of conditions of contract, at least every 2 years, or when applicable legislation is introduced.

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15. 15. Contracts Register

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~~15.1 The Service Director – Digital and Business Operations Chief Financial Officer **must** maintain and publish a register (“the Contracts Register”) which includes details of contracts, commissioned activity, purchase orders involving recurring payments, framework agreements and any other legally enforceable agreement with values of £5,000 and above. ~~all approved and current contracts and framework agreements where the contract value is £100,000 or over~~ to enable the Council to meet its obligations in respect of the Local Government Transparency Code 2015. The register is maintained by the Procurement Services Team and should be published on the Southampton City Council’s website~~

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~~15.2 Senior Managers **must** maintain a register, using the template provided by the Chief Financial Officer, of all current contracts and framework agreements where the contract value is less than £100,000. An up to date register **must** be available to the Chief Financial Officer on request and formally issued to the Chief Financial Officer by 31st March every year.~~

~~16.~~ **16. Variations and Extensions**

~~16.1 All extensions and variations to an existing contract must demonstrate best value and must not be instigated solely to avoid or delay the requirement to conduct a procurement.~~

~~16.2 Officers must ensure that the appropriate budget holder has the funds in place for the variation or extension and that the necessary budget approval from Finance has been obtained.~~

~~16.3 All extensions and variations must be documented in writing and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier.~~

~~16.4 Before any extensions or variations are agreed, the Procurement Services Team must have been consulted.~~

~~16.5 The Procurement Services Team shall recorded all implemented extensions and variations on the Contracts Register.~~

~~16.6 As well as complying with any statutory restrictions and compliance with these Rules, Service Directors may authorise an extension or variation to an existing contract where an extension or variation is provided for within the terms and conditions of the contract.~~

~~16.16.7~~ **Extensions**

~~16.1.1 As well as complying with any statutory restrictions and compliance with these Rules, Senior Managers may only authorise an extension to an existing contract where an extension for the particular period is provided for within the terms and conditions of the contract (and provided that there has been satisfactory performance).~~

~~16.7.1 For any extension to a contract which is not expressly provided for within the terms and conditions of the contract officers must always seek advice from the Procurement Services Team before agreeing any extensions. These extensions must be authorised by the Service Director – Digital and Business Operations or such other person or department as he or she may direct.~~

~~16.1.2~~

~~16.2~~

16.8 Variations

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~~46.4.16.8.1~~ All variations must be made in accordance with the provisions of the PCR 2015. Officers must always seek advice from the Procurement Services Team before any variations to contracts are agreed with a supplier.

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~~46.4.116.8.2~~ Subject to any statutory restrictions and compliance with these Rules, ~~enior Managers Service Directors~~ may authorise ~~request any other~~ variations to an existing contract ~~where, and if relevant thea~~ consequent change in price, determined in accordance with the contract terms where the annual value of the variation is less than £25,000 or 15% of the original annual contract value (whichever is the lesser).:-

~~46.4.216.8.3~~ Subject to any statutory restrictions and compliance with these Rules aAny variations to an existing contract ~~where the, and if relevant a~~ consequent change in price, (determined in accordance with the contract terms) ~~where the annual value of the variation~~ is greater than £25,000 or 15% of the original annual contract value (whichever is the lesser) **must** be authorised by the Service Director: Digital and Business Operations. Chief Financial Officer.

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~~46.5~~ No extension or variation may be granted to any contract not awarded under the EU procurement procedures where the value of the extension or variation results in the contract value exceeding the EU procurement procedures thresholds.

~~46.6~~ All extensions and variations to an existing contract **must** be checked to confirm that they represent best value and they are not being instigated solely to avoid or delay the requirement to conduct a procurement.

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~~46.7~~ All extensions and variations to a contract awarded under the EU Procurement Directives **must** be authorised by the Chief Financial Officer.

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~~46.8~~ All extensions and variations **must** be documented and signed by an authorised signatory on behalf of the Council and counter-signed by the supplier.

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17. 17. Conflicts of Interest and corruption

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17.1 Any interest which may affect the award of a contract under these Rules **must** be declared. Such interests may include the ownership of shares in a potential supplier, previous employment by a potential supplier or the employment of a family member by a potential supplier. Any officer of the Council participating in a contract award decision or employee of Procurement Services Team or Property Services managing the procurement **must** provide the Chief Financial Officer Service Director – Finance and Commercialisation with a written declaration of any such interests.

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17.2 The Chief Financial Officer Service Director: Finance and Commercialisation **must** either certify that such interests are acceptable or take any necessary action in respect of potential conflicts of interest and the officer should not participate in the award of the contract by the Council.

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17.3 Officers ~~must~~^{should} be aware of other requirements of the Council's Constitution with regard to conflicts of interest, bribery and corruption.

17.4 Each contract which the Council enters into shall include a provision which entitles the Council to terminate the contract and recover losses from the contractor resulting

from such termination if the contractor or any one acting on the contractor's behalf has:

- 17.4.1 offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or has done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the Council; or
- 17.4.2 shown or has forborne to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or
- 17.4.3 committed an offence under the Prevention of Corruption Acts 1889 to 1916 (or any act or acts as may replace the same) or has given any reward the receipt of which is an offence under the Local Government Act 1972 (or any act as may replace the same) or committed an offence under the Bribery Act 2010.

~~18.~~ **18. Gifts and Hospitality**

- 18.1 No gifts or hospitality should be accepted from any bidders to any contract being let ~~or about to be let~~ by the Council. Acceptance of gifts or hospitality may be a disciplinary offence. Every ~~Officer~~ (whether of the Council or Procurement Services ~~Team or Property Services~~) managing a procurement, letting ~~(or planning to let)~~ a contract or managing a contract for the Council **must** inform the ~~Service Director: Finance and Commercialisation~~ **Chief Financial Officer** of any offers of gifts or hospitality. Reference should be made to the Council's policy on Gifts and Hospitality in place at such time and ~~relevant the Council's Bribery Act p~~ **Policies**.

~~19.~~ **19. Exemptions ~~from to~~ the Rules**

- ~~19.1~~ Exemptions from these Rules **must** be obtained in advance in accordance with the following procedure.

~~19.2~~ ~~19.1~~ No exemption can be given which breaches ~~An exemption cannot be given for any procurement subject to the EU Procurement Directives as implemented in the UK by the Public Contracts Regulations 2006.~~ **public procurement law.**

~~19.3~~ ~~19.2~~ An exemption **to these Rules** may **only** be agreed by the ~~Service Director – Digital and Business Operations (or his/her delegate)~~ **Chief Financial Officer** if after considering a **Request for Exemption** ~~written report~~ he/she is satisfied that the exemption is justified because:

~~19.3.1~~ ~~19.2.1~~ the nature of the market for the works to be carried out or the ~~supplies~~ **goods** or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or

~~19.3.2~~ ~~19.2.2~~ the contract is for works, ~~supplies-goods~~ **goods** or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

~~19.3.3~~ ~~19.2.3~~ there are other circumstances which are genuinely exceptional.

- 19.3** A record of the decision approving an exemption and the reasons for it **must** be kept by the ~~Chief Financial Officer~~ **Procurement Services Team** and ~~an entry made in the register of approved exemptions~~ **and the Contracts Register must be updated accordingly.**

19.4 Approved exemptions will be conditional on the relevant Service Director providing and agreeing a plan with the Service Director – Digital and Business Operations to mitigate the need for further exemptions relating to the contract.

~~19.4~~.

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19.5 An exemption shall never be given in relation to either Rule 17 or Rule 18.

19.6 These Rules may also be varied or departed from when, but only when, the Service Director: Legal & Governance advises that statute or subordinate legislation requires.