

CHAPTER 9: PROCUREMENT AND CONTRACT PROCEDURE RULES

9.1 Procurement Overview

9.1.1 Procurement Definition

- 9.1.1.1 Public Sector procurement is the process of acquiring goods, services and works for the delivery of an Authority's obligation to its residents and regional visitor. The process must be carried out within a specific legal framework and based on principles of equal treatment, transparency and non-discrimination such that for contracts over a specified value or specific social interest may be tendered for by any interested and appropriately qualified organisation. This is to ultimately achieve the optimal solution that also provides value for money across the whole-life of the process and contract.

9.1.2 Governing Legislation

- 9.1.2.1 The Local Government Act 1972 section 135 requires Public Bodies to have standing orders for how it enters into contracts. These Contract Procedure Rules ("Rules") set out how the Combined Authority will deliver against this obligation.
- 9.1.2.2 All Procurements for Contracts, by Combined Authority staff or members (including where managed by an external organisation or public body on the Authority's behalf), MUST comply with these Rules, the Combined Authority's Financial Regulations and all applicable and UK Legislation; specifically (but not limited to):
- a. The Local Government Act 1972
 - b. Public Contract Regulations 2015 (PCRs)
 - c. Concession Contracts Regulation 2016 (CCRs)
 - d. Equality Act 2010
 - e. Bribery Act 2010
 - f. Localism Act 2011
 - g. Social Value Act 2012
 - h. Modern Slavery Act 2015
 - i. General Data Protection Regulation 2016 (SI 2016\679)
 - j. Freedom of Information Act 2000
 - k. Transparency Code 2015
 - l. National Procurement Policy Statement 2021

- 9.1.2.3 Where there is a discrepancy between these rules and any procurement

- legislation, the procurement legislation is the dominant authority.
- 9.1.2.4 Where there is a conflict between the procurement legislation and any other relevant legislation as listed above (or otherwise identified during the process) the Monitoring Officer must be consulted immediately to carry out a legal, project risk assessment.
- 9.1.2.5 Central Government guidance (Procurement Policy Notes (PPNs)) should be considered for best practice but do not override these rules or legislation.
- 9.1.2.6 Government has issued a procurement policy note (05/21) requiring that contracting authorities familiarise themselves with the contents of the National Procurement Policy Statement. The Statement advises that contracting authorities should have regard to the following national priorities in their procurement where it is relevant to the subject matter of the contract, and it is proportionate to do so:
- creating new businesses, new jobs and new skills
 - tackling climate change and reducing waste, and
 - improving supplier diversity, innovation and resilience
- 9.1.2.7 The National Procurement Policy Statement affirms the requirement to comply with legal obligations including those in the UK-EU Trade and Cooperation Agreement, and these obligations include the binding commitment to fair and open competition which is assured by the Public Contracts Regulations.
- 9.1.2.8 The procurement policy note also advises that contracting authorities should consider whether they have the right policies and processes in place to manage the key stages of commercial delivery identified in this statement where they are relevant to their procurement portfolio. They should consider whether they have the right organisational capability and capacity with regard to the procurement skills and resources required to deliver value for money.
- 9.1.29 Non-compliance with any of these rules may constitute grounds for disciplinary action.

9.1.3 Application of the Rules

These rules govern

- 9.1.3.1 ALL purchases of works, goods and services (including consultancy requirements and equipment hire or lease through rental agreements) across the whole Combined Authority, regardless of value, as covered by Chapter 1 and 2 of the PCRs and not excluded by Regulation 10, PCRs.
- 9.1.3.2 The use of external frameworks and Dynamic Purchasing Systems.

- 9.1.3.3 Procurements under the Light Touch Regime Procurements, as covered by Chapter 3 of the PCRs.
- 9.1.3.4 Below threshold procurements under Chapter 8 of the PCRs.
- 9.1.3.5 The procurement of Concession contracts as set out in the CCRs.
- 9.1.3.6 ALL collaborative procurements with other public bodies.
- 9.1.3.7 The Disposal of Assets or goods by the Combined Authority.

They DO NOT apply to:

- 9.1.3.8 Supply of works, goods and services by the Authority to another authority, subject to the agreement of the Procurement and Contracting Manager.
- 9.1.3.9 Purchases through local authorities, government bodies or public agencies, (eg police, health or other similar authorities) where the procurement rules of that organisation have been approved by the Procurement and Contracting Manager as complying with these Rules, or the contract is agreed in cooperation or partnership eg section 75 agreements.
- 9.1.3.10 Public body to public body co-operation - contracts with other public bodies where the parties come together to deliver a public service, under the following conditions:

- (a) achieve objectives which are common to both parties; and
- (b) the arrangement is solely for the public interest; and
- (c) the parties perform less than 20% of the services covered by the arrangement on the open market.

- 9.1.3.11 In-house awards (this is where the Combined Authority awards a contract to an entity it controls or controls jointly with other contracting authorities) as prescribed in regulation 12 PCRs. This exemption will only apply if all of the following conditions are met:

- (a) The Combined Authority exercises a similar control or joint control with other contracting authorities on the entity as it does with its own departments;
- (b) The entity carries out more than 80% of its activities for the controlling authorities;
- (c) There is no private sector money in the entity.

- 9.1.3.12 Employment contracts.
- 9.1.3.13 Purchases made at public auction or of goods sold due to insolvency.
- 9.1.3.14 Land contracts (including leases, licences and transfers).
- 9.1.3.15 Grants of money, these cannot be contracts as there is no consideration

and they are not services required to be delivered by the Authority.

9.1.3.16 Funding or financing arrangements.

9.1.3.17 Any other arrangements excluded by the PCRs.

9.1.4 Services Excluded under Regulation 10 PCRs

9.1.4.1 The services excluded under Regulation 10 PCRs:

- (a) Legal advice that may lead to or is in preparation for Judicial Proceeding, or representation at judicial proceedings;
- (b) Arbitration or conciliation;
- (c) the purchase or sale of any interest in land, (including leasehold interests);
- (d) Financial advice for the sale, purchase or transfer of sureties;
- (e) Audio-visual/radio broadcasts;
- (f) Arbitration/legal advice for either the preparation or representation in legal proceedings that may result in a court hearing;
- (g) Loans;
- (h) Employment contracts between an individual and the Combined Authority;
- (i) Public transport by rail or metro;
- (j) Political campaigns;
- (k) Civil Defence

9.1.4.2 Where there is any doubt as to whether the procurement is covered by these rules, officers are required to seek advice from the Procurement and Contracting Manager.

9.2 Procurement Objectives

9.2.1 The Combined Authority seeks to achieve more than just the practical element of the contract from the procurement process; as such, every

contract must be let in consideration of the following objectives:

- (a) Regulatory Compliance (open markets and equal opportunity for all providers, fair & transparent process in accordance with the procurement principles in Regulation 18 PCRs);
- (b) Accountability;
- (c) Value for Money (proportionality, efficiency and economy);
- (d) Efficient Procurement Process;
- (e) Support of Horizontal Policies such as implementing social, environmental and industrial commitments, at a proportionate level, in accordance with the Combined Authority's Policies and Procurement Guidance Document.

9.2.2 Excluding item 1 – the level of priority of each of the other objectives is to be set by the Combined Authority, as detailed in this document.

9.2.3 Roles and Responsibilities

9.2.3.1 The following lists detail the various procurement activities and where the responsibilities for each sit.

Procurement and Contracting Manager (directly or through delegation)

- (a) Responsibility for the Rules, guidance documents and procurement templates.
- (b) Design, implementation and management of a Procurement Gateway Process.
- (c) Provision of Procurement Advice and assistance on all expenditure, including route to market and contract choice.
- (d) Overview and management of any frameworks and corporate contracts.
- (e) Oversee all exemptions to the PCRs and these rules.
- (f) Organising and running market engagement events.

- (g) Provision of advice on commercial structure and evaluation methodology.
- (h) Appointment of external legal support for complex procurements.
- (i) Management of the e-tendering portal.
- (j) Tender Moderation.
- (k) Signing off All Regulation 84 Tender Reports for process compliance.
- (l) All formal Procurement correspondence.
- (m) Collating/populating all Contract Documents and ensuring signature
- (n) Oversee contract monitoring and all contract variations.
- (o) Attendance at bi-annual contract management meetings.
- (p) Management and monitoring the Contract Register.
- (q) Forward Planning of cyclical requirements.

Chief Finance Officer (directly or through delegation)

- (a) Development and implementation of the Financial Regulations.
- (b) Approving budgets for procurement of contracts.
- (c) Signing of All Regulation 84 Tender Reports for budgetary compliance.

Monitoring Officer (directly or through delegation)

- (a) General advice as required.
- (b) Lawfulness and governance of complex procurement decisions taken.
- (c) Provision of any legal document requirements and support managing external legal services.
- (d) Signing of All Regulation 84 Tender Reports for governance

compliance.

- (e) Approval of all contract documents before signature.
- (f) Approval of all waivers to these rules.
- (g) Approval of any contracts awarded under Regulation 32.

Directors

- (a) Project approval and authority to proceed.
- (b) Signing of All Regulation 84 Tender Reports for Award Approval.

Contract Managers

- (a) To following the instructions of the Procurement and Contracting Manager and Monitoring Officer.
- (b) Development of Project Initiation Documents and Gateway reports.
- (c) Confirmation of Project Budget & Authorisation to Procure.
- (d) Creation of Contract Specification and Contract Management requirements.
- (e) Managing any technical enquiries during a procurement process.
- (f) Evaluation of tender returns.
- (g) Complete the tender report.
- (h) Manage the delivery of the contract in accordance with the specification, tender return and the contract management processes included in the contract.

All Officers Must:

- (a) Comply with the Combined Authority's Financial Regulations.
- (b) Declare any gifts or hospitality received either before, during or after the procurement to the Head of Procurement.
- (c) Not disclose any confidential information to unauthorised persons.

- (d) Conduct the procurement process in a fair, open and transparent manner.
- (e) Ensure the process delivers value for money.

9.2.4 Use of Consultants

9.2.4.1 Where the Combined Authority requires the technical input of industry experts/ consultants to either resource and/or manage a procurement or inform a specification, or deliver a particular process; officers are required to ensure the following is applied:

- (a) The service is for a discrete (or multiple discrete) pieces of work and/or is not backfilling a Combined Authority post.
- (b) The consultants are procured in accordance with these Rules.
- (c) The Consultant is experienced in and fully understands all Public Procurement Legislations and agrees to be bound by them.

There is a clear specification of requirements and responsibilities set out in their appointment, including adherence to these rules and that this is documented in the form of contract used.

9.2.5 Procurement Process Planning

9.2.5.1 As part of the initial procurement planning process, officers are required to consider the impact of legislation, financial and time constraints along with any of project specific requirements.

1. Category of Spend

9.2.5.2 The procurement process to be applied is firstly determined by the category of spend and then the contract value, such that before beginning the process this needs to be ascertained.

9.2.5.3 The categories of spend are

- (a) Goods (supplies or products);
- (b) Services (labour, consultants or technical resources);
- (c) Works (Construction Projects);
- (d) Light Touch Regime Services (Hospitality/ Catering, Education/

Training, Security, Legal Services);

- (e) Concession Contracts (contracts where the supplier's revenue is through the exploitation of an asset e.g. running a café owned by the authority);
- (f) Regulation 32 PCRs (Non-competitive Direct Awards);
- (g) Regulation 10 PCRs Excluded Contracts;
- (h) Regulation 14 PCRs Research & Development.

9.3 Contract Value Estimation

9.3.1 The estimated value of a contract is based on either; the money to be paid by the Authority to the successful tenderer (Regulation 6 PCRs) or the value to the market (Regulation 8 CCRs) of the contract.

9.3.2 A contract value should be calculated as follows:

- (a) A lump sum contract – this is a one-off, capital project, only used by one project/team where the contract value is the total budget available (including any contingency).
- (b) A periodic contract – this is where there is an annual, regular, potentially on-going requirement, by the authority – the contract value is the potential annual spend (across the whole Authority) multiplied by the number of years the contract is to run (including any extensions).
- (c) A concession contract – this is a term contract over a number of years whereby the revenue is paid based on usage levels, and usually by the service users, without any guarantee of full recompense or profit.

9.3.3. The value of any contract is the TOTAL maximum, potential or reasonably foreseeable spend over the whole duration of the contract (including extensions) for a given requirement.

9.3.4 The Authority MUST NOT disaggregate or sub-divide like or similar requirements for the purpose of avoiding the procurement from being regulated. (Regulation 5, PCRs or Regulation 7, CCRs). Procurements below these thresholds are still subject to delivering value for money but the nature of the procurement process may be defined by the authority and needs to be proportionate to the value, effort and market interest in consideration to the nature of the purchase.

(a) See Schedule 1 for current thresholds across all relevant legislations

9.4 Partnership Arrangements

9.4.1 The authority has entered into a number of arrangements with partner authorities for the purchase of various back office services; officers are required to liaise with procurement before commencing an external procurement to ensure that those arrangements are not breached or cause relationship problems across the authority's partners.

9.5 Procurement Gateway Process

9.5.1 The Procurement and Contracting Manager in consultation with the Monitoring Officer, shall publish and oversee a gateway process that reviews and approves the approach to procurement and ensures that these rules, legislation and best practice are adhered to along with monitoring the delivery of value for money and social obligations. This process to be monitored by an officer board based on value and/ or complexity. The details of the Procurement Gateway Process will be maintained on the Combined Authority internal website.

Pre- Procurement Contract Approvals

9.5.2 Where the procurement is not required to be monitored under the gateway process the project officer must still provide evidence to the Procurement and Contracting Manager that they have the necessary director, committee or board approvals to procure and subsequently award a contract based on specified value.

9.5.3 The Project Officer must also liaise with the Governance team to ascertain if the procurement is a Key decision and based on this, place the contract on the Forward Plan in accordance with the Authority's Constitution.

9.6 Procurement Timescales

9.6.1 Officers should allow the following minimum timescales for each of the identified routes:

- (a) Single quote - approximately two weeks
- (b) Three quotes - approximately six weeks
- (c) Below FTS threshold tender - approximately 10 weeks
- (d) Above FTS threshold tenders - OPEN procedure – approximately 14 weeks

- (e) Negotiated Procurement - at least 26 weeks

9.7 Application of Non-Procurement Legislation

- 9.7.1 Officers are required to consider whether the procurement process and decisions are affected by other relevant legislation. A list of the more obvious ones to be considered and their impact on procurement are available in the procurement guidance documents and will need to have been considered as part of the Gateway process to ensure a holistic approach is adopted and transparently procured.

9.8 Conflicts of Interest (Regulation 24 PCRs)

- 9.8.1 The Public Procurement Legislations are designed to prevent corrupt practices and the application of any preferential treatment or discrimination of any suppliers. As such the following rules apply:

All members, officers, contract managers or organisations procuring on behalf of the Combined Authority must avoid any potential conflict between their own (or family/ friends) interests and the interests of the Combined Authority as detailed in the Combined Authority's Code of Conduct.

- 9.8.2 Where an interest (financial or personal) is identified this must be reported to the Procurement & Contracting Manager such that any identified risks can be minimized. Where such a conflict is identified and cannot be suitably mitigated to the Procurement & Contracting Manager's satisfaction, that person may not participate in the procurement or evaluation process.

9.9 Separation of Duties

- 9.9.1 A procurement, contract, purchase order or waiver cannot be raised and approved by the same person.
- 9.9.2 Where a contract manager completes the practical element of a procurement process, a procurement form or makes another recommendation, the award must be agreed by a Director.

9.10 Risk Assessment

- 9.10.1 Officers are required to complete a risk assessment for approval by finance and legal on all procurements that are deemed high risk based on the following
 - (a) Is of political or public interest;
 - (b) Is over FTS threshold;

- (c) Is being awarded under Regulation 32 PCRs; or
- (d) Is being varied/extended under Regulation 72 PCRs;
- (e) Includes the setting up of a Special Purpose Vehicle;
- (f) Includes a lease arrangement, advance payment or holding funds on behalf of another entity;
- (g) Is for a duration over five years;
- (h) Includes design liability, intellectual property rights or a requirement for collateral warranties.

9.10.2 Officers should use the Combined Authority's standard templates and ensure they are added to the corporate risk register before the procurement commences and then monitored throughout the process and life of the contract.

9.11 Bonds and Parent Company Guarantees

9.11.1 The requirement for a bond or parent company guarantee (and its value) is at the discretion of the relevant Director.

9.11.2 An optional requirement for a Bond or Parent Company Guarantee should be included as part of all procurements over £250k such that it creates both; a means to assess the financial stability of a tenderer and an option to mitigate any identified performance risks of the preferred supplier. Evidence of the bond's availability (even if not required) should be obtained before award.

9.11.3 Where the project or a contractor is deemed as a high risk for failure (likelihood and/or impacts), advice should be sought from Procurement, Finance and Governance in deciding if the provision of the bond is required.

9.11.4 Where a bond or parent company guarantee is deemed necessary – this should be in a form acceptable to the Combined Authority and in consideration of the form of contract being used.

9.12 Routes to Market

9.12.1 The route to market is selected based on a number of considerations as set out below.

Where possible, **Officers are recommended to consider whether to use either an existing framework (or one procured by a partner authority) so as to minimise procurement costs and process time.**

Where the value is below FTS threshold or it has been agreed with procurement that the requirement is non-standard, or a framework may not deliver the optimal solution, be that because the supplier base is unsuitable or too limited, framework rates do not offer value for money or the requirement requires an ability to negotiate, then alternative routes should be considered in conjunction with procurement and legal or through the 'gateway' process.

These processes available are as set out below.

9.13 Process Types

9.13.1 Procurements can be split into two categories; regulated and non-regulated.

Non-Regulated (below FTS Threshold) Procurements

9.13.1.1 These can, in addition to using the regulated routes, be used based on value:

Direct Award – a single supplier quote from a local/SME supplier who is selected based on previous knowledge, a recommendation or a local supplier list (where one exists).

Quotes Process – between three and five suppliers are selected to provide a quote detailing how they will deliver a project and the costs. Suppliers to be selected based on being local/ SMEs with either previous knowledge, on a recommendation or from a local supplier list (where one exists).

Regulated (above FTS Threshold) Procurements

OPEN Tender (Regulation 27 PCRs) – DEFAULT ROUTE - single stage, advertised process. This route is for standard purchases where the requirements are clear – it does **not** include any scope for negotiation of any of the element of the tendered information. All compliant submissions must be evaluated.

RESTRICTED Process (Regulation 28 PCRs) – two stages, advertised process. This route is for standard purchases where the requirements are clear – it does **not** include any scope for negotiation of any of the element of the tendered information. Suppliers are shortlisted to tender following an initial supplier qualification process. This route is most suited to extensive markets to ensure proportionality of process and cost.

COMPETITIVE PROCESS with NEGOTIATION (Regulation 29 PCRs) – multi-stage, advertised process. Includes the ability to negotiate on predefined elements. Suppliers are shortlisted to tender following a supplier qualification process, and then following each round of negotiations based on the predefined scoring criteria. This is used where the desired outcome of the procurement is known but how

it is to be achieved is less clear.

COMPETITIVE DIALOGUE (Regulation 30 PCRs) – multi-stage, Advertised process. Includes the ability to discuss and define any unknown requirements. Suppliers are shortlisted to tender following a supplier qualification process, and then following each round of dialogue based on the predefined scoring criteria. This is used where the desired outcome of the procurement is unclear as to how it is to be achieved.

INNOVATIVE PARTNERSHIP (Regulation 31 PCRs) – multi-stage this is used where you want to purchase something that isn't already available in the market and needs to be created. The procurement process is based on a set of minimum requirements and desirable outcomes – the process can only be used with the approval of Procurement.

FRAMEWORK (Regulation 33 PCRs) – This can be procured through any of the procedures in this list and is an arrangement with one or more suppliers to provide the requirements on an as required basis with no fixed commitment. The Framework has a maximum duration of four years and subsequent awards can be made either by a direct award based on the framework prices or through further competition and evaluation – depending what has been specified in the Framework Agreement. Contracts awarded under the framework can run past the framework end date where set up to facilitate this.

DYNAMIC PURCHASING SYSTEM (DPS) (Regulation 34 PCRs) - this is an approved list, on to which suppliers can be added at pre agreed intervals. Suppliers are added based on the completion of the first stage of a RESTRICTED procedure and their demonstration of technical ability and previous experience. All subsequent awards must be through further competition and price/ quality evaluation.

FURTHER COMPETITION (from an existing framework) – this is where you are inviting the suppliers already on a compliantly procured framework or DPS to submit a qualitative proposal and price for your specific requirements. (where this is from a framework the prices/rates are capped at the framework prices).

BESPOKE COMPETITIVE PROCESS – this can only be used under the Light Touch Regime and will be defined and managed by procurement. **(Regulation 76, PCR or Regulation 36 CCR).**

DESIGN COMPETITION (Regulation 80 PCRs) - These are for the design of unique construction projects.

NEGOTIATED PROCEDURE WITHOUT ADVERTISEMENT – (Regulation 32 PCRs) – this route can only be used in exceptional circumstances and must be agreed by Procurement and the

Monitoring Officer and documented on a waiver. Potential for use include: lack of competition, urgency or exclusive rights.

9.14 Below FTS Threshold Requirements

9.14.1 The procurement process is to be selected based on its category and its value, this is to ensure that the process is proportionate, transparent and can demonstrate value for money in consideration of the project requirements and other constraints such as urgency or protected rights.

Goods and Services Contracts

- (a) Single quote up to £9,999
- (b) Three quotes between £10,000 and £49,999 (RFQ process)
- (c) Advertise on Contracts Finder between £50,000 and the FTS threshold (Tender Process)

Recruitment Consultant Appointments

- (a) Single quote up to £24,999
- (b) Three quotes between £25,000 and £99,999 (RFQ process)
- (c) Advertise on Contracts Finder between £100,000 and threshold (Tender Process)

Works and Concession Contracts

- (a) Single quote up to £49,999
- (b) Three quotes between £50,000 and £499,999 (RFQ process)
- (c) Advertise on Contracts Finder between £500,000 and above FTS threshold (Tender Process)

Light Touch Regime (including training and legal requirements)

- (a) Single quote up to £49,999
- (b) Three quotes between £50,000 and £199,999 (RFQ process)
- (c) Advertise on Contracts Finder between £200,000 and above FTS threshold (Tender Process)

Quotes Process

9.14.2 Where requests for quotations are made, these should be from local suppliers where possible and where permissible under the law, either from a known local list or identified through the e-tendering portal of registered suppliers. Where none are known, the opportunity may be advertised at the officer's discretion.

Contracts Finder (Tender Process)

9.14.3 Where an opportunity is to be advertised based on the above, or is published in any other way (eg on the e-tendering portal, through an industry magazine or some form of social media) it must also be advertised on Contracts Finder. Any advertised, below FTS threshold procurement,

must follow that of a single stage/open tender with no option for shortlisting.

Waivers

9.14.4 Where a below FTS threshold contract, based on value, requires a competitive process and there is an urgency, protected right, technical expertise or other reason that is accepted by the Monitoring Officer and Chief Finance Officer as delivering best value to the authority, a waiver may be used to enable the officer to seek a single quote and carry out a direct award to that organisation. This process is set out in the procurement guidance documents.

9.15 Above FTS Threshold Requirements

9.15.1 All Above FTS threshold procurements must be advertised (unless procured under Regulation 32 PCRs) on the e-tendering portal, Contracts Finder and Find A Tender Service (FTS).

9.15.2 The choice of which route to market should apply depends on the likely number of interested participants, the contract requirements and complexity and the need to negotiate, in accordance with Regulation 26. Further information is available in the procurement guidance documents and above at 9.13.1

9.16 Use of Frameworks

9.16.1 Where the decision is to utilise an existing Framework for the appointment of consultants or routine requirements, the choice of methodology should be based on the rules of the framework and compliance with PCRs

9.17 Advertisement (Regulations 48, 49, 52 and 106 PCRs)

9.17.1 Where a direct award/ or quotes process is not permitted by these rules or by exception under either these rules or the Regulations; and where the award is not via an approved framework, the procurement opportunity must be advertised as follow:

- (a) Contracts Finder (**Regulations 52 & 106 PCRs**) - where specified in this document or where they are regulated under any of the public procurement legislations
- (b) FTS – where they are regulated/ value exceed the values as set out in Schedule 1
- (c) Authority e-tendering portal – where an advert is placed under one of the above requirements it must also be advertised on the

e-tendering portal

- (d) Additional adverts – where the opportunity is advertised, officers may also place adverts on the Authority website, trade publications or social media.

9.18 Market Engagement (Regulation 40 PCRs)

9.18.1 Where an advertised process is to be used, and before commencing a process, it is essential to understand the market make up and possible supply options, specifically

- (a) Is the Market a Monopoly or is it saturated?
- (b) Is the requirement able to be delivered by a single supplier or does it require sub-contracting?
- (c) Can the contract requirements be met by local SMEs?
- (d) Is the contract suitable for a consortia solution?

9.18.2 All engagement must be overseen by Procurement and participants should be invited through an advertisement on the e-tendering portal and carried out in a transparent manner (eg supplier days) that treats all possible procurement participants equally and without discrimination such that the activity is artificially restricts or impairs competition.

9.19 Procurement Processes

All procurements are to be issued using either the authority's standard templates or the templates provided by the framework's owner as applicable.

Additional information on the following processes and documents is available within the procurement templates, policy documents and through the procurement guidance documents.

9.20 Direct Award

9.20.1 This option does not require officers to create a set of tender documents; instead, they should discuss their requirements with the selected organisation and these should then be written up, priced and submitted by that organisation to the authority for approval. Once agreed, they should then be attached to the authority's standard Purchase order or Service terms and conditions and awarded as set out below.

9.21 Request for Quotation (RFQ)

9.21.1 This option uses a single procurement document to set out the contract and specification requirements along with how the submission will be qualitatively and financially assessed. This to be requested from the three

selected companies. The submissions should be evaluated in accordance with this document and then a contract concluded with the successful organisation using the terms and conditions attached to the RFQ in accordance with the award process below.

9.22 Advertised Tender

9.22.1 The documents needed for an advertised procurement will depend on the contract value and the selected route to market; the tender pack will include some or all of the following:

9.23 Due Diligence Document

9.23.1 Where a tender is unregulated and thus an SSQ is not used, the due diligence (financial and company status) checks must be used to ensure that the successful tenderer is commercially capable and stable to deliver the contract.

(a) Standard Selection Questionnaire (SSQ)

9.23.2 This document is to be used for above FTS threshold tenders and has three parts; Parts 1 and 2 are set down by central government and cannot be amended. Part 3 can be populated with the qualitative requirements of the project and used as a mechanism to shortlist in a multi staged process (Regulations 57, 58 and 65 PCRs).

(b) Invitation to Tender (ITT) (or ITN or ITN Final) (Regulation 54 PCRs)

9.23.3 This document sets out the details of the procurement process and the process requirements along with the rules that interested (or shortlisted) tenderers must follow to ensure that their bid is compliant. Further guidance and adaptation of the standard template should be sought from procurement.

(c) Specification (Regulation 42 PCRs)

9.23.4 This document must clearly and concisely set out the Authority's specific contract requirements and depending on the whether these are input, output or outcome based, the details by which these may be deemed to be achieved or demonstrated.

9.23.5 When using an input specification, officers should ensure that they are suitably up to date with current technology and developments. Specifications should be based on performance or industry standards and only use a brand, model or part number where it is impossible to sufficiently define the requirement any other way. Where this is relied on the specification must state 'or equally approved'.

9.23.6 Where the technical expertise is absent or dated, an output or outcome specifications should be used to ensure that an up to date solution is achieved along with value for money.

9.23.7 Where social or other policies are to be considered, these must be clearly specified and where possible, hyperlinks to their location included in the procurement documents.

(d) Terms of Business/Contracts

9.23.8 The choice of contract shall be in a form approved by the Legal team and will be based on the nature of the spend and the project complexity along with the route to market, officers must engage with the Legal team at the concept of the procurement to enable sufficient time for consideration and drafting.

9.23.9 Where the selected procurement process does not allow for negotiations, officers are advised to ensure that the requirements identified to Legal are not prohibitive or anti-competitive such that they may limit competition and the ability to achieve a successful, value for money outcome.

(e) Tender Submission Document

9.23.10 ALL Tenders MUST be evaluated using the principle of Most Economically Advantageous Tender (MEAT).

(f) Quality Requirements – Method Statements (Regulation 67 PCRs)

9.23.11 Officers are recommended to use a split of 60% price and 40% quality. Where this is not felt to be the best means by which to select the most suitable supplier, this may be adjusted to an 80:20 split in either direction following a discussion with Procurement.

9.23.12 Method Statement Questions should be drafted to elicit responses that supplement the specification and in consideration that the responses become part of the contract and performance requirements.

9.23.13 The weighting (importance) of each method statement question must be clearly set out as must the requirements of the scoring criteria.

9.23.14 The questions, as a minimum should seek to understand the skills of the delivery team, the timescales for delivery, any quality or health and safety considerations and how the contract can be used to support the local economy, protect the environment or deliver other social benefits.

(g) Pricing Requirements

9.23.15 The tender documents must set out how the price should be calculated and evaluated. This could be a lump sum or a schedule of requirements/bill of quantities. Where a schedule is used and exact quantities are unknown the document must include details of estimated quantities (unless part of the submission is for them to quantify a resource) to ensure that the evaluation is fair and transparent. Where a schedule of pricing is used, officers may weight particular elements if they are more significant to the success and delivery of the project; where this is required officers must liaise with procurement and finance to ensure the

pricing model is fair and representative of the contract requirements.

(h) Form of Tender

9.23.16 Along with the method statement and pricing submission, tenderers are required to confirm that they have no conflicts of interest with the authority and that they have not colluded or otherwise engaged in unethical or illegal practices in order to collate their submission.

9.24 Use of/Reliance on Subcontractors (Regulations 63 and 71 PCRs)

9.24.1 The authority must allow a tenderer to rely on subcontractors for economic or technical capacity, experience or professional qualifications unless the task that they seek to subcontract is deemed a critical task; specifically where this would dilute accountability or the performance management of essential elements of the contract.

9.24.2 The authority, when setting out its procurement requirements, may stipulate that where subcontracting is relied on that the tenderers sets out the share of the contract to be subcontracted and where they are to be relied upon, may insist that all such subcontractors complete an SSQ or the authority's Due Diligence document (where applicable) to enable the authority to assess their suitability to deliver an Authority contract.

9.25 Tender Communications (Regulations 22 and 51 PCRs)

9.25 All procurement processes (except for direct awards) must be managed electronically through the authority's e-tendering portal. All notices, tender documentation and awards must be published through the portal and all communications (Q&A) must be published openly unless deemed commercially sensitive.

(i) Evaluation Process and Clarifications (Regulation 56 PCRs)

Due Diligence

9.26 These checks should be completed before the price and quality evaluation process as they assess the financial stability of a tenderer. Where a concern is identified this should be referred to finance and legal for consideration and a decision made as to whether they should be disqualified to protect the successful performance of the contract.

Standard Selection Questionnaires (Regulations 57 and 58 PCRs)

9.27 Where this is provided in a single stage process this should be assessed before the qualitative or pricing submission. Any concerns identified should be clarified with the tenderer before deciding if they should be disqualified.

9.28 Where this document is used to shortlist in a two or multi-stage process the Part 1 & 2 elements should be assessed first and any concerns identified should be clarified with the tenderer before evaluating part 3 and shortlisting

Quality Submissions

- 9.29 These must be evaluated by at least three, suitably skilled individuals using the predefined criteria and the specification.
- 9.30 Evaluators must make notes as to the rationale for each individual score and provide question specific feedback to be used in the moderation process and ultimately shared with the unsuccessful tenderer.
- 9.31 Where the information is unclear or incomplete a clarification process must be carried out.

Pricing Submissions

- 9.32 This must be carried out separately to the quality evaluation, in accordance with the process set out in the tender documentation and must be verified by the relevant member of the finance team to validate its accuracy.
- 9.33 Where the pricing is incomplete or excessively low, a clarification process must be completed with the support of procurement.

Post-tender Clarifications

- 9.34 Submitted information may be clarified or explained but not amended or supplemented.

(j) Missing Information

- 9.35 Where information is missing, this may be confirmed to the tenderer but may not be supplied by them. Where this has an impact on the total price, tenderers must either honour the total price submitted or withdraw.

(k) Price Calculation Errors

- 9.36 Where an arithmetical error is identified and can be corrected without the need to seek clarity or additional information, this should be done and advised to the tenderer for agreement. Where this has an impact of increasing the total price, tenderers must either honour the initial total price submitted or withdraw their offer.

(l) Abnormally Low Pricing (Regulation 69 PCRs)

- 9.37 Where a tenderer's price is significantly lower than anticipated by the authority or in comparison with other tenders received; the authority must seek clarity from the tenderer on how they have priced the tender at this level and demonstrate that it is commercially viable and sustainable. Where such assurances are either not provided or not plausible then the authority should disqualify the submission.

(m) Post-tender Negotiations

- 9.38 Post Tender Negotiations shall not be used to degrade the original tender requirements or price unless:

- (a) ALL the received tenders came in over budget
- (b) Other special circumstances

9.39 In these circumstances, all tenderers that have submitted a tender shall be given the opportunity to resubmit against a revised or reduced specification.

9.40 All other negotiations shall only be undertaken in accordance with Law and in agreement with Procurement and Legal.

(n) Moderation

9.41 Following the individual scoring of the quality method statement responses, the evaluation panel, overseen by procurement, must meet and agree a common score for each question along with an agreed justification for the scores and question specific feedback for the tenderer.

(o) AWARD Process

9.42 Where a formal gateway process has been used to commence and decide on the procurement process, a further review should be completed before the decision to award. In all case, the following stages must be completed.

9.43 Tender Report (Regulation 84 PCRs)

9.43.1 All advertised tenders must, before award, have a completed tender report approved by procurement, legal and finance before any notifications are sent or contracts collated.

9.44 Notifications (Regulations 55 & 86 PCRs) & Standstill (Regulation 87 PCRs)

9.44.1 All notification or outcome letters must be approved by procurement and signed by the Procurement and Contracting Manager.

9.44.2 All tenderers (successful and unsuccessful) must be notified, in writing, of the outcome of the evaluation process at the same time. Unsuccessful tenderers must be provided with feedback which details the relative advantages of the successful tenderer.

9.44.3 Where the procurement is regulated (and even on below FTS threshold processes where advised by procurement) the authority must issue and apply a standstill period with the award letters not being issued until after this period has expired.

9.45 Supplier De-briefing

9.45.1 Following the notification of the procurement outcome, unsuccessful tenderers may request feedback in addition to that provided in the letters; this must be agreed and supported by procurement to ensure that only allowed information is shared and that it is done so in a non-

discriminatory manner.

9.46 Letters of Intent

9.46.1 Letters of intent give the contractor the authority to proceed prior to the execution and dating of contract; however, they should only be used where there is a genuine need and genuine benefit to the Authority, such as to:

- (a) facilitating the ordering of goods where there are long lead times;
- (b) enable design work to commence immediately where not doing so would have an adverse effect on the overall project deadlines and planning requirements;
- (c) facilitate TUPE requirement.

9.46.2 All letters that fall under the points above must be agreed with legal and signed by the relevant Director. Where a letter of intent is required for any other reason it must be agreed by the Monitoring Officer.

9.46.3 Where a letter of intent is issued it must specify its intent and include a maximum liability, which cannot exceed £100,000 unless otherwise agreed by the Monitoring Officer.

9.47 Contract Award

9.47.1 All tender processes must be concluded by way of a duly signed or executed document.

9.47.2 Contracts MUST not be awarded until all checks have been completed and evidence of any qualifications and certificates provided.

9.47.3 The award must be as per the specification issued and the tender received (including any clarifications) and not a conditional or counteroffer.

9.48 Contract Approval

9.48.1 Contracts must be executed by signature or as a deed as follows, following consultation and approval from the Chief Finance Officer and Monitoring Officer:

Goods & Service

- (a) Up to £25k – Responsible Officer
- (b) Up to £100k – Finance
- (c) Up to £250k – Project Director
- (d) Up to £500k – Monitoring Officer, Chief Finance

Officer, Chief Executive

9.48.2 All works contract to be executed as a deed to ensure a 12-year latent defect period is applied.

9.48.3 Copies of all executed contracts must be provided to the Procurement and Contracting Manager for inclusion in the contracts register

9.49 Contract Award Notices (Regulation 50 PCRs)

9.49.1 Award Notices must be published in accordance with the following decisions.

(a) Where a new Framework or Contract is let and it is over the FTS threshold – in FTS and on Contracts Finder.

(b) Where the procurement is via a mini competition from a framework and is over £30k – on Contracts Finder

(c) Where the contract value is over £30,000 but under the FTS threshold – on Contracts Finder.

Contract Register & Transparency Code

9.49.2 All contracts over £5,000 must be published on the Authority's contract register, this to include a scanned copy of the completed contract and any waiver/ decision or process approval documentation.

9.50 Document Retention

9.50.1 All documents issued and received via the e-tendering portal will be stored indefinitely on the portal.

9.50.2 Any other information not held on the portal will be in accordance with the Authority's retention policy.

(p) Contract Management

9.51 The Authority is committed to ensuring that in addition to procuring its contracts compliantly, effectively, economically and in consideration of the community it serves; that they will be appropriately performance managed to ensure the intention and benefits promised are delivered and within the contracted value.

9.52 Contract Performance Management

- 9.52.1 The Contract owner must ensure that performance management meetings are held at appropriate intervals and that these meetings and any decisions made are properly documented and formally recorded such that they can be relied on.

9.53 Supplier Payment Generally

- 9.53.1 As a responsible authority, payments against contracts should be managed efficiently and without detriment to the suppliers and at most, within 30 days on receipt of the invoice in accordance with government guidance

(q) Construction Contracts

- 9.54** Payments on construction contracts must comply with the form of contract used and where practical, should comply with the Construction Supply Chain Partner as far as reasonable possible to do so.

(r) Late Payments

- 9.55 Where payments are late, suppliers are entitled to claim statutory late payment interest unless otherwise documented in the contract.

9.56 Contract Review

- 9.56.1 Where a formal gateway process has been used in the initial decision making and subsequent award decision, a further review should be carried out to consider contract performance against the initial advertised requirements and budget and to monitor ongoing compliance with these rules and legislation.

9.57 Performance Failures

- 9.57.1 Where a Performance failure is identified the following must be applied:

- (a) Legal are consulted as to permissible measures under the contract.
- (b) Management meetings are held more frequently with the interval being based on the severity of the failure.
- (c) A remedial plan is agreed and signed.
- (d) Revised, intermediate performance targets are set out and monitored to ensure improvement and performance failure resolution within the agreed timescales.

9.57.2 Where the above measures do not deliver the required improvements within the required timescales, legal should be consulted to escalate the remedial requirements or initiate the termination of the contract.

9.58 Contract Termination for Performance

9.58.1 Where performance failure under the contract cannot be remedied or where there has been a case of insolvency or other organisation failure, the officer should seek advice from legal and agreement by the Monitoring officer to terminate the contract.

9.59 Contract Variations/Extensions (Regulation 72 PCRs)

9.59.1 A Contract should only be extended or varied in accordance with any options specifically included in the original procurement documentation.

9.59.2 Where no such provision exists; a contract can only be extended or varied with the agreement of the Director and/or Monitoring Officer (depending on value) and documented through the approval of a waiver, as follows:

- (a) The additional requirement is still in scope of the original specification and does not equate to a new requirement or something that is materially different to that advertised such that it requires a new process.
- (b) The extension or variation does not present an unacceptable risk to the authority eg had the changes been known, others would have participated in the opportunity or a better price could have been achieved.
- (c) The additional requirement does not take it over the FTS threshold when it was procured using a below FTS process.
- (d) The additional value does not exceed more than 10% if goods & services or 15% if works of the original, advertised value (This can be approved by the Director subject to available funds).
- (e) The additional value of any extension or variation is not a material change, the need was unforeseeable, there is a proprietary right or there is urgency and the change does not exceed more than 50% of the original, advertised value (Monitoring Officer).

9.59.3 The application of any extension or variation

- (a) must be in the Authority's best interest;

(b) must demonstrate value for money;

(c) cannot be until after a new Due Diligence Check has been completed.

9.59.4 Once approved, Legal must be engaged to provide the necessary legal documentation to record the variation or extension and then the signed version of this and the waiver must be added to the contract register.

9.60 Lessons Learned

9.60.1 At the close of the contract, the gateway process must be concluded with a lessons learned exercise and this information should be shared to ensure ongoing process improvements and best practice.

(s) Other Procurement Considerations

9.61 Procurement on Behalf of Partner Authorities

9.61.1 Where the authority is required under its own powers or at the request of a partner authority to procure on its behalf, those procurements must comply with legislation, these rules and the other authority's rules.

9.61.2 Where there is a conflict between these rules and the other authority's rules then the following apply:

- (a) Financial, procurement or other approvals to procure or award must be the those of the authority for which the contract is let
- (b) Contract signatory requirements to be those of the authority signing the contract
- (c) Procurement Process to be followed will be these in compliance with the relevant legislation

9.62 Purchase Cards

9.62.1 The authority operates a purchase card facility; these are available, with the approval of Finance.

9.62.2 Purchase cards are to be used for low value or one-off incidental spend where it is not efficient to carry out a competitive process. Purchase cards MUST NOT be used to bypass corporate contracts or these rules without the express permission of Procurement and the appropriate Director.

9.62.3 The principle of disaggregation applies to spend on purchase cards both in relation to the individual and the Authority as a whole.

9.63 Grants (Law)

9.63.1 Where a grant is issued, it must be awarded in accordance with the authority's process for advertising, selecting, awarding and monitoring grants.

9.63.2 All grants over £25,000 MUST be executed as a Deed.

9.64 Community Right of Challenge

9.64.1 Section 81 of the Localism Act 2011 permits relevant bodies (charities, community bodies, town and parish Authority Services and Staff) to submit Expressions of Interest to provide Authority Services. Corporate Services shall maintain and publish a timetable for the submission of interest. Any such expressions shall be forwarded to the Transformation Team.

9.65 Disposal of Goods and Assets (Authority Requirement)

9.65.1 Where the Authority has goods or assets that are no-longer required these are to be disposed of through a closed-bid auction process. The Authority has an eBay account for this purpose and any department wishing to use it needs to do so through the Procurement team.

9.66 Procurement Schedules

9.66.1 Please see schedule 1 for threshold by procurement category.

9.66.2 Please see Schedule 2 for a summary table of procurement rules by category and value.

(t) Waivers

9.67 Where an officer seeks to deviate from the requirements of this document a waiver must be completed and approved in accordance with the following rules:

1. Exemptions to the Requirement to Carry-out a Quotes Process

1.1. This must be drafted by the responsible officer and agreed by procurement and legal.

2. Exemptions to the Requirement to Advertise on Contracts Finder

2.1. This must be drafted by the responsible officer and be approved by procurement, legal and Director with budget responsibility.

3. Exemptions to the Requirement to Carry-out an Advertised Process

3.1. This must be drafted by the responsible officer and be approved by procurement, the relevant Director and the Monitoring Officer.

4. Requests to Vary a Contract in Value or Time

- 4.1. This must be drafted by the responsible officer and be approved by procurement, the relevant Director, the Chief Finance Officer and the Monitoring Officer.

5. Waiver Contract Documents

- 5.1 Once a waiver has been agreed, a formal contract or variation instruction completed and signed/executed. The completed documents must be added to the contract register.

9.68 Procurement Policy

- 9.68.1 Best practice dictates that organisations should have an overarching Procurement Policy in place to offer clear guidance to officers when procuring goods and services, whilst at the same time supporting the organisations' priorities and strategic themes; otherwise there is a risk that officers do not have guidelines to follow to ensure that the Combined Authority is not open to challenge because of its procurement activities.
- 9.68.2 The Combined Authority Procurement Policy at Chapter 19: Policies and Protocols, Appendix 10 offers clear guidance to ensure that procurements comply with both statutory requirements and the Combined Authority's own constitutional requirements.
- 9.68.3 The Policy ensures the Combined Authority is better placed to reduce the likelihood of subsequent challenges to non-compliant procurements.
- 9.68.4 Responsible procurement is defined as "the process whereby organisations meet their needs for goods, services and works in a way that achieves value for money on a whole life basis and generates benefits not only to the organisation, but also to society, the economy and the environment". The Public Services (Social Value) Act 2012 provides the relevant legislative framework and requires local authorities to consider these wider benefits when procuring and entering into contracts. The Act applies to public services contracts and framework agreements to which the Public Contracts Regulations 2015 apply and aims to provide a tool to assist commissioners to get more value for money out of procurement.
- 9.68.5 Under the Public Services (Social Value) Act 2012, the CA must consider before starting the process of procurement of services how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and how, in conducting the process of procurement, it might act with a view to securing that improvement.
- 9.68.6 This social value duty is balanced by obligations to ensure fair and open competition as set out in the Public Contracts Regulations 2015 which

state, *inter alia*, that award criteria must be 'linked to the subject matter' of the contract in question and must be contract-specific and not aimed at assessing the business or corporate policies of the tenderer.

- 9.68.7 Contracting authorities are entitled to decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by retained laws in the UK-EU Trade and Cooperation Agreement, national law, or collective agreements. The list of such obligations is prescribed and must be strictly construed. If the tenderer is not in breach of any of those obligations the contracting authority is bound to select its bid if it is the most economically advantageous tender.