



# CONTRACT STANDING ORDERS

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## SECTION 1 INTRODUCTION AND GENERAL REQUIREMENTS

- 1.1 Contract Standing Orders (CSO's) are a framework of rules, which must be adhered to when purchasing goods, services, works, income generating contracts or disposing of Council property. These Contract Standing Orders<sup>1</sup> have been established to ensure that the Council is compliant with UK legislation, follows best practice and achieves best value for money in its procurement activities. Contract Standing Orders do not apply to employment contracts or contracts for the sale or purchase of land or buildings<sup>2</sup>.
- 1.2 Contract Standing Orders promote good purchasing practice, public accountability, data transparency and help protect officers from any complaints. Following the rules is the best defence against any possible allegation that a purchase or disposal has been made incorrectly or inappropriately.
- 1.3 Officers responsible for purchasing goods, services, works, income generating contracts or disposing of Council property are bound by and have a duty to read and be familiar with Contract Standing Orders. Contract Standing Orders lay down **minimum** requirements. A more thorough procedure may be appropriate for a particular contract.
- 1.4 Officers must ensure that any necessary pre-purchasing steps have been taken. This may include<sup>3</sup>:
- conducting a value for money review
  - drafting a business case,
  - conducting pre procurement market engagement
  - considering any workforce implications including TUPE
  - health and safety and business continuity requirements
  - complying with *Key Decision requirements*
  - Equality Impact Assessment
  - GDPR (Data Protection)
  - Safeguarding considerations
  - Section 20 considerations if housing
  - Collaboration opportunities
  - considering Social Value
- 1.5 Unless an exemption provided for in Section 3 has been approved, it is a disciplinary matter to fail to comply with Contract Standing Orders. Responsibility for compliance rests with everyone who carries out procurement of goods, services or works (including contracts for consultancy) for or on behalf of the Council. The ultimate responsibility for identifying the need to start a procurement, creating the procurement, managing it through its contract term and requirement to re-procure rests with the Assistant Director for the relevant area.
- 1.6 Contract Standing Orders should be read in conjunction with the Council's Financial Regulations as appropriate. Officers should also consider the Corporate Procurement Strategy when considering embarking on a procurement<sup>4</sup>. Contract Standing Orders will be reviewed and updated on a periodic basis (the latest version will be held on the intranet).
- 1.7 Officers must also ensure that any agents or consultants acting on their behalf in purchasing or disposal matters also comply with the Council's Contract Standing Orders, Financial

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<sup>1</sup> Referred to from now on throughout this document as Contract Standing Orders or CSO's

<sup>2</sup> Contact the Recruitment Officer regards employee contracts (for the avoidance of doubt, contracts with agencies or companies who supply temporary staff are subject to CSO's) and the Estates Manager regards contracts for sale of land.

<sup>3</sup> Checklists to help ensure correct steps are addressed are available on the intranet under Procurement

<sup>4</sup> Corporate Procurement Strategy is held on the intranet under Procurement

Regulations and with all UK and European Union (EU) legal requirements.

1.8 **Contracts** mean any arrangement under which the Council pays or receives money or equivalent value for:

- a) goods;
- b) services;
- c) works;
- d) all types of disposals (excluding land and buildings); and,
- e) hire, rental or lease agreements.

1.9 Public Contract Regulations 2015 (PCR2015) set out what is legally required for UK public procurement. They are the UK specific version of EU Public Contracts Directive 2014 and are often referred to as EU procurement regulations. Thresholds for the purposes of PCR2015 are those set by the EU and referred to as EU thresholds. PCR2015 also contains some regulations for procurements below the EU thresholds such as the requirement to use Contracts Finder; these have been incorporated into the CSO's.

1.10 All contracts must be subject to competition, as follows:

Band 1	Up to £10,000	One quote (confirmed in writing if greater than £1,000)
Band 2	£10,001 – £75,000	Three quotes to a purchaser specification via the Council's e-tendering system
Band 3	£75,001 – EU Threshold	Invitation to Tender to at least three suppliers via the Council's e-tendering system
Band 4	Above EU Threshold	<i>PCR2015 Procedures</i> via the Council's e-tendering system

1.11 An officer must neither enter into separate contracts nor select a method of calculating the *Estimated Total Value* in order to circumvent the application of Contract Standing Orders or PCR2015.



**Clare Fletcher -Strategic Director**

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**For Further Advice on Contract Standing Orders:**

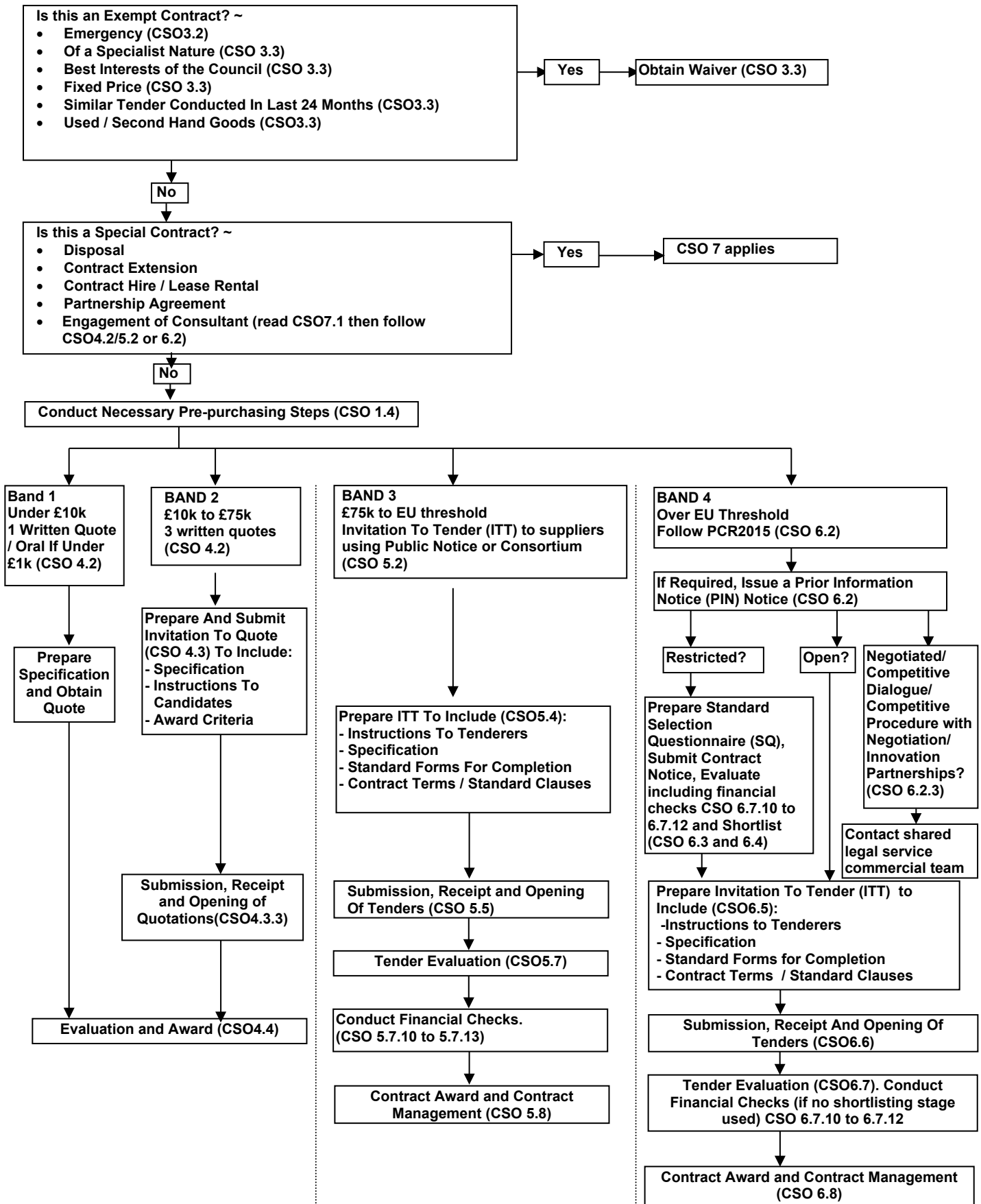
The authorised version of Contract Standing Orders and various supporting written guidance are held on the Council's intranet site, under "Procurement".

If you have any queries about the Contract Standing Orders or the various supporting written guidance please contact one of the following as appropriate:

- Corporate Procurement ext 2083 or ext 2775
- Finance ext 2933

**If you are unclear about the procurement rules please seek relevant advice before taking any purchasing or disposal action.**

## SECTION 2 CONTRACT STANDING ORDERS – EXPLANATORY FLOWCHART



NOTE: This guide is explanatory only and is not a suitable alternative for reading Contract Standing Orders

## SECTION 3 EXEMPTIONS TO CONTRACT STANDING ORDERS

- 3.1 An exemption under this Section allows an officer to partly depart from the normal contract action required in following Contract Standing Orders.

Contract Standing Orders shall not prevent expenditure being incurred where an emergency or disaster involving destruction of or danger to life or property occurs or is imminent. Where in the opinion of a Senior Leadership Team (SLT) member, in consultation if possible with the Chief Executive and the Assistant Director (Finance & Estates), (where over £250k the key decision urgency process also applies) the urgency of the situation will not permit delay, nothing in Financial Regulations or Contract Standing Orders shall prevent the Council from incurring the expenditure as an exemption. Where the contract value is over £75,001, action under this exemption shall be reported to the next meeting of the Executive Committee.

- 3.2 Subject to adhering to PCR2015 and any subsequent /associated UK legislation, the following exemptions from the requirement to obtain the requisite number of quotations or tenders must be the subject of prior and written approval by either the Assistant Director (Finance & Estates), the Borough Solicitor, or the Corporate Procurement Manager:

- a) For the purchase of goods, works or services which are of a specialist nature or are obtainable from only one or a limited number of Suppliers and there are no other satisfactory alternative options.<sup>5</sup>
- b) Where exceptional circumstances clearly show it is in the best interests of the Council to negotiate a new contract with an existing Supplier.<sup>6</sup>
- c) The goods or materials are sold at a fixed price or are wholly controlled by trade organisations or government order and no satisfactory alternative is available.
- d) Tenders or quotes for similar goods, works or services have been obtained in the last 24 months.
- e) The goods are classed as used or second hand - where the Borough Solicitor, the Assistant Director (Finance & Estates) or the Corporate Procurement Manager is satisfied that the market for such goods or materials is such that it would be unreasonable to tender or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second hand item and where the relevant officer has ensured that a Value for Money approach has been applied.

- 3.3 Once a request to waive Contract Standing Orders has been received, a Waiver Action Form will be completed by the Officer requesting the waiver and reviewed by the Approving Officer. A record of the decision approving or rejecting a waiver request and the reasons for it must be kept and an entry made in the waiver request register which will be maintained by the Corporate Procurement Manager

- 3.4 Officers applying the exemption rules in 3.3 must, **as a minimum**, draft a specification and use the Council's preferred contractual documents, where appropriate (as outlined in Section 5). Unless otherwise stated, Financial Regulations (including key decision processes) will still apply and will need to be adhered to.

- 3.5 Officers must complete a contract award notification form (ANF), if an exemption to CSO's is agreed which results in a change to existing contract details or constitutes the award of a

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<sup>5</sup> The officer must provide evidence to prove that there are no other satisfactory alternatives, such as a recent public notice where no suitable candidates responded.

<sup>6</sup> For example, where the Council have received consultancy services for a complex project and wish to employ the same consultant for additional consultancy services relating to that project, because the use of an alternative consultant would result in the loss of an important skillset or knowledge, which is not easily transferable.

new contract with a value over £5000, to enable the Council's contracts register to be updated.

- 3.6** Compliance with the EU Procurement Directives (including developing case law) and any UK legislation are considered to satisfy the Council's Contract Standing Orders and Financial Regulations. **No exemption shall be granted if the giving of that exemption would cause a breach of PCR2015 or subsequent / associated UK legislation.**



## SECTION 4 SPECIFIC REQUIREMENTS FOR CONTRACTS BELOW £75,000 (BAND 1 AND 2)

### 4.1 Overview

Band	Estimated Contract Value	Minimum No. of Quotes	Contract Signature
1	Up to £10,000	At least one oral quote (written if over £1,000)	Officers authorised to sign purchase orders within this value banding.
2	£10,001 to £75,000	At least three written quotations to a purchaser specification.	Officers authorised to sign contracts within this value banding <sup>7</sup>

Where the preliminary estimated contract value is within 10% of a higher category value, the appropriate provisions for the higher category of contract should be applied (unless the preliminary estimate is based on a firm quote). If the existing contract you are using has a total contract value within the Band 2 threshold and you anticipate the new final contract total may be within the Band 1 threshold, you must still continue to follow the Band 2 process unless the new contract is fundamentally different.

The value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. Contract periods should be appropriate to the market in question and not artificially shortened to bring the value into a particular band. It should also be considered if the requirement can be combined across the council, or combined with similar works e.g. electrical works needed over x years rather than singular works to various buildings over multiple contracts, to provide the council with better value.<sup>8</sup>

#### Band 1

Contracts with a value between £5001 and £10,000 should be considered as to whether conducting a procurement exercise would be more expensive in officer time than the value of any savings, if that is the case a band 1 waiver form must be submitted to your Tier 4 manager or AD if you are Tier 4 for approval before proceeding. This is more likely to apply to services and works, where quality has to be assessed or site visits to quote arranged and unlikely to apply to goods.

### 4.2 Supplier Selection

- 4.2.1 Suppliers invited to quote within these bands can be sourced from any means, including the Internet, suppliers registered on [www.supplyhertfordshire.uk](http://www.supplyhertfordshire.uk) or based on previous satisfactory experience with the Council. There is no requirement to issue public notices for contracts within these bands, although this may be appropriate in some instances. However, when inviting quotations in Band 2, Officers must invite a Stevenage based supplier if one such exists on [www.supplyhertfordshire](http://www.supplyhertfordshire) and is appropriate for the requirement. If no Stevenage based look to Hertfordshire based as this supports the Councils community wealth building agenda. Officers should also document the reasons for selecting the suppliers (such evidence may be required should the decision be challenged at a later date).

If you are sourcing contracts of a similar nature on a regular basis i.e. low value bespoke

<sup>7</sup> As per the authorised contract signatory list held by Exchequer Services.

<sup>8</sup> Guidance document "Estimating the total value of your procurement correctly" is available on the intranet under Procurement.

building alterations it is a requirement to ensure that you invite at least one supplier not invited last time so that more suppliers are given the opportunity to quote for the Council's business.<sup>9</sup>

## Framework Agreements

4.2.2 Framework agreements let by other contracting authorities, where the council has been named as being able to use the framework agreement, can be used. Examples of contracting authorities that let framework agreements of this nature are: Crown Commercial Services (CCS), Eastern Shires Purchasing Organisation (ESPO), Procurement for Housing (PfH), Homes England, and Yorkshire Purchasing Organisation (YPO).

4.2.3 The officer may utilise any of the above purchasing consortiums framework agreements (or any other framework agreements approved by either the Corporate Procurement Manager or Borough Solicitor). Any procedures provided by the purchasing consortium must be followed; generally mini competition is likely to achieve the best value as it allows Contractors to submit tailored bids to our requirement.

Direct Award is not available on all frameworks, where it is an option then generally it is only permitted if the officer can establish that best value considerations have been taken into account and one of the below applies;

- The framework is sole supplier; or
- Pricing and Terms have been fully pre-agreed under the framework agreement and there are no changes being made as part of the call off and where best value can be proven only from information published; or
- Where there is a ranked call off provision; or
- Where the framework has established alternative specific rules on determining a direct award that can be properly complied with.

4.2.4 Where Direct Award is not available under the rules of the framework or it is envisaged better value can be achieved via mini competition then the officer must follow the procedures provided by the contracting authority to conduct the mini competition amongst the suppliers on the framework. It is not permitted to include suppliers in the mini-competition who are not listed on the framework.

4.2.5 Officers should use existing contracts where these are provided for and suitable, details of which can be found on the shared drive under Corporate> Central Contracts Database. Officers must liaise with the contract manager of the contract before proceeding to ensure they are compliant. All procurement of ICT Hardware and Software must be in consultation with the IT team.

4.2.6 In exceptional circumstances and for contract values under £1,000 only, an officer may be permitted to contract with a supplier or group of suppliers without first obtaining an oral quote. In this instance, the officer must first submit the request in writing to either the Assistant Director (Finance & Estates), Corporate Procurement Manager, or the Borough Solicitor and obtain his or her prior written approval before awarding the contract(s).<sup>10</sup>

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<sup>9</sup> Guidance on supplier selection at quote level is available on the intranet under Procurement

<sup>10</sup> An example of where this may be acceptable would be contracting with a supplier to top up of the Depot's bulk fuel storage facility. The charge per litre will have been pre-agreed before awarding a contract, but the number of litres to be supplied will not be known until the goods have been supplied.

### **4.3 The Invitation to Quote (Band 2 only)<sup>11</sup>**

- 4.3.1 Officers must provide adequate instructions to respondents, outlining what is required (specification), in what format and by when. The Invitation to Quote<sup>12</sup> should also define the award criteria, whether lowest cost or most economically advantageous quote (See 5.4.1). Officers are reminded that further instructions may be necessary depending on the nature of the contract. For example, specific insurances and equality requirements may be appropriate where the purpose of the contract is to supply services directly to the public.
- 4.3.2 The officer responsible for the purchase may consult potential Suppliers prior to the issue of the Invitation to Quote in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential Supplier.
- 4.3.3 Quotations must be submitted through the In-Tend e-tendering system. If there is a reason why Intend cannot be used, this needs to be agreed with the Corporate Procurement Manager in advance of the procurement<sup>13</sup>. A return date must be specified and adhered to. When using In-Tend the receiving officer can open the returns as soon as the system makes them available.
- 4.3.4 Suppliers must be given a minimum of 5 working days to respond to an invitation to quote, but they may require longer timescales if the contract is considered complex in any way.

### **4.4 Contract Evaluation and Award (Band 2 only)**

- 4.4.1 To ensure adequate competition, there must be at least two satisfactory responses from the three quotations requested (unless using a framework) i.e. responses which meet a minimum quality standard under which the Council could award the contract. If the Council receives only one satisfactory response, the officer must not open the responses until talking to Corporate Procurement who will determine if the officer should obtain an additional quote, re-run as an advertised process or obtain an exemption under CSO 3.3.
- 4.4.2 All quotes must be evaluated based on the defined award criteria in the Invitation to Quote. Post tender negotiation may be used for certain contracts, in accordance with CSO's 5.7.6 and 5.7.7.
- 4.4.3 If the quoted contract value for the preferred supplier falls into the higher band 3 (£75,001 to the EU threshold) when processes for the lower Band 2 were followed, the officer must provide either the Assistant Director (Finance & Estates), the Borough Solicitor or the Corporate Procurement Manager with a written explanation and supporting evidence as to the basis for estimating the contract value at the lower band. The Borough Solicitor, Assistant Director (Finance & Estates) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band.
- 4.4.4 Officers must not agree to contract conditions where payment is made before the goods, works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Director (Finance & Estates), or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of the goods, works or services received.

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<sup>11</sup> A checklist is available on the intranet under staff into/finance/corporate procurement to help you through the steps of a quote process.

<sup>12</sup> SBC invitation to quote templates are available on the intranet under Procurement

<sup>13</sup> An example of an exemption could be where we are not in a market position to impose the use of Intend.

- 4.4.5 Successful and unsuccessful Suppliers must be informed of the decision within 14 days of the closing date and feedback provided, if requested.
- 4.4.6 Contracts or agreements over £5,000 must be signed by an authorised signatory. If there is no written contract, the authorised signatory must confirm in writing (either via letter or email) that the quote has been accepted, stating the cost and any other terms (such as payment terms and delivery date) to which the Council is agreeing to. In the absence of a written contract, a Purchase Order containing the above mentioned information and signed by an authorised signatory is sufficient.
- 4.4.7 For contracts over £5,000, an **Award Notification Form must be completed and passed to Corporate Procurement** (the Award Notification Form is found on the intranet). The contract will then be entered onto the Central Contracts Database by Corporate Procurement.
- 4.4.8 All documentation must be kept in accordance with the Document Retention Schedule which can be found on the intranet.

## SECTION 5 CONTRACTS BETWEEN £75,001 AND EU THRESHOLD<sup>14</sup>

### 5.1 Overview

Band	Estimated Contract Value	Minimum No. of Respondents	Contract Signature
3	£75,001 to EU Threshold (see CSO 6.1 for EU values)	N/A unless restricted process <sup>15</sup>	Officers authorised to sign contracts within this value banding <sup>16</sup> , unless under seal (see CSO 5.8.7)

Where the preliminary Estimated Contract Value is within 10% of a higher category value, the appropriate provisions for the higher category of contract should be applied (unless the preliminary estimate is based on a firm quote). If the existing contract you are using has a total contract value within the Band 3 threshold and you anticipate the new final contract total may be within the Band 2 threshold, you must follow the Band 3 process unless the new contract is fundamentally different.

The value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. Contract periods should be appropriate to the market in question and not artificially shortened to bring the value into a particular band. It should also be considered if the requirement can be combined across the council, or combined with similar works e.g. electrical works needed over x years rather than singular works to various buildings over multiple contracts, to provide the council with better value.

<sup>17</sup> Collaboration with other Hertfordshire authorities is encouraged and can be promoted via the Hertfordshire Procurement Group by talking to Corporate Procurement.

### 5.2 Supplier Selection: Public Notice & Purchasing Consortium

5.2.1 Within this contract value banding, a public notice or a suitable framework agreement that the council is entitled to use can be used.

#### Public Notice

5.2.2 If the chosen method is a public notice, officers must follow the: Open procedure – all Suppliers expressing an interest are sent an Invitation to Tender (ITT) and all responses are evaluated. An exception can be made for Works contracts with a value between EU services threshold and the EU works threshold which allows for restricted PCR2015 procedures.

The Public notice will be placed via the Corporate Procurement team on the Councils E procurement system In-Tend, on the government website “Contracts Finder” and additionally may be placed via OJEU (or equivalent) in order to maximise competition. The notice will state how to register on the In-Tend system, the scope of the requirement and the deadline for submission.

#### Framework Agreements

5.2.3 Framework agreements let by other contracting authorities, where the council has been named as being able to use the framework agreement ,can be used. Examples of

<sup>14</sup> Checklists are available on the intranet under Procurement to assist you with the process

<sup>15</sup> If using restricted process for works invite at least three to tender where sufficient sq's qualify

<sup>16</sup> As per the Authorised Signatory list held by Exchequer Services.

<sup>17</sup> Guidance document “Estimating the total value of your procurement correctly” is available on the intranet under Procurement.

contracting authorities that let framework agreements of this nature are: Crown Commercial Services (CCS), Eastern Shires Purchasing Organisation (ESPO), Procurement for Housing (PfH), Homes England, Yorkshire Purchasing Organisation (YPO).

5.2.4 The officer may utilise any of the above purchasing consortiums framework agreements (or any other framework agreements approved by either the Corporate Procurement Manager or Borough Solicitor). Any procedures provided by the purchasing consortium must be followed, generally mini competition is likely to achieve the best value as it allows Contractors to submit tailored bids to our requirement.

Direct Award is not available on all frameworks, where it is an option then generally it is only permitted if the officer can establish that best value considerations have been taken into account and one of the below applies;

- The framework is sole supplier; or
- Pricing and Terms have been fully pre-agreed under the framework agreement and there are no changes being made as part of the call off and where best value can be proven only from information published; or
- Where there is a ranked call off provision; or
- Where the framework has established alternative specific rules on determining a direct award that can be properly complied with.

5.2.5 Where Direct Award is not available under the rules of the framework or it is envisaged better value can be achieved via mini competition then the officer must follow the procedures provided by the contracting authority to conduct the mini competition amongst the suppliers on the framework. It is not permitted to include suppliers in the mini-competition who are not listed on the framework.

### 5.3 Not Used

### 5.4 The Invitation to Tender

5.4.1 The **Instructions to Tenderers**<sup>18</sup> must, as a minimum, include the following:

- a) List the information which must be provided by the supplier in their response, including any forms, tables or pricing schedules to be completed.
- b) State the method of response required. All tenders shall be issued through the Council's E-tendering System – In-Tend (see CSO 5.5).
- c) Outline a timetable for the remainder of the procurement exercise, detailing the closing date for receipt of responses, the evaluation period and when a response on contract award is expected.
- d) State the method which will be via In-Tend and the deadline for obtaining additional information or clarification (usually 7-14 days before the closing date for receipt of responses) and that additional information requested will be distributed to all suppliers (this should be distributed to all suppliers at the same time through Intend no later than one week before the closing date for receipt of responses<sup>19</sup>).
- e) Outline how the responses will be evaluated, listing the appropriate award criteria and their relative weightings, which shall be selected from one of the following:
  - i) "most economically advantageous" offer i.e. where considerations other

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<sup>18</sup> An template Invitation to Tender can be requested from Corporate Procurement.

<sup>19</sup> A Clarification/Query template spreadsheet is available from corporate procurement

than price also apply. The award criteria may include price, service, quality of goods, running costs, previous experience, delivery date, cost effectiveness, relevant environmental considerations, employment considerations, aesthetic and functional characteristics, safety, after-sales services, technical assistance, contract terms and conditions and any other relevant matters.

- ii) "lowest price" (only if approved by Corporate Procurement)
- f) State that late responses will not be considered unless it is proven that a third party is at fault and that the Council is not bound to accept any Tender.
- g) State the price validity period (usually up to a maximum of six months).
- h) Provide a statement to the effect that under the Freedom of Information Act (2000), the Council may be obliged to provide information regarding the procurement exercise or a subsequent contract award and that respondents will be advised of any requests for information and be given an opportunity to comment before disclosure of such information (information whose disclosure would be likely to prejudice anyone's commercial interests is exempt from disclosure provided the public interest in withholding the information outweighs the public interest in disclosing it)
- i) The level of economic and financial standing required
- j) The level of insurance required
- k) Any Pass/Fail elements or minimum thresholds to be met

5.4.2 An adequate **specification** must be included. The specification must describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers.

5.4.3 For contracts within this value banding, the following **Standard Forms**<sup>20</sup> should either form part of the Invitation To Tender and should be included in the final contract documentation:

- a) Form of Tender
- b) Certificate that the Tender is Bona Fide
- c) Parent Company Guarantee (if applicable).
- d) Performance Bond Certificate (if applicable).
- e) Insurance requirements

5.4.4 Where appropriate to the type of contract being let, the officer should use standard industry contracts ie JCT<sup>21</sup> or the **Council's own standard contracts**, such as the "Stevenage Borough Councils (SBC) High Value Service Contract". Where the Council does not supply a suitable standard contract for the type of contract being let, the officer should liaise with Shared Legal Services to identify contract terms relevant to that specific contract. The officer must seek advice from the Shared Legal services Commercial law team if he/she is unclear as to what terms and conditions should be included in the contract. It should be stated in the Invitation to Tender and final contract documentation that these clauses will prevail over any supplier contract clauses. SBC's standard clauses and contracts are available from

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<sup>20</sup> Standard Forms can be obtained from corporate procurement

<sup>21</sup> Standard amendments to JCT Minor Works or Measured Term contracts are available from Corporate Procurement

corporate procurement. <sup>22</sup>

- 5.4.5 Suppliers invited to tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the urgency of the contract requirement. Normally at least **four weeks** should be allowed for submission of Tenders but this can be less if the Contracting Officer has ascertained, during pre procurement market engagement , that a lesser time period is practical and realistic. All tender documents for a contract shall be despatched to the Suppliers invited to tender on the same day via in-Tend.
- 5.4.6 Pre-procurement engagement with the market (including talking to potential suppliers) is not prohibited by PCR2015, nor is it subject to any detailed procedures provided that it does not prevent an effective competition taking place once the procurement has started. In fact, engaging with the market before starting the formal procurement process is best practice and helps to maximise value for money from the resulting procurement.<sup>23</sup>
- 5.4.7 A tender period can be extended if there are justifiable reasons and it is practical to do so. The reasons for any extension of time should be recorded and communicated in writing to all respondents ideally at least one week prior to the closing date.
- 5.4.8 Suppliers must demonstrate that they carry a range and level of insurance cover acceptable to the type of contract being let. As a starting point it would be prudent to assume the following minimum levels of indemnity, Public Liability £5m, Employers Liability £10m (although the legal minimum is £5m), Professional Indemnity £2m, Products Liability between £1m and £5m. These must be reviewed for adequacy in light of the various risk factors affecting the contract. Only in very low risk scenarios would levels of indemnity lower than these be acceptable .If in doubt, contact the Council's Insurance Officer.<sup>24</sup>
- 5.4.9 The advice of the Shared Legal Service Commercial law team must be sought as necessary, particularly for contracts which are complex.

## **5.5 Submission, Receipt and Opening of Tenders**

- 5.5.1 Tenders shall be submitted through the Council's E-tendering System – In-Tend. Instructions on how to register on the e-tendering system must be provided in the public notice. The system sends full guidance documents on how to use the system to respondents when they register and has on line guidance at every stage. Within the Invitation to Tender documents Respondents must be provided with a contact point in case they experience any problems in using the E-Tendering system Respondents must also be advised that failure to advise the Council of the problem **before** the deadline for return of tenders will mean they have lost their opportunity to tender. Where a notification of a problem is received in time, consideration should be given to extending the deadline for submission and all tenderers should be advised accordingly of any extension of time.

## **5.6 Not Used**

## **5.7 Tender Evaluation**

- 5.7.1 The following should be checked by the Officer:

- a) The Tenders are actually from the Suppliers invited to tender (where using a framework or restricted process);

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<sup>22</sup> It is prudent that Officers obtain the standard clauses and contracts as and when the procurement need arises, as they are subject to change.

<sup>23</sup> Further information on pre procurement market engagement is available on the intranet under Procurement

<sup>24</sup> An insurance checklist can be found on the intranet under staff info/finance/insurance



- b) That there are no errors or omissions in the completion of the documents;
- c) Where a check of the prices quoted suggest collusion among tenderers or 'ring' pricing, the case should be referred to the Assistant Director (Finance & Estates).

5.7.2 To ensure adequate competition, there must be at least two satisfactory responses to the Invitation to Tender i.e. two responses which meet the minimum quality threshold. If there is only one satisfactory response, the officer must either re-tender the contract, advising respondents accordingly, or obtain an exemption under CSO 3.3.

5.7.3 Where necessary, clarifying some aspect of a Tender response in writing or by way of a meeting is permitted. If a meeting is held then relevant notes should be made of the results of the meeting and matters should be confirmed in writing for contractual purposes.

5.7.4 The officer must use the award criteria and measurement system<sup>25</sup> as set out in the Invitation to Tender. The measurement system may include the following 4 elements:

- a) Any pass/ Fail considerations
- b) A point scoring system for individual quality/value for money considerations.
- c) Weightings applied to quality/value for money issues in accordance with their importance to the completion of the contract.
- d) A "Quality Threshold" which sets the minimum standard expected. Tenders which fall below this shall be excluded from consideration.

5.7.5 The Procurement process should take no longer than 10 months from issue of advertisement to award of contract. Should the procurement process take longer than 10 months, authorisation must be sought from the Borough Solicitor, Assistant Director (Finance & Estates) or Corporate Procurement Manager to proceed with the contract award.

5.7.6 **Within (and below) this contract value banding only, *Post-Tender Negotiations* may be used**, providing the officer justifies the need for post tender negotiation in writing to either the Assistant Director (Finance & Estates), the Borough Solicitor or the Corporate Procurement Manager and that the request is authorised by either the Assistant Director (Finance & Estates), the Borough Solicitor or the Corporate Procurement Manager in writing. Post-Tender Negotiations will only be authorised when lawful and will normally only be approved in the following instances:

- a) Procurement exercises involving the purchase of application software.
- b) The procurement of goods, works or services in respect of which the Council has no or inadequate experience.
- c) For any supply of any goods or services where the leading bid is above budget, price reduction measures are necessary and the Tender cannot be clarified readily to produce a reduced price.

5.7.7 Negotiations must be conducted by a team of at least two suitable officers with the involvement of Shared Legal Services Commercial Law team, as required. Changes should be confirmed in writing for contractual purposes. Where Post Tender Negotiation results in a significant change to the specification (or contract terms) the contract must not be awarded but re-tendered.

5.7.8 Officers must not agree to contract conditions where payment is made before the goods,

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<sup>25</sup> A sample criteria and measurement template can be found on the intranet under Procurement.

works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Director (Finance & Estates) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of the goods, works or services received and must be submitted for checking to Treasury and Capital in Accountancy, see CSO 5.8.10.

- 5.7.9 If the tendered contract value for the preferred Supplier falls into the higher band 4 (above the EU threshold) when processes for the lower Band 3 were followed, the officer must provide either the Assistant Director (Finance & Estates), the Borough Solicitor or the Corporate Procurement Manager with a written explanation and supporting evidence as to the basis for estimating the contract value at that lower band. The Borough Solicitor, Assistant Director (Finance & Estates) or Corporate Procurement Manager will decide whether the contract should be re-tendered following the procedures within the higher band.

### Checks on Financial Status

- 5.7.10 For contracts within this value banding, the officer must ensure the supplier has the level of economic and financial standing that they self certified that they have. To do so obtain two years annual accounts for the preferred Supplier before contract award (unless this is not possible, for example where a company has recently been established). Annual accounts are to be provided to Corporate Procurement, who will check that the supplier self certified correctly. Please allow at least 1 week for this process to be completed.
- 5.7.11 If the financial check reveals an unsatisfactory appraisal, yet the officer still wishes to use the Supplier, he/she must submit a written request to the Assistant Director (Finance & Estates) or nominated deputy for his/her approval. Any conditional approval given by the Assistant Director (Finance & Estates) or nominated deputy must be strictly complied with.
- 5.7.12 At the discretion of Corporate Procurement, financial checks may not be necessary for specific Suppliers. For example, where the contracting body is a local authority.
- 5.7.13 All contracts in this value banding with a term of over 24 months will need to be registered with Corporate Procurement for monitoring updates on financial status.

## **5.8 Contract Award and Contract Management**

- 5.8.1 Consult Financial Regulations to ascertain the correct process to gain approval to award<sup>26</sup>
- 5.8.2 All Suppliers who have expressed an interest in a proposed contract should be notified in writing through the Council's E-tendering system whether they have or have not been successful in winning the contract. Where the contract is awarded on the most economically advantageous grounds, tenderers should be notified of their score against each award criteria, the score the winning tenderer obtained and the name of the winning tenderer. If requested additional feedback should be provided.
- 5.8.3 All contracts in this value band will be in the form of a letter of acceptance signed by an officer authorised to sign contracts within this value banding and countersigned by an authorised signatory for the supplier (together with any relevant contractual documentation as per bullet (h) under CSO 5.8.5, unless:
- a) another contractual document constitutes the **entire** agreement and has a section for contract signature by both parties, in which case, this document must be signed by an authorised contract signatory, or

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<sup>26</sup> An Approval flowchart is available to assist on the intranet under Procurement

b) the contract is required to be sealed under CSO 5.8.7.

5.8.4 Letters of Intent shall only be used in exceptional circumstances and with the approval of the Borough Solicitor who should be satisfied that they are adequately worded.

5.8.5 The following must be included in the acceptance letter:

- a) Any contract reference
- b) Description of the work, service or goods
- c) The contract price (exclusive of VAT)
- d) That the acceptance letter must be acknowledged and returned to the Council
- e) Either the commencement date of the contract or how the *Supplier* is to be notified of the commencement date
- f) The contract period and/or completion date
- g) The name of officer in charge of the contract and his or her telephone number.
- h) Detail the Contract documents (e.g. tender, correspondence, specification, drawings, KPI's, project brief/proposal, terms and conditions and forms for completion as relevant to the contract concerned). A copy of these documents should be enclosed with the acceptance letter for the *Supplier's* retention.

5.8.6 If acceptance of a tender is for any reason delayed beyond the appropriate tender price validity period, the Supplier must be asked to confirm his tender in writing before the acceptance is issued. This letter of confirmation must be included as part of the contract. If the recommended tenderer submits a revised price, the Shared Legal Services commercial law team must be consulted for advice on how to proceed.

5.8.7 A contract must be sealed<sup>27</sup> in the following cases:

- a) For all formal construction/works contracts over the current EU services threshold (see 6.1)
- b) Where an extended limitation period of 12 years is required (the normal limitation period is 6 years after the end of the contract).

5.8.8 **For contracts within this value banding, an electronic award notification form (ANF) must be completed and passed to Corporate Procurement** (the award notification form is found on the intranet **An electronic copy of the contract pack must be provided to Corporate Procurement for the Central Contracts Database followed by a scan of the fully signed acceptance letter or relevant contract pages holding signatures/seals at point of execution.** Contracts, for the purpose of this exercise, will range from a simple letter confirming pricing and using standard Supplier terms and conditions to a large contractual document drafted by Legal. Contracts will also cover one off purchases and schedules of rates.

5.8.9 **It is essential that the ANF form is completed and passed to Corporate Procurement within 10 working days of award so that the details can be published on Contracts Finder where the value is over £25,000. It is a legal obligation of the Public Contracts Regulations 2015 to publish award notices of this value and above on Contracts Finder.**

5.8.10 All interim valuations and final accounts in respect of staged payment contracts must also be submitted for checking by Treasury and Capital in Accountancy who will record it in the

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<sup>27</sup> Sealing process is detailed on the intranet under Procurement.

Central Contracts Database, before they are sent for payment to Exchequer.

- 5.8.11 The officer may wish to use a contract management checklist to ensure all required steps have been followed. An example checklist can be found on the intranet under "Procurement", although Business Units may use their own forms to reflect their special requirements.
- 5.8.12 All documentation and records of communications pertaining to the tender must be kept in accordance with Document Retention Schedule which can be found on the intranet.
- 5.8.13 The officer must monitor and manage the performance of the Supplier throughout the contract to ensure that requirements are delivered satisfactorily. In performing this task the officer must monitor:
- a) Work performance
  - b) Compliance with specification and contract terms and conditions
  - c) Cost
  - d) Any Value for Money requirements
  - e) User satisfaction
  - f) Risk management

Further guidance is available on the intranet under "Procurement".

## SECTION 6 CONTRACTS ABOVE THE EU THRESHOLD (BAND 4)

### 6.1 Overview

Band	Category	Estimated Contract Value / EU Thresholds <sup>28</sup>	Minimum Number of Suppliers Short Listed		Shortlist Approval	Contract Signature
			Procedure	No		
4	Service Contracts	Above £189,330	Open Restricted Negotiated Competitive Dialogue Competitive Procedure with Negotiation Innovation Partnership	N/A 5 3 3  3  3	Strategic Director or relevant Assistant Director	Under Seal
4	Supplies Contracts	Above £189,330	Open Restricted Negotiated Competitive Dialogue Competitive Procedure with Negotiation Innovation Partnership	N/A 5 3 3  3  3	Strategic Director or relevant Assistant Director	Under Seal
4	Works Contracts	Above £4,733,252	Open Restricted Negotiated Competitive Dialogue Competitive Procedure with Negotiation Innovation Partnership	N/A 5 3 3  3  3	Strategic Director or relevant Assistant Director	Under Seal

(See also Appendix B for PCR2015 timescales)

A check list can be found on the intranet to guide procuring officers through the tender exercise (under the "Procurement" section). Further advice should be sought by contacting Corporate Procurement.

The value of any contract is calculated on the basis of the total value of the consideration (usually the cost payable but may include any benefit in kind or other benefit to the contractor) estimated to be payable over the entire contract period. Contract periods should be appropriate to the market in question and not artificially shortened to bring the value into a particular band. It should also be considered if the requirement can be combined across the council, or combined with similar works e.g. electrical works needed over x years rather

<sup>28</sup> EU threshold values were current as at 1<sup>st</sup> January 2020, but are subject to change. Please check the latest EU threshold values on the intranet under Procurement.

than singular works to various buildings over multiple contracts, to provide the council with better value.<sup>29</sup>

Collaboration with other Hertfordshire authorities is encouraged and can be promoted via the Hertfordshire Procurement Group by talking to Corporate Procurement.

## 6.2 Public Contracts Regulations 2015 (PCR2015)

6.2.1 The detailed complex advertising, tendering and reporting processes imposed by the Public Contracts Regulations 2015 are not fully covered in Contract Standing Orders. Separate advice and instructions may be issued from time to time by the Corporate Procurement Manager and Shared Legal Services Commercial Law team relating to PCR2015. Such advice and instructions will be deemed to be incorporated into Contract Standing Orders and can be found on the intranet under "Procurement". In the event of any conflict between Contract Standing Orders and PCR2015, PCR2015 will prevail.

6.2.2 Works contracts generally fall under the scope of construction projects, such as new build, or major renovations involving the bringing together of different services and supplies. PCR2015 is very specific as to what falls into their definition of 'Works' so do not assume 'Works' without consulting with Corporate Procurement or Shared Legal Services Commercial Law team. If in doubt apply the Services or Supplies thresholds. Some services, such as Legal and postal services follow a light touch regime which does not need the full PCR2015 rules<sup>30</sup> to be followed.

6.2.3 'Open, restricted, negotiated, innovation partnership, competitive procedure with negotiation and competitive dialogue procedures' are the procurement procedures applied via PCR2015<sup>31</sup>, whereby:

- a) in the case of **open procedures**, any interested Supplier may submit a tender;
- b) In the case of **restricted procedures**, any Supplier may request to participate and only suppliers invited by the Council after short listing may submit a tender;
- c) In the case of the **negotiated procedures**, the Council consults with the Supplier of its choice and negotiates the terms of the contract with one or more of these.
- d) In the case of the **competitive dialogue procedure**, the Council conducts a dialogue with the suppliers admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the suppliers chosen are invited to tender.
- e) In the case of the **innovation partnership** the Council conducts a dialogue with the suppliers admitted to that procedure, with the aim of developing a new product or service not currently on the market
- f) In the case of the **competitive procedure with negotiation**, any Supplier may request to participate and only suppliers invited by the Council after shortlisting may submit a tender.

6.2.4 The advice of the Corporate Procurement Manager and/or the Shared Legal Services Commercial Law team must be sought where following PCR2015 especially if intending to

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<sup>29</sup> Guidance document "Estimating the total value of your procurement correctly" is available on the intranet under Procurement.

<sup>30</sup> The list of Works, Services and Supplies categories (including exempt Light Touch service categories) can be found on the intranet under Procurement.

<sup>31</sup> The negotiated, innovation partnership, competitive procedure with negotiation or competitive dialogue procedure should only be considered after consultation with the Corporate Procurement Manager or the Shared Legal service Commercial law team.

use the negotiated, innovation partnership, competitive procedure with negotiation or competitive dialogue procedure.

- 6.2.5 The officer must confirm as appropriate that Prior Information Notices (PIN), Contract Notices and Contract Award Notices, where required for PCR2015, have been placed in the Official Journal of the European Union using the In-Tend E-tendering system. The Corporate Procurement Team will assist with this.

A PIN Notice (Prior Information Notice) or a PIN with call for competition can be issued via OJEU anytime between 12 months and 35 days prior to the issuing of a Contract Notice. The issuing of a PIN will shorten the minimum timescales for tender response (see Appendix B).

### **6.3 Supplier Selection**

- 6.3.1 Under PCR2015, the officer must liaise with Corporate Procurement to place a Contract Notice to the Official Journal of the European Union (OJEU). Public notices may also be placed in trade journals and approved Suppliers can be advised of the tender exercise, so long as this is done after the OJEU advertisement has been published on Tenders Electronic Daily (TED) or 48hrs from when it was sent to TED whichever is the lesser.

- 6.3.2 Framework agreements managed by other contracting authorities can be used when the contract value is above the EU Threshold, so long as the contracting authorities have awarded the framework agreement in accordance with PCR2015 and on behalf of the Council. Where it is proposed to use a framework agreement for a procurement above the EU threshold, approval must first be sought from either the Borough Solicitor, Assistant Director (Finance & Estates) or the Corporate Procurement Manager

- 6.3.3 Any procedures provided by the purchasing consortium must be followed; generally mini competition is likely to achieve the best value as it allows Contractors to submit tailored bids to our requirement.

- 6.3.4 Direct Award is not available on all frameworks, where it is an option then generally it is only permitted if the officer can establish that best value considerations have been taken into account and one of the following apply;

- The framework is sole supplier; or
- Pricing and Terms have been fully pre-agreed under the framework agreement and there are no changes being made as part of the call off and where best value can be proven only from information published; or
- Where there is a ranked call off provision; or
- Where the framework has established alternative specific rules on determining a direct award that can be properly complied with.

Where Direct Award is not available under the rules of the framework or it is envisaged better value can be achieved via mini competition then the officer must follow the procedures provided by the contracting authority to conduct the mini competition amongst the suppliers on the framework. It is not permitted to include suppliers in the mini-competition who are not listed on the framework.

### **6.4 Short Listing**

- 6.4.1 Short Listing will be applicable if the Council is using the restricted procedure, as outlined in PCR2015.

- 6.4.2 For contracts within this value banding (unless utilising an approved framework) a financial

check must be undertaken as part of the evaluation process. See CSO 6.7.10.

- 6.4.3 All Suppliers who have expressed an interest in a proposed contract should be notified in writing whether they have or have not been successful in making the next stage within 30 days of the deadline for receipt of expressions of interest. Feedback should be provided in the letter.
- 6.4.4 The Supplier's experience, economic and financial standing, manpower and equipment or their ability to perform the contract by the anticipated deadline ('qualitative selection criteria') should be considered at the Short listing stage using the current Crown Commercial Service approved Standard Selection questions (formally known as pre-qualification questions), as the Council is precluded from taking these factors into account as 'award criteria' within the tender stage.<sup>32</sup> When using the open procedure these factors should be considered as part of the tendering process.

## **6.5 The Invitation to Tender**

- 6.5.1 The Instructions to Tenderers<sup>33</sup> must, as a minimum, include the following:
- a) List the information which must be provided by the Supplier in their response, including any forms, tables or pricing schedules to be completed
  - b) State the method of response required. All tenders must be issued through the Council's E-tendering System – In-Tend (see CSO 5.5).
  - c) Outline a timetable for the remainder of the procurement exercise, detailing the closing date for receipt of responses, the evaluation period and when a response on contract award is expected
  - d) State the method and deadline for obtaining additional information or clarification (usually 14-21 days before the closing date for receipt of responses) and that additional information requested will be supplied to all respondents (this should be supplied to all suppliers at the same time no later than 7 days before the closing date for receipt of responses<sup>34</sup>)
  - e) Set out in detail how the responses will be evaluated, listing award criteria and weightings as you will not be able to introduce new award criteria or weightings later. The appropriate award criteria shall be selected from one of the following:
    - i) "most economically advantageous" offer i.e. where considerations other than price also apply. These may include price, service, quality of goods, running costs, delivery date, cost effectiveness, relevant environmental considerations, employment considerations, aesthetic and functional characteristics, safety, after-sales services, technical assistance, contract terms and conditions and any other relevant matters - but note 6.4.4 above
    - ii) "lowest price" (only if approved by Corporate Procurement)
  - f) State that late responses will not be considered and that the Council is not bound to accept any Tender
  - g) State the price validity period (usually up to a maximum of six months)

Provide a statement to the effect that under the Freedom of Information Act (2000) and the requirements for transparency, the Council may be obliged to provide information regarding the procurement exercise or a subsequent contract award and that respondents will be

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<sup>32</sup> If you are unsure about the 'qualitative selection' please contact the Corporate Procurement Team

<sup>33</sup> An outline Invitation To Tender can be obtained from Corporate Procurement.

<sup>34</sup> A Clarification/Query template spreadsheet is available from corporate procurement



advised of any requests for information and given an opportunity to comment before disclosure of such information (information whose disclosure would be likely to prejudice anyone's commercial interests is exempt from disclosure provided the public interest in withholding the information outweighs the public interest in disclosing it)

- 6.5.2 An adequate **specification** must be included. The specification must describe clearly the Council's requirements in sufficient detail to enable the submission of competitive offers.
- 6.5.3 For all contracts within this value band, the following **standard forms** must either form part of the standard selection questionnaire or the Invitation To Tender and should be included in the final contract documentation<sup>35</sup>:
- a) Form of Tender
  - b) Certificate that the Tender is Bona Fide
  - c) Parent Company Guarantee (if applicable)
  - d) Performance Bond Certificate (if applicable)
  - e) Insurance requirements
- 6.5.4 The officer should seek advice from the Shared Legal Services Commercial Law team as to what terms and conditions should be included in the contract. Where appropriate to the type of contract being let, the officer should use standard industry contracts ie JCT<sup>36</sup> or the **Council's own standard contracts**, such as the "Stevenage Borough Councils (SBC) High Value Service Contract". Where the Council does not supply a suitable standard contract for the type of contract being let, the officer should liaise with Shared Legal Services to identify contract terms relevant to that specific contract. The officer must seek advice from the Shared Legal services Commercial law team if he/she is unclear as to what terms and conditions should be included in the contract. It should be stated in the Invitation to Tender and final contract documentation that these clauses will prevail over any supplier contract clauses. SBC's standard clauses and contracts are available from corporate procurement.
- 6.5.5 A tender period can be extended if there are justifiable reasons and it is practical to do so. The reasons for any extension of time should be recorded and communicated in writing to all respondents at least one week prior to the new closing date.
- 6.5.6 Suppliers must carry a range and level of insurance cover acceptable to the type of contract being let. As a starting point it would be prudent to assume the following minimum levels of indemnity, Public Liability £5m, Employers Liability £10m (although the legal minimum is £5m), Professional Indemnity £2m, Products Liability between £1 and £5m. These must be reviewed for adequacy in light of the various risk factors affecting the contract. Only in very low risk scenarios would levels of indemnity lower than these be acceptable. If in doubt, contact the Council's Insurance Officer.<sup>37</sup>
- 6.5.7 The advice of the Shared Legal Services Commercial Law team must be sought as necessary, particularly for contracts which are complex.
- 6.5.8 PCR2015 lays down specific time periods for submission of Tenders, which must be followed (see guidance in the Intranet under "Procurement" and also Appendix B)
- 6.5.9 If the procurement is a mini competition(tender) under an approved framework agreement that has been let in accordance with PCR2015 and covers the Council, then normally at

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<sup>35</sup> Standard forms can be found within the template tender documents available from corporate procurement

<sup>36</sup> Standard amendments to JCT Minor Works or Measured Term contracts are available from Corporate Procurement

<sup>37</sup> An insurance checklist can be found on the intranet under staff info/finance/insurance

least four weeks should be allowed for the submission of Tenders. This can be less if the Contracting Officer has ascertained, after consultation with all short listed Suppliers, that a lesser time period is practical and realistic.

- 6.5.10 It may be necessary during the tender period for the Council to clarify some aspects of its tender documents. This may be done in writing or by way of a meeting ie Bidders Day. Parity of tendering must be preserved so it is important that all tenderers are issued with the same information.
- 6.5.11 The officer must consider if the requirement could be split into lots, if the decision is not to use lots it must be explained in the Invitation to Tender.
- 6.5.12 The Public Services 2012 Social Value Act requires commissioners to consider securing economic, social, or environmental benefits when buying services above the EU threshold. To comply with the Act, commissioners must think about how what they are going to buy, or how they are going to buy it, could add these benefits, and must also consider whether they should consult on these issues. This consideration needs to be documented and retained in line with CSO 5.8.12

## **6.6 Submission, Receipt and Opening of Tenders**

For contracts within this value banding, CSO 5.5 must be followed.

## **6.7 Tender Evaluation**

- 6.7.1 The following should be checked by the Officer:
  - a) The Tenders are actually from the firms invited to tender (where a framework or restricted process is used);
  - b) Check that the price of the tenders as set out on the Opening of Tenders is correct;
  - c) That there are no errors or omissions in the completion of the documents.
  - d) Where a check of the prices quoted suggest collusion among tenderers or 'ring' pricing, the case should be referred to the Assistant Director (Finance & Estates);
- 6.7.2 Where necessary, clarifying some aspect of a Tender response in writing or by way of a meeting is permitted. If a meeting is held then relevant notes should be made of the results of the meeting and as necessary significant matters should be confirmed in writing for contractual purposes. It is possible to upload the notes to the Council's Intend system if required.
- 6.7.3 The Procurement process should take no longer than 10 months from issue of advertisement to award of contract. Should the procurement process take longer than 10 months, authorisation must be sought from the Borough Solicitor, Assistant Director (Finance & Estates) or Corporate Procurement Manager to proceed with the contract award.
- 6.7.4 **Post Tender Negotiation must not be conducted in an EU Procedure.**
- 6.7.5 Following the negotiated procedure contained within PCR2015 is not the same as Post Tender Negotiation. The negotiated procedure can only be used in exceptional cases and prior written approval **must** first be sought from either the Borough Solicitor or Corporate Procurement Manager to use the negotiated procedure. Post Tender Negotiation includes revising pricing and contract terms and conditions.
- 6.7.6 The Competitive Dialogue procedure permits the Council to enter into dialogue with suppliers to identify possible or alternative solutions. This procedure can only be used where

the financial or technical make-up of the contract cannot be ascertained without such dialogue. Prior written approval **must** first be sought from either the Borough Solicitor or Corporate Procurement Manager to use the Competitive Dialogue procedure.

6.7.7 The officer must use the award criteria and measurement system as set out in the public notice and Invitation to Tender<sup>38</sup>. The measurement system should usually include the following three elements:

- a) A point scoring system for individual quality/value for money considerations.
- b) Weightings applied to quality/value for money factors in accordance with their importance to the completion of the contract. Any sub-criteria must also be identified at this stage and the appropriate breakdown weighting disclosed.
- c) A "Quality Threshold" which sets the minimum standard expected. Tenders which fall below this shall be excluded from consideration.

6.7.8 All suppliers must be notified in writing through the Council's E-tendering system whether they have or have not been successful either in making the next stage or winning the contract. Where the contract is awarded on the most economically advantageous ground, tenderers must be notified of their score obtained against each award criteria, the score the winning tenderer obtained, the name of the winning tenderer and the characteristics and relative advantages of the winning tender. **The contract with the successful supplier must not commence until 10 calendar days after the date on which the letters were sent**, if the 10<sup>th</sup> day is a weekend or bank holiday the last day must be the following working day (15 days if sent by post) allowing unsuccessful suppliers time to dispute any decision made.<sup>39</sup>

6.7.9 Officers must not agree to contract conditions where payment is made before the goods, works or services are received, unless otherwise approved in writing by either the Corporate Procurement Manager, the Assistant Director (Finance & Estates) or the Borough Solicitor. Staged payments are acceptable but must be proportionate to the cost of goods, works or services received and must be submitted to Treasury and Capital in Accountancy for checking, please see CSO 6.8.13.

### **Checks on Financial Status**

*(Note 6.4.2 above)*

6.7.10 When following the restricted procedure within this banding, checks on financial status must only form part of the overall evaluation at standard selection stage. Financial appraisals cannot be used as a quality evaluation criterion at the Invitation To Tender stage. See the intranet under "Procurement" for the full financial appraisal process. When using the open procedure, financial appraisals should be carried out as part of the tendering process.

6.7.11 At the discretion of Corporate Procurement, financial checks may not be necessary for specific Suppliers. For example, when the contracting body is a local authority.

6.7.12 All contracts in this value banding with a term of over 24 months will need to be registered with Corporate Procurement for monitoring updates on financial status.

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<sup>38</sup> A sample criteria and measurement template can be obtained from Corporate Procurement.

<sup>39</sup> Compliant template letters showing the standstill period are available from Corporate Procurement

## 6.8 Contract Award and Contract Management

- 6.8.1 Consult Financial Regulations regarding the process to be followed to gain approval to award
- 6.8.2 Officers must obtain and check copies of all documents that were self-certified by the supplier during the tender process before awarding the contract.
- 6.8.3 All contracts over the EU threshold must be made under the common seal of the Council. Unless in exceptional circumstances approval to sign under hand is sought and obtained, from the Borough Solicitor, prior to competition.<sup>40</sup> Officers must follow the sealing process as detailed on the intranet.<sup>41</sup>
- 6.8.4 If acceptance of a tender is for any reason is delayed beyond the appropriate tender price validity period, the Supplier must be asked to confirm his tender in writing before the acceptance is issued. This letter of confirmation must be included as part of the contract. If the recommended tenderer submits a revised price, the Shared Legal Services Commercial Law team must be consulted.
- 6.8.5 A written report must be compiled that satisfies regulation 84 of the Public Contracts Regulations 2015. The report must be kept with the signed contractual documents for a minimum of 3 years from the date of award of the contract.<sup>42</sup>
- 6.8.6 Contract award notices must be published by the Corporate Procurement team in the Official Journal of the European Union (OJEU) and Contracts Finder within 30 days of contract award via the Council's E-tendering system – In-Tend<sup>43</sup>.
- 6.8.7 For contracts within this value banding, **an electronic award notification form must be completed and passed to Corporate Procurement<sup>44</sup> An electronic copy of the contract pack must be provided to Corporate Procurement for the Central Contracts Database followed by a scan of the fully signed acceptance letter or relevant contract pages holding signatures/seals at point of execution.** Contracts, for the purpose of this exercise, will range from a simple letter confirming pricing and using standard Supplier terms and conditions to a large contractual document drafted by Legal. Contracts will also cover one off purchases and schedules of rates.
- 6.8.8 The officer may wish to use a contract management checklist form to ensure all required steps have been followed. An example checklist can be found on the intranet under "Procurement", although Business Units may use their own forms to reflect their special requirements. All documentation and records of communications pertaining to the tender must be kept in accordance with Document Retention Schedule which can be found on the intranet.
- 6.8.9 The officer should provide his or her line manager, or Senior Leadership Team member as considered necessary, with regular reports on the financial position of a contract for budget or funding monitoring purposes and to enable corrective action to be taken as necessary.
- 6.8.10 All interim valuations and final accounts in respect of staged payment contracts must also be

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<sup>40</sup> Exceptional circumstances are where the 12 year limit of liabilities is of no benefit due to the nature of the product, such as supply of road fuel/ utilities or where the form of contract is dictated by framework terms.

<sup>41</sup> See sealing process on the intranet under Procurement.

<sup>42</sup> The award notification form contains a page to complete Regulation 84 information

<sup>43</sup> The Corporate Procurement Team will undertake this task.

<sup>44</sup> The Award notification forms are found on the intranet under Procurement

submitted for checking by Treasury and Capital in Accountancy for recording in the Central Contracts Database before they are sent for payment to Exchequer.

6.8.11 The officer must monitor the performance of the Supplier to ensure that requirements of the contract are delivered satisfactorily<sup>45</sup>. In performing this task the officer must monitor:

- a) Work performance (including KPI's if applicable)
- b) Compliance with specification and contract terms and conditions
- c) Cost
- d) Any Value for Money requirements
- e) User satisfaction
- f) Risk management (to include checking that relevant certificates such as insurance are up to date)

6.8.12 All documents, communications and minutes pertaining to the tender exercise and contract award must be kept in accordance with the Document Retention Schedule which can be found on the intranet under the section marked Freedom of Information.

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<sup>45</sup> Guidance on contract management is available on the intranet under Procurement

## SECTION 7 SPECIAL TYPES OF CONTRACTS

### 7.1 Engagement of Consultants

7.1.1 It is important that value for money is obtained when employing consultants.<sup>46</sup> Therefore, for all instances where the Contract Value of a consultancy appointment is over £5,001, the commissioning officer must provide a report to the Assistant Director responsible containing as a minimum the details listed under CSO 7.1.2.

7.1.2 Before consultants are invited to bid/tender the Assistant Director is responsible for:

- a) identifying the project objectives; and
- b) documenting the reasons for the employment of consultants including the benefits of employing consultants against in-house staff or agency staff; and
- c) documenting the residual in-house costs to support the consultant and ensuring that sufficient budget is available to meet all identified costs;
- d) Preparing a project brief with action dates to be recorded against each section, including:
  - (i) background; and
  - (ii) objectives; and
  - (iii) timetable; and
  - (iv) total costs; and
  - (v) performance monitoring arrangements; and
  - (vi) documentation standards; and
  - (vii) contact names and numbers for enquiries

7.1.3 All consultants must provide evidence of adequate professional indemnity insurance prior to their appointment. The requirement for insurance and the levels required should be advertised in the specification of works, if in doubt about the levels required consult with the Council's Insurance Manager

7.1.4 Human Resources must be consulted to help determine if the appointment is within IR35 or if a consultant is appointed and employed through an agency or through the council's payroll the consultant may fall under the Agency Workers Regulations 2010.

7.1.5 It should be a condition of contract with any consultant, agent or professional advisor who is to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:

- a) comply with these Contract Standing Orders as though they were an employee of the Council; and
- b) produce on request all the records maintained by them in relation to the contract award and award of contract; and
- c) on completion of the contract, transmit all records that they have produced or received that relate to the contract to the appropriate Assistant Director

7.1.6 Any letter of appointment or contract must set out the consultants legal obligations to the Council including where the ownership of intellectual property rights will sit. Advice on intellectual property can be sought from the Shared Legal Services Commercial Law team. Every written contract shall provide that the consultant shall not assign directly or indirectly the whole or any part of the contract without the written approval of the Council.

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<sup>46</sup> A consultant is a professional who provides expert advice in a specific field; they either operate within the organisation or are employed externally by an organisation for a fee.

## **The Invitation to Quote / Tender**

- 7.1.7 When procuring consultants the total estimated contract value should be used to adopt the procurement band to use. Details on Band 1 and 2 can be found under CSO 4.1 and Band 3 under CSO 5.1. When the estimated Total Value of the consultancy is equal to or exceeds the EU Threshold for services, then PCR2015 rules must be followed, as set out in Section 6.<sup>47</sup>
- 7.1.8 Where it can be demonstrated that there are insufficient suitably qualified consultants to meet the competition requirement, the officer must record in writing the reason why the services are so specialist and obtain an exemption approval as required by paragraph 3.3 of Section 3 of Contract Standing Orders to invite fewer consultants.
- 7.1.9 For consultancies over £10,001 related to construction, estates or building surveying work, the use of conditions of engagement is permitted where they are considered appropriate by the Assistant Director in consultation with the Shared Legal Services Commercial Law team<sup>48</sup>. Other consultancies over £10,001 including management and IT should use terms and conditions either supplied or approved by the Shared Legal Services Commercial Law team.

## **Tender Evaluation and Contract Award**

- 7.1.10 The tendering, evaluation and award procedure, as outlined in Section 5, shall apply to all consultancies where the total estimated value is over £75,001 and under the EU Threshold and in cases below that value where there is a strong likelihood of additional work (i.e. serial or extension contracts), which would bring the total value above £75,001.

## **Contract Monitoring**

- 7.1.11 For contracts over £75,001, the Senior Leadership Team member shall be responsible for ensuring that the Consultants work is properly monitored on an ongoing basis. This includes:
- a) Appointing a named Project Officer or Group
  - b) Specifying key tasks and dates for Consultants
  - c) Monitoring costs against budgets (payment schedules should include the agreed fees and the frequency of invoicing)
  - d) Arranging regular progress meetings with Consultants
- 7.1.12 The project officer shall maintain and keep all records pertaining to the tender, award and ongoing maintenance of the contract.
- 7.1.13 The project officer shall maintain the following documentation:
- a) project brief/objectives; and
  - b) minuted authority, where required; and
  - c) the agreement with the consultant and any subsequent variations; and
  - d) records that can demonstrate contractors compliance with contract standards prior to payments being made; and

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<sup>47</sup> Certain consultancy related services are not subject to the full tendering requirements of the EU Procurement Directive, a new light touch regime has been introduced where advertising is required but the thresholds are higher.

<sup>48</sup> Standard terms and conditions for consultants approved by Legal are those in the services quotation document provided on the intranet under Procurement.

- e) record of payments made to the consultant and for the project; and
- f) a project evaluation form

7.1.14 The project officer shall report immediately to the Assistant Director any material technical or financial deviation by the consultant from the specified agreement.

## 7.2 Disposal Contracts

7.2.1 Where items, excluding land and buildings over the cost of £1000 (at the time of purchase) cannot be re-used elsewhere in the Council an asset disposal certificate form found on the staff intranet under Finance must be completed, explaining why the items are surplus or redundant, any health and safety issues, and the proposed method of disposal. The form should be submitted to the relevant Assistant Director for approval to proceed with disposal of the items. All vehicles must be disposed of through sale by public auction or by quotations from a reputable dealer.

7.2.2 Where small items of equipment such as keyboards are scrapped under the cost of £1000 (at the time of purchase), they must be recorded on a list held by each relevant Assistant Director and signed off at year end. The list must be passed to Treasury and Capital in Accountancy at year end.

7.2.3 The highest bid received for an item if reasonable should be accepted. One of the following methods of disposal should be used:

- a) Invite quotations or tenders from outside organisations<sup>49</sup>
- b) Sale by Public Auction.
- c) Trade in for a new item when the circumstances are appropriate.
- d) Scrap the items in a safe manner.

7.2.4 The proposed method of disposal should be approved by a Assistant Director. All disposals must comply as applicable with the Waste Electrical & Electronic Equipment Directive and Health & Safety legislation. All Council and personal data must be removed from any IT or recording equipment prior to their disposal.

### Competition Rules

7.2.5 Where inviting quotations or tenders from outside organisations the following number of bidders should be invited as follows:

<u>Estimated Value</u>	<u>Minimum number of bidders to be invited (for Plant &amp; Equipment only)</u>
Up to £5,000	At least one bidder by quote
Over £5,001 up to £75,000	At least three bidders by quote
Over £75,001	At least four bidders by invitation to tender

7.2.6 Records of the bids received and written approval by an authorised officer to accept the most favourable bidder should be kept. The acceptance will be by letter signed by SLT Member or Assistant Director if the value is under £75,000 or a Senior Leadership Team member if the value is over £75,001.

## 7.3 Contract Extensions

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<sup>49</sup> Quotations or tenders can be issued through the Councils Intend e-tendering system if required



- 7.3.1 Term contracts often have the provision for extensions. E.G. the contract terms is 3 years with the option to extend for a further 2 years. When considering taking up the extension option consider if this will be in the councils best interest to extend. e.g. is the service still required in the existing form? Has the market changed? Could re procuring produce a saving? Do the research in sufficient time so that if the answer is re procure there is sufficient time to re procure well, the default should not be to extend because it's not been thought about it in time for any other option. The decision to extend is signed off by the officer with delegated rights to sign contracts of the value of the extension.
- 7.3.2 All requests to extend a contract beyond provision in the contract to extend must be made in writing to either the Assistant Director (Finance & Estates) or the Borough Solicitor for their approval. No extension that contravenes The Public Contracts Regulations 2015 will be granted and no extension to an existing contract shall be given unless it can be clearly demonstrated that a change of Supplier would result in one or more of the following:
- a) Unacceptable technical difficulties
  - b) A significant and unacceptable increase in costs to the Council
  - c) Significant disruption to the delivery of Council services.
- 7.3.3 It is not permitted to extend a contract renewable yearly on more than four occasions without re-tendering. Such cases should be reviewed annually and a written record of the decision (with reasons) to either, extend the contract or carry out a new competitive tendering exercise must be kept.
- 7.3.4 In all cases where the extension of a contract has been approved, the Shared Legal Services Commercial Law team shall be requested by the client department to undertake formalising the contract extension. Where the total contract value (including the original contract value) exceeds £5,001, details of the contract extension must be provided to Corporate Procurement for recording on the Central Contracts Database. If a contract record has already been entered on the central register then this will need to be updated with the contract extension details<sup>50</sup>.

## **7.4 Contract Hire and Lease/Rental Agreements**

- 7.4.1 Contract hire and lease/rental agreements are procurements and are subject to the provisions contained in Contract Standing Orders.
- 7.4.2 Before entering into a contract hire or lease/rental agreement the officer shall ensure that the financial implications have been assessed by Accountancy. Lease/Rental agreements can only be signed off following approval from the Assistant Director (Finance & Estates) or their nominated deputy.

## **7.5 Nominated Sub-Contractors and Suppliers**

- 7.5.1 If nominations are to be used then the terms of the contract between the Council and the main contractor should make it clear that the main contractor will be expected to enter into contract with the sub-contractors or Suppliers nominated by the Council.
- 7.5.2 *Tenders* for the nominated sub-contractors or Suppliers will be invited, opened and evaluated by the Council in accordance with Contract Standing Orders. The officer shall

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<sup>50</sup> A variation form to amend central contract details is available on the intranet under Procurement

nominate the successful tenderer(s) to the main contractor.

- 7.5.3 The main contractor will ensure that the main contract indemnifies them against the sub-contractors own obligations in relation to the works, supplies or services included in the sub-contract.

## **7.6 Term Contracts and Framework Agreements**

- 7.6.1 An officer may consider it advantageous to the Council, to invite tenders on a Term basis or under a Framework Agreement where payment is based not on defined works, services or supplies, but on a Schedule of Rates, Bill of Quantities or fixed unit cost over a defined period of time.
- 7.6.2 Unless a long term partnership, term contracts should not exceed five years or in the case of framework agreements four years, but will not normally exceed two years unless the contract contains a price fluctuation clause. It is not permitted to extend a contract renewable yearly on more than four occasions without re-tendering. Such cases should be reviewed annually and a written record of the decision (with reasons) to either extend the contract or carry out a new competitive tendering exercise must be kept (contracts may be subject to other term restrictions under the EU Procurement Directive).
- 7.6.3 The relevant procedures and regulations in Sections 3 to 6 of Contract Standing Orders are applicable to all Term Contracts.
- 7.6.4 Any Framework Agreement must be tendered in accordance with Contract Standing Orders or under PCR2015 rules, as applicable.
- 7.6.5 The estimated value of the Term Contract should be based on the full length of the contract (including any options for contract extensions) or for four years if the contract is renewable yearly or is a framework agreement.
- 7.6.6 Where additional items of work are required but not contained within the Schedule of Rates consult with Corporate Procurement to check these are legally valid variations, If agreed all suppliers on the framework agreement or term contract shall be given the opportunity of pricing such items which will then be added to the main Schedule of Rates to be used in the future.

## **7.7 Partnerships & Shared Services**

- 7.7.1 The term 'Partnership' is used to cover a wide variety of joint ventures and other procurement arrangements. The Senior Leadership Team member or contracting officer shall ensure that the prior approval of The Assistant Director (Finance & Estates) or the Borough Solicitor for the proposed partnership arrangement is obtained. The financial implications must be assessed by the Assistant Director (Finance & Estates) and all proposed partnership agreements must be cleared with the Borough Solicitor **at the earliest stage**.
- 7.7.2 All partnership agreements shall include *where relevant*:
- a) The principles of the partnership
  - b) Output specification and specified inputs
  - c) Partnership board
  - d) Open book accounting

- e) Any profit sharing arrangement and payment mechanism
- f) Hierarchy of dispute resolutions mechanisms
- g) Quality and Environment management systems
- h) Asset transfer
- i) Withdrawal arrangements

7.7.3 Partnership agreements which involve a joint venture/contractual arrangement with private sector bodies are subject to the provisions of Contract Standing Orders.

7.7.4 A competitive exercise shall be undertaken in accordance with the provisions of Contract Standing Orders to select the partner and award the work. In any cases where the proposed partnership would mean that Contract Standing Orders of another public sector body would take precedence over those of Stevenage Borough Council, the written approval of either the Assistant Director (Finance & Estates) or Borough Solicitor must first be obtained before any partnership is formalised.

7.7.5 Partnerships with the Voluntary Sector shall be in accordance with the grants policy of this Council.

7.7.6 Procurements undertaken through an existing Shared Service will be made using the Contract Standing Orders of the contracting lead authority.

## 7.8 Income Generating Contracts

7.7.7 All income generating contracts must be subject to competition, as follows:

	<b>Estimated Value</b>	<b>Minimum Number of Bidders to be Invited</b>
<b>Band 1</b>	Up to £10,000	At least one bidder by quote
<b>Band 2</b>	£10,001 – £75,000	At least three bidders invited to quote (a minimum of two responses received)
<b>Band 3</b>	Above £75,001	Public advertisement used

7.7.8 Details of income generating contracts in band 2 or above must be reported to and approved in writing by a Strategic Director.

7.7.9 For contracts with an estimated value above £75,001, CSO 5.5 (regarding the submission, receipt and opening of tenders) must be followed.

7.7.10 Where income generating contracts also incur a cost to the Council, the cost element may be subject to Contract Standing Orders in its own right. In this instance, the advice of the Assistant Director (Finance & Estates), Shared Legal Service Commercial Law team or Corporate Procurement Manager should be sought.

## **SECTION 8 OTHER CONSIDERATIONS**

### **8.1 Contractual Disputes**

- 8.1.1 The officer should seek the advice and involvement of the Shared Legal Services commercial law team as appropriate in contractual disputes with Suppliers.
- 8.1.2 In the event of a claim from a Supplier for loss or expense incurred (either permitted by the terms of the contract or extra-contractual), seek advice from the Shared Legal Services commercial law team immediately.

### **8.2 Termination of Contracts**

- 8.2.1 Subject to the terms and conditions of the contract, where the Supplier has demonstrably failed to deliver the work, services or goods in accordance with the contract the Council will be at liberty to terminate the contract either wholly or in part and to procure the works, supplies or services of the same or similar description elsewhere, in order to make good such default.
- 8.2.2 Adequate written evidence of poor unacceptable performance must be kept. Such records would include relevant correspondence and records of relevant meetings with the Supplier.
- 8.2.3 Shared Legal Services Commercial Law team must be involved in the termination of any formal contract to ensure that:
  - a) The Council's case for termination is legally sound; and,
  - b) The termination is carried out in accordance with the terms of the contract.

### **8.3 Bankruptcies and Liquidations**

- 8.3.1 In the event that a Supplier ceases to trade as a result of a bankruptcy or liquidation then the Shared Legal Services Commercial Law team must be involved in any of the following:
  - a) Terminating the contract
  - b) The appointment of new Supplier to complete the work or service;
  - c) Negotiations with liquidator/receiver/administrator
  - d) Assignment of contract and Novation

### **8.4 Contract Variations**

- 8.4.1 Contracts above the EU thresholds – Consult Corporate Procurement for advice before creating a variation order.
- 8.4.2 Variation orders shall relate to the work specified in an existing contract only and shall not be given in circumstances where a separate contract should or ought to have been entered into.
- 8.4.3 All variation orders must normally be issued to the Supplier prior to the relevant work being carried out but, in exceptional circumstances, should be given as soon as possible thereafter.
- 8.4.4 Variations shall be issued to the Supplier on an official Variation Order (VO), e.g. Architects

Instructions (AI'S), in a form approved by the relevant professional association. Variation Orders shall contain the details of the work required and be appropriately priced. Variation Orders must be signed by an officer authorised to sign contracts for the new total value of the contract in question. In the case of sealed documents Shared Legal Services Commercial Law team must be consulted.

8.4.5 All contract variations regarding contract value or expiry dates must be reported to Corporate Procurement to enable the changes to be updated on the Council's contracts register.

## **8.5 Green Environment and Sustainable Sources**

Goods or services which are known to be harmful to the environment, and where there are other adequate options, will not be used. Wherever practical and cost effective, only materials from sustainable sources will be used.

## **8.6 Diversity**

Officers should take steps in the procurement exercise to encourage a diverse and competitive supply market, including small firms, social enterprises, ethnic minority businesses and voluntary and community sector suppliers.<sup>51</sup> Providing details of any bidding opportunities on the Internet via the Corporate Procurement Manager will raise awareness for these organisations.

## **8.7 Equality**

The Council must have due regard to the requirements of the public sector equalities duty under the Equalities Act 2010, which must be taken into account when procuring goods, works, or services from external providers.

## **8.8 Innovative Procurement/Abnormal Contract Action**

New or different ways of purchasing goods, services or works, which give better value for money, are encouraged. However, any proposals for innovative procurement or abnormal contract action (including the use of another organisation's Contract Standing Orders and E-auctions) must be cleared by the Borough Solicitor to ensure the proposal is legally sound.

## **8.9 Declaration of Interest**

Section 117 of the Local Government Act 1972 provides that, if it comes to the attention of any officer, that the Council has entered or is proposing to enter into a contract in which he or she has "pecuniary" interest, he or she must give notice in writing of that interest to the Authority as soon as is practicable. It is a criminal offence not to comply with this provision.

- a) The register in which the written notice is to be given is held by the Constitutional Services Manager.
- b) "Pecuniary" includes any direct or indirect interest and is defined by reference to Section 95 of the Local Government Act 1972. The Borough Solicitor's advice should be sought in areas of uncertainty.
- c) The requirement to register applies even if the officer is not involved with the Contract.

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<sup>51</sup> Further guidance on how to encourage a diverse and competitive supply market using pre-procurement is available on the internet under Procurement.

## 8.10 Freedom of Information Act (2000)

The Data protection officer or their appointed nominee should be consulted where requests for information on tenders or contracts are received under the Freedom of Information Act (2000).

## 8.11 Security of Performance and Performance Liability

In order to protect the Council from non-performance or poor performance in a contract, the officer should consider whether a performance bond or a liquidated damages clause is required and in what form. These are especially relevant for Works and some Service contracts<sup>52</sup>. The Shared Legal Service Commercial Law Team should be consulted about the type and wording of the bond or liquidated damages clause.

For Works contracts between £500,000 and £2,000,000, the Council may (dependant on risk analysis) require the Supplier to provide a performance bond for 10% of the total contract value. For Works contracts above £2,000,000 the performance bond is usually 5%.

Supplier contracts should be checked carefully for any limitations or liability and advice should be sought from the Shared Legal Service Commercial Law Team. The foreseeable damage to the Council which might arise from the failure on the part of the supplier, any limitation on the contract, liability insurance carried by the supplier (other than public liability cover) and, security for performance, are all interrelated factors and should be considered carefully as a whole.

## 8.12 TUPE and the Best Value Code of Practice on Workforce Matters

If contracting out a service or re-tendering a term contract, the Transfer of Undertakings (Protection of Employment) Regulations (“TUPE”) 2006 may apply. This is a very complex area where legal guidance and trade union consultation must be sought at an early stage.

## 8.13 Health and Safety

Officers should take steps during the procurement exercise and throughout the length of the contract to ensure that health and safety is appropriately covered.

Considerations include:

- Clearly identify all aspects of work to be carried out by the contractor
- Consider the health and safety implications
- Competency to do the job safely?
- How reliant on sub- contractors and sub-sub-contractors?
- Reputation?
- Prosecutions, notices, accident record?
- Ensure contractors know what is expected
- Show SBC safety policy procedures, permit systems, contractor guidance and confirm they have been read and understood
- Whether Works contractors should be SSIP (or equivalent) registered

Consider requiring your Contractor to:

- Outline recent health and safety performance
- List, with evidence, qualifications and skills

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<sup>52</sup> Standard templates and further explanations/guidance for performance bonds and liquidated damages clauses can be found in the High Value Services Contract available from Corporate Procurement

- Provide safety method statement
- Be a member of trade organisation or professional body
- Provide clear information about the risks of the operation
- Provide safety rules and procedures
- Any employee, contractor or sub contractor working on behalf of SBC on SBC premises including tenanted properties must have ID relevant to their employment.

For further guidance, please refer to the Council's Health and Safety Guidance which can be found on the intranet under staff info/hr/health and safety.

#### **8.14 Safeguarding Children<sup>53</sup>**

All services commissioned by the Council must operate within the requirements of the Council's Safeguarding Children Policy and meet the relevant legislative standards. Where appropriate, procuring officers will need to ensure that contractors demonstrate that they meet these requirements. As an indicator, contractors/agencies must have in place the following:

- Senior Management Commitment to Safeguarding
- Clear, Accessible Statement of Responsibility (including Safeguarding Policy, Complaints, Equal Opportunities and Incident Monitoring Procedures)
- Clear mechanisms for identification and investigation/action regarding safeguarding concerns
- Clear Line of Accountability for Reporting Safeguarding Concerns
- Child and Family conscious service planning and delivery
- Staff Training programme for Safeguarding
- Safer Recruitment Policy
- Information Sharing procedure

#### **8.15 Accessibility**

Consider whether what you are buying needs to meet new Accessibility requirements - it could be websites / apps or even pdf/reports/pictures – anything that is published by SBC to the public or to staff<sup>54</sup>

#### **8.16 GDPR**

The Council must have due regard to the requirements of the General Data Protection Regulations 2018. Conduct a Data Protection Impact assessment to perform an assessment of privacy risks of performing data processing activities involving personal data handling.<sup>55</sup>

#### **8.17 Social Value**

The council must have due regard to the Public Services 2012 Social Value Act which requires commissioners to consider securing economic, social, or environmental benefits when buying services above the EU threshold, it is best practice to also apply the considerations to buying goods and works both under and over the EU thresholds . To

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<sup>53</sup> Additional information regarding Safeguarding is available on the Stevenage Borough Council website.

<sup>54</sup> Speak to IT service desk for assistance or <https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps>

<sup>55</sup> See intranet staff info/data protection.

comply with the Act, commissioners must think about how, what they are going to buy, or how they are going to buy it, could add these benefits, and must also consider whether they should consult on these issues. This can be both in the design of the specification and in the evaluation of the bids.<sup>56</sup>

### **8.18 Modern Slavery**

The council must consider the risk of modern slavery existing within its supply chain. Procuring officers need to research the level of risk that exists in the relevant market. If the risk is medium or high they should consult with Corporate Procurement suitable measures to take above and beyond the questions asked as standard in the SBC quotation and tender templates available via the intranet or Corporate Procurement.<sup>57</sup>

### **8.19 Fraud Prevention**

The council must comply with the Bribery Act 2010 and consider the risk of fraud within its supply chain. Procuring officers need to think about whether their actions could be perceived as fraudulent or favoring a particular supplier and also be alert to possible fraudulent behavior from bidders during the procurement and evaluation process. Within contract management processes consideration needs to be given to preventing fraudulent behavior by contractors or Council officers. Any suspicion of fraudulent behaviour should be reported to the Shared Anti-Fraud Service or use the Councils Whistleblowing policy<sup>58</sup>.

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<sup>56</sup> See information on the intranet under Procurement

<sup>57</sup> See intranet procurement.

<sup>58</sup> See intranet for more information



## Appendix A - Table of Definitions / Terms

Authorised Contract Signatory	The named officer who has been sanctioned via SLT to sign contract with suppliers to a specified contract value. The list of authorised signatories and respective values are maintained by Exchequer Services.
Bond	A bond is a legally enforceable financial guarantee given by a third party (the guarantor) to the Council to guarantee the obligations of a <i>Supplier</i> under a contract. The guarantor agrees to pay the Council a sum of money if the <i>Supplier</i> does not do what has been promised under a contract with the Council (e.g. a bond is often 10% of the total contract value). The purpose of a bond is to help the Council meet the extra expenses to remedy the contract default and/or complete the contract.
CCS	Crown Commercial Services - a local authority approved purchasing consortium, which is an executive agency of the Cabinet Office.
Contracts Finder	Government mandated advertising portal for all contract notices and awards advertised by Local and National Government and it's agencies
CSO	Contract Standing Orders
ESPO	Eastern Shires Purchasing Organisation - a local authority approved purchasing consortium.
Estimated Contract Value	The calculation of the estimated value of a contract shall be based on the maximum total amount payable, excluding VAT, envisaged for the total term of the agreement (including any option for contract extensions). Contracts <b>must</b> not be artificially separated either in structure or duration so as to avoid having to comply with the requirements of the Council's Contract Standing Orders or EU Procurement rules.
EU	European Union.
EU Procedures	The procedures required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> – see <i>separate additional guidance from Corporate Procurement</i> .
EU Threshold	The contract value at which PCR2015 must be applied, for example, as from 1 <sup>st</sup> January 2020 £189,330 for the supply of goods or services and £4,733,252 for works (building engineering and construction) contracts. These figures are subject to change every two years or possibly more frequently so staff should review the guidance regarding PCR2015 available on the intranet, under "Procurement".
Financial Regulations	The Council's financial regulations set out rules/procedures for financial management and the conduct required of Council staff in dealing with financial matters. They are issued by the <i>Assistant</i>

*Director (Finance & Estates) and form part of the Constitution.*

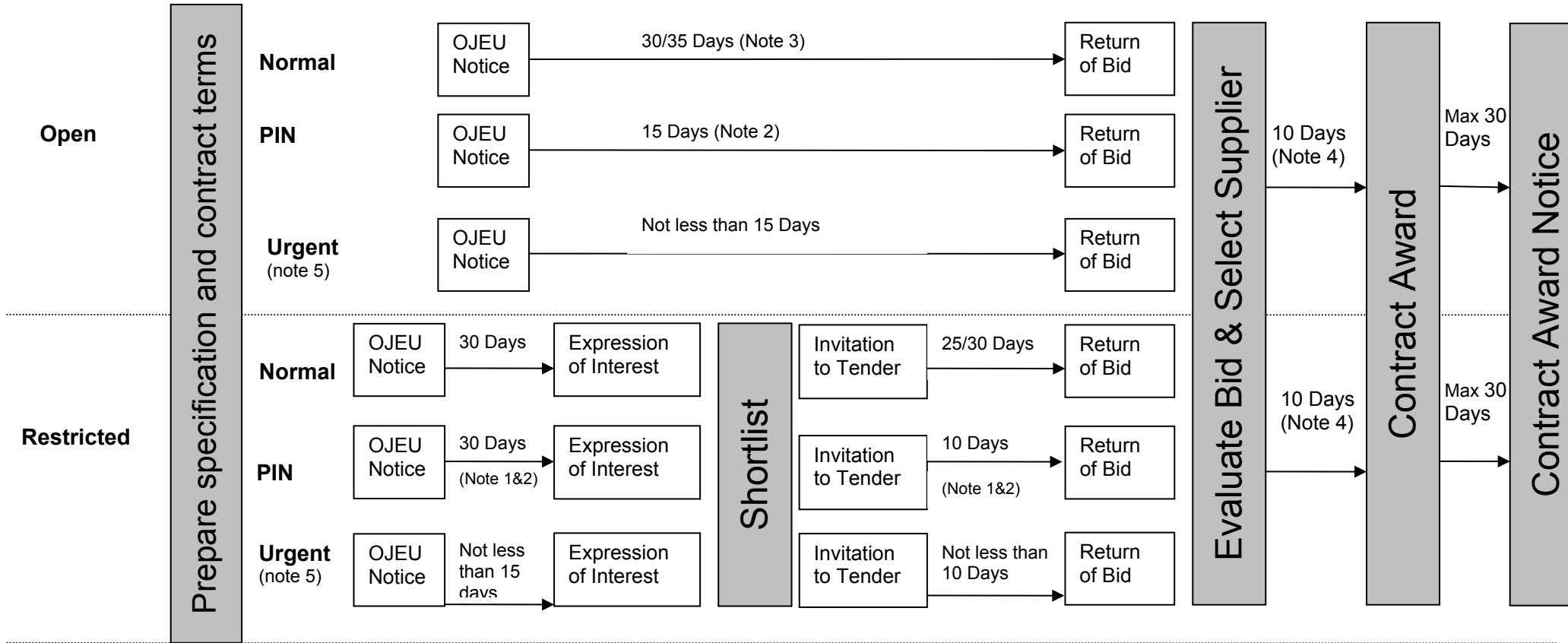
Framework Agreements	Framework Agreements are non-binding agreements entered into between a contracting authority and one or more <i>Suppliers</i> , setting out the terms and conditions (e.g. pricing mechanisms, quantity and scope of services/supplies/works and duration) under which future purchases (or call offs) can be made throughout the term of the agreement.
Homes England	Homes England is the non-departmental public body that funds new affordable housing in England. It was founded on 1 January 2018 to replace the Homes and Communities Agency.
Insurance cover and indemnity / liability limits	<p>Normally, contracts should require suppliers to indemnify (protect) the Council from public liability and employers liability to an appropriate limit, but products liability and professional liability may be required when relevant to a particular contract. The appropriate limit of indemnity should be judged individually depending on the nature of the contract, risk assessment, size of contracting firm etc. A brief explanation of each type of liability follows:</p> <p><b>Public Liability</b> provides indemnity for damages the insured is legally obliged to pay to a third party who has suffered damage or injury as a result of the insured's action. It does not extend to damage or injury suffered by employees of the insured. It does not include pure financial loss suffered as a result of advice given. The contract may include a co-indemnity or cross-indemnity clause, which effectively extends the supplier's cover to include SBC.</p> <p><b>Employers' Liability</b> provides indemnity for damages the insured is legally obliged to pay to an employee who has suffered damage or injury as a result of the insured's action. The contract should include a wide definition of "employee" so as to include apprentices, work-experience people, and volunteers if appropriate.</p> <p><b>Products Liability</b>, often included as part of general Public Liability Section of a policy, provides indemnity for damages the insured is legally obliged to pay to a third party who has suffered damage or injury as a result of the product for which the insured is responsible.</p> <p><b>Professional Liability (or Indemnity)</b> covers loss or damage (except bodily injury or damage to property) arising from the negligence or accidental error/omission of any official or employee while the Council is acting in a statutory capacity.</p>
In-Tend	The Councils E tendering system software, also known as SupplyHertfordshire
ITT	Invitation to Tender.
Key Decision	Decisions that are defined as Key Decisions in the <i>Constitution</i> . If the purchase is a Key Decision, the Officer must ensure that all appropriate steps have been taken. If the Contract value exceeds £250,000 or the contract will be significant in terms of its effects on communities living or working in the area, then the purchase is likely

	to be a key decision (See Decision Making - Article 11 in the Constitution for further information).
Nominated Suppliers and Sub-contractors	These are sub-contracts specified in the main contract where the Council nominates specific <i>Suppliers</i> or sub-contractors to the main contractor. The main contractor is expected to establish sub-contracts with the <i>Suppliers</i> nominated by the Council.
Novation	The agreed transfer to another <i>Supplier</i> of the full obligations and rights under the contract.
Parent Company Guarantee	The parent company (or holding company) guarantees the proper performance of a contract by one of its subsidiaries (the contractor). The conditions of the parent company guarantee will usually give the parent company the opportunity to remedy any default within a period of notice before the guarantee is called. The liability can take several forms including a financial guarantee of completion of the project itself or the employment of another <i>Supplier</i> to complete the project.
PIN	Prior Information Notice posted to the European Union
Post Tender Negotiation	Post tender negotiation means negotiations with any tenderer after submission of a <i>Tender</i> and before the award of the contract with a view to obtaining an adjustment in price, delivery or content.
PFH	Procurement for Housing – a local authority approved purchasing consortium, more specifically for Housing
Public Contracts Regulations 2015	Public Contract Regulations 2015 (PCR2015) are the legally required processes for UK public procurement which were transposed from EU Procurement Directives 2014 along with some UK specific rules(PCR 2015 is often referred to as EU Regulations)
Quotation	“Quotation” means an offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on terms and conditions agreed with the <i>Supplier</i> . For the purpose of Contract Standing Orders, the Council uses the term ‘Quote’ rather than ‘Tender’ for the more simplistic procurement process to be followed for estimated contract values below £75,000.
SBC	Stevenage Borough Council
Short Listing	Where <i>Suppliers</i> are selected: <ul style="list-style-type: none"> <li>• to quote or bid or</li> <li>• to proceed to final evaluation.</li> </ul>
Supplier	Any person, organisation or economic operator who supplies the Council with Goods, Works or Services. For the purpose of Contract Standing Orders, the term supplier includes contractors, consultants and service providers.
Senior Leadership Team member	The Assistant Directors, Strategic Directors and Chief Executive.

Tender	“Tender” means a formal offer to supply or purchase goods, or materials, execute works or provide services including consultancy, at a stated price based on set terms and conditions. For the purpose of Contract Standing Orders, the Council uses the term ‘Tender’ as opposed to ‘Quote’ for the more complex procurement procedure required for estimated contract values over £75,001.
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
YPO	Yorkshire Purchasing Organisation - a local authority approved purchasing consortium

**Appendix B**

**Minimum Timescales for above EU Threshold Contracts (in calendar days)**



**Competitive procedure with Negotiation**

**Innovation Partnerships**

**Competitive Dialogue**

These processes may only be used when certain criteria are met – for criteria and timescales please contact Corporate Procurement.

Note 1 Where PIN is used as a Call for Competition in the Restricted procedure, provided PIN published no less than 35 days and no more than 12 months before the despatch of the Contract, the 30 day timescale commences from when the invitation to confirm interest is sent and a separate Contract Notice is not necessary – strict guidelines for publication of PIN.

Note 2 Provided PIN published no less than 35 days and no more than 12 months before the despatch of the Contract Notice

Note 3 Under the new Public Contracts Regulations 2015, where the contracting authority allows electronic submission of tenders, the minimum timescales for receipt of tenders can be reduced by 5 days to 25 days for Restricted / 30 days for Open procedures.

Note 4 Under the Public Contracts Regulations 2015 where notification of intention to award is NOT sent by electronic means the Alcatel (Standstill) period must be 15 days, standstill expires midnight on the 10<sup>th</sup> day after notification (see mandatory standstill document for more information). Standstill must not expire on a non-working day (Saturday, Sunday or bank holiday)

Note 5 Classifying a procurement as Urgent is subject to meeting certain criteria – please check with Corporate Procurement