

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES (July 2019 revision)

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All costs stated in these Contract Procedure Rules are exclusive of VAT, staff costs and fees.

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good purchasing practice and public accountability and deter corruption. They are designed to safeguard the interests of the Council, its Members and its employees. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently.

These rules should be read in conjunction with the Council's Financial Regulations and Purchasing Card Procedure (as appropriate).

They apply to all activities of the Council, and where the Council is a lead authority in any joint procurement, shared service, partnership or collaborative arrangement.

All Officers (including temporary or agency workers) and Members must comply with these Contract Procedure Rules for all relevant contracts (see Rule 5 Relevant Contracts). They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract. Any breaches will be considered to be a disciplinary matter.

In accordance with the Constitution, Council shall have the power to make amendments from time to time to these Contract Procedure Rules.

If, after reading these Contract Procedure Rules, you require further guidance or clarification, or you are not sure how best to comply with the Rules, then please contact your Line Manager, the Business Manager – Financial Services or Welland Procurement.

Terms used in this document are defined in the Definitions Appendix at the end of this document.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All purchasing and disposal procedures must:

- (i) Achieve [Value For Money](#) for public money spent
- (ii) Be consistent with the highest standards of integrity
- (iii) Ensure fairness in allocating public contracts
- (iv) Comply with all legal requirements
- (v) Ensure that [non-commercial considerations](#) do not influence any contracting decision
- (vi) Support the Council's corporate and Business Unit vision and priorities

2. OFFICER RESPONSIBILITIES

2.1 Contract Officers

2.1.1 Contract Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Regulations, Standing Orders, Officers Code of Conduct and with all UK Government legislation and European Union binding legal requirements. Contract Officers must ensure that any agents, [consultants](#) and contractual partners acting on their behalf also comply. It is the responsibility of officers to ensure that they are aware of and fully understand these requirements.

2.1.2 Prior to any procurement exercise, Contract Officers must:

- (i) Check the Council's register of recurring contracts to see if a suitable corporate contract exists before seeking to let another contract; where a suitable corporate contract exists, this must be used unless there is an auditable reason not to
- (ii) Advise Welland Procurement of their intention to let or re-let a contract with a Total Value in excess of £75,000 a minimum of six months in advance of placing an advertisement to invite tenders

During any procurement exercise, Contract Officers must:

- (iii) Keep relevant records
- (iv) Seek and follow all necessary legal, financial and professional advice
- (v) Be able to demonstrate the achievement of [Value for Money](#)

2.1.3 When any employee either of the Council or of a service provider may be affected by any transfer arrangement, Contract Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal and HR advice before proceeding with inviting tenders or quotations.

2.2 Chief Officers

2.2.1 Chief Officers must:

- (i) Ensure that their staff (including temporary and agency staff) comply with these Contract Procedure Rules and are suitably trained
- (ii) Ensure that details of all current contracts are recorded on the Council's corporate register of recurring contracts
- (iii) Ensure that all completed contracts are passed to legal for safe keeping
- (iv) Ensure that any Contract Procedure Rules exemptions provided for under Rule 4 are duly recorded using the form on the [Procurement Intranet Pages](#)

3. PROCUREMENT OPTIONS

- 3.1 Officers need to consider what procurement method is most likely to achieve the purchasing objectives, in consultation with Welland Procurement.
- 3.2 For all procurements of Goods, Services or Works with a total value BELOW the relevant EU Goods & Services threshold an **Open** tender procedure must be used. Advice must be sought from the Welland Procurement.
- 3.3 For all procurements with a total value ABOVE the relevant EU threshold for either Goods/Services or Works, Contract Officers must consult with Welland Procurement before making a final decision on the appropriate procurement method.
- 3.4 For purchasing where there is no on-going commitment the Council's purchasing cards should be used where possible. Such purchases will be ad hoc and with no time bound commitment. Anything other than this must be referred to Welland Procurement.
- 3.5 Regardless of the procurement option used, all EU/UK legislation must be adhered to and all statutory guidance in respect of this legislation.
- 3.6 Where it is a Capital Programme scheme, the recommendation in the Council's guidelines on project management must be adhered to.
- 3.7 Welland Procurement must be consulted prior to commencing any procurement process using framework agreements **including those** established by the Crown Commercial Service (CCS) or other Public Sector Buying Organisations (PSBOs), where the requirement is valued over the OJEU threshold or otherwise high risk or complex. The terms and conditions of contract applicable to any CCS or PSBO framework agreements, including the requirement to undertake competition between providers, must be fully complied with.

3.8 Collaborative Procurement Arrangements

- 3.8.1 In order to secure [Value for Money](#), the Council may enter into collaborative procurement arrangements. The Contract Officer must consult the Section 151 Officer, the Business Manager - Legal and Welland Procurement **where collaborative procurement arrangements are proposed** with another local authority, government department, statutory undertaker or Public Sector Buying Organisation.
- 3.8.2 In order to allow the development of joint procurement, shared services, partnerships or collaborative arrangements, the Section 151 Officer shall have delegated authority to permit the use of the Contract Procedure Rules of a local authority partner. The Contract Officer must also consult with Welland Procurement and the Business Manager - Legal to ensure compliance with all legal requirements.
- 3.8.3 All purchases made via a Public Sector Buying Organisation (PSBO) (e.g. ESPO, YPO, CCS) are deemed to comply with these Contract Procedure Rules and no exemption is required. However, purchases above the EU threshold must be let under the [EU procedure](#), unless the PSBO has satisfied this requirement already by letting their contract in accordance with the [EU procedure](#) on behalf of the Council and other eligible users.

3.9 Private Finance Initiatives

- 3.9.1 Contracts entered into concerning Private Finance Initiatives shall be undertaken in accordance with relevant legislation. The Contract Officer shall refer to the Legal Business Unit and the Section 151 Officer prior to a contract being entered into concerning Private Finance Initiatives.

3.10 [Framework Agreements](#)

- 3.10.1 Welland Procurement must be consulted prior to commencing any process which could lead to the use of a [framework agreement](#).
- 3.10.2 [Framework agreements](#) must only be used where the Council is either a named participant or where the Council is considered a recognisable class of contracting authority under the terms of the framework agreement.
- 3.10.3 Contracts based on [framework agreements](#) may be awarded by either:
- (i) Applying the terms laid down in the [framework agreement](#) (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
 - (ii) Where the terms laid down in the [framework agreement](#) are not precise enough or complete for the particular call-off, by holding a mini competition.

Advice must be sought from Welland Procurement.

4. EXEMPTIONS

- 4.1 **The Contract Procedure Rules must be followed. This is to ensure open and transparent competition and protect the Council from any undue risk of challenge of anti-competitive behaviour.**
- 4.2 Where the total lifetime value of a proposed contract is likely to exceed the [EU threshold](#), a Chief Officer has no delegated powers and no exemption can be applied for.
- 4.3 For Supplies and/or Services contracts where the total lifetime value is below the EU threshold, an exemption to all or part of the requirements under section 9.1.1 may be granted with the written approval of the Council's Section 151 Officer. For Works contracts with an estimated total value below the EU threshold, an exemption to all or part of the requirements under section 9.1.1 may be granted with the written approval of the Council's Chief Executive and the Section 151 Officer. Any application for exemption is required to demonstrate valid reasons for not going through an open competition process together with a risk assessment.
- 4.4 Any contract entered into through collaboration with other Local Authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedure Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption is required. However, advice must be sought from Welland Procurement.
- 4.5 Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services, approval must be sought from the Section 151 Officer, or in the event of his absence the Deputy Section 151 Officer or in his absence, the Chief Executive or the relevant Business Unit Manager. Where this situation arises a report must be sent to the next Policy & Finance Committee to support the action taken.
- 4.6 All exemptions, and the reasons for them, must be recorded using the Contract Procedure Rules Exemption form which is available from the Business Manager – Financial Services. Exemptions shall be detailed by the Contract Officer and signed by the relevant Director and Section 151 Officer and a copy sent to the Business Manager – Financial Services for subsequent recording and monitoring.
- 4.7 The use of e-procurement technology does not negate the requirement to comply with all elements of these Contract Procedure Rules, particularly those relating to competition and [Value for Money](#).
- 4.8 Competitive tenders are not required in any of the following circumstances:

- (i) EU contracts or framework agreements may be modified without a new procurement procedure only in clearly defined situations as provided for under Regulation 72 of the Public Contracts Regulations 2015.
- (ii) The work to be executed or goods or materials to be supplied or the services to be provided constitute an extension of an existing **below EU threshold** contract provided that such an extension has received approval by the Section 151 Officer. Welland Procurement must be consulted and must be satisfied that the extension is in accordance with procurement legislation.
- (iii) The work to be executed or the goods or materials to be supplied consists of repairs to or the supply of parts to existing proprietary machinery or plant by the manufacturers or their agents. The Welland Procurement must be consulted and be satisfied that [Value For Money](#) is being achieved.
- (iv) The estimated expenditure is less than £10,000 provided that the appropriate Chief Officer shall take reasonable steps to secure the order at the most competitive price.
- (v) The purchase is by or at public auction, including online auction facilities (e.g. eBay) and the total value of the procurement is below the prevailing EU threshold.

5. **RELEVANT CONTRACTS**

5.1 All relevant contracts must comply with these Contract Procedure Rules. A relevant contract is any arrangement made by, or on behalf of, the Council for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- (i) The supply or disposal of goods
 - (ii) The hire, rental or lease of goods or equipment
 - (iii) The delivery of services, including (but not limited to) those related to:
 - (a) The recruitment of non direct employees/agency staff
 - (b) Land and property transactions* (also covered by [Financial Regulations](#))
 - (c) Financial and consultancy services
- *(these are exempt from the EU Rules and corresponding UK Regulation)**

5.2 Contracts for the sale of land and property must be conducted in accordance with these Contract Procedure Rules or a process approved by the Section 151 Officer and with the approval of the Policy & Finance Committee.

5.3 Relevant contracts do not include:

- (i) Contracts of employment which make an individual a direct employee of the Council
- (ii) Treasury management deals for borrowing or investment which will be dealt with in accordance with the latest Treasury Management Strategy approved by Council.

SECTION 2: COMMON REQUIREMENTS

6. STEPS PRIOR TO PURCHASE

6.1 The Contract Officer must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance contained on the Welland Procurement website, by:

- (i) Ensuring there is sufficient time to complete the purchase process
- (ii) Appraising the need for the expenditure and its priority
- (iii) Assessing the feasibility of the proposed order/tender
- (iv) Ensuring there is sufficient budget
- (v) Assessing and managing risks identified with the procurement process; financial risks should be assessed in consultation with the Section 151 Officer
- (vi) Considering which procurement method is most likely to achieve the purchasing objectives in consultation with Welland Procurement
- (vii) Consulting users as appropriate about the proposed procurement method, contract standards, contract performance (refer to Rule 19) and user satisfaction monitoring
- (viii) Preparing a robust specification of requirements
- (ix) Consulting, where appropriate, with a suitable Technical Officer(s) Drafting the terms and conditions that are to apply to the proposed contract. Consultation must take place with legal services prior to the terms and conditions being finalised
- (xi) Setting out these matters in writing per Rule 7. Records
- (xii) Considering project management arrangements, including [nominating a suitable officer to manage the contract once awarded](#)
- (xiii) Considering the requirements for [construction contracts](#)
- (xiv) Considering how the procurement of above EU threshold public Services contracts may improve the economic, social and environmental well-being of the District in order to demonstrate compliance with the Public Services (Social Value) Act 2012. Well-being considerations must be relevant and proportionate to the subject matter of the contract and enforceable within the constraints of existing EU legislation.
- (xv) Confirming that there is Member or delegated approval for the expenditure and the purchase accords with the approved scheme of delegation as set out in the Constitution

7. RECORDS

7.1 Where the [total value](#) of the procurement is less than £75,000, the Contract Officer must ensure an appropriate audit trail exists in the form of written &/or electronic records to evidence that the procurement process has been carried out in compliance with the Council's Contract Procedure Rules and secures Value for Money.

- 7.2 Where the [total value](#) of the procurement exceeds £75,000 the Contract Officer must record and keep:
- (i) Documented work undertaken pre tender as detailed in Rule 6. Steps prior to Purchase
 - (ii) The method for obtaining bids and the basis for the selection of tenderers
 - (iii) Any contracting decision and the reasons for it
 - (iv) Any exemption under Rule 4 together with the reasons for it including a copy of the exemption form. See 4.5
 - (v) The award criteria in descending order of importance
 - (vi) Tender documents sent to and received from candidates
 - (vii) Pre-tender market research
 - (viii) Supporting documentation relating to tender examination
 - (ix) Clarification and post-tender **clarification** (to include minutes of meetings)
 - (x) The contract documents
 - (xi) Post-contract evaluation and monitoring
 - (xii) Written records of communications with candidates and with the successful contractor throughout the period of the contract
 - (xiii) Contract monitoring undertaken during the life of the contract
- 7.3 All hard copy and electronic records relating to procurement activities including but not limited to tendering procedures and contracts must be retained by the Contract Officer in accordance with the Council's Retention & Disposal Policy and Retention and Disposal Schedule (Contracts & Tendering).
- 7.4 Business Unit Managers must supply the Business Manager – Financial Services with such information as is required to populate a central contracts register.
- 7.5 All signed contracts must be passed to the Business Manager – Legal Services for safekeeping.
- 7.6 The tender record log must be kept by the Business Manager - Democratic Services. A copy must be kept by the Contract Officer.

8. ADVERTISING

8.1 Identifying and Assessing Potential Candidates

- 8.1.1 Contract opportunities must be advertised in accordance with the provisions of rule 9.1.1 and in consultation with Welland Procurement.
- 8.1.2 Contract Officers are responsible for ensuring that all candidates for a relevant contract are suitably assessed. The assessment process shall establish that the potential candidates have sound:
- (i) Economic and financial standing
 - (ii) Technical ability and capacity to fulfil the requirements of the authority.

The only exception to this process is direct purchases where the goods are received prior to payment being made.

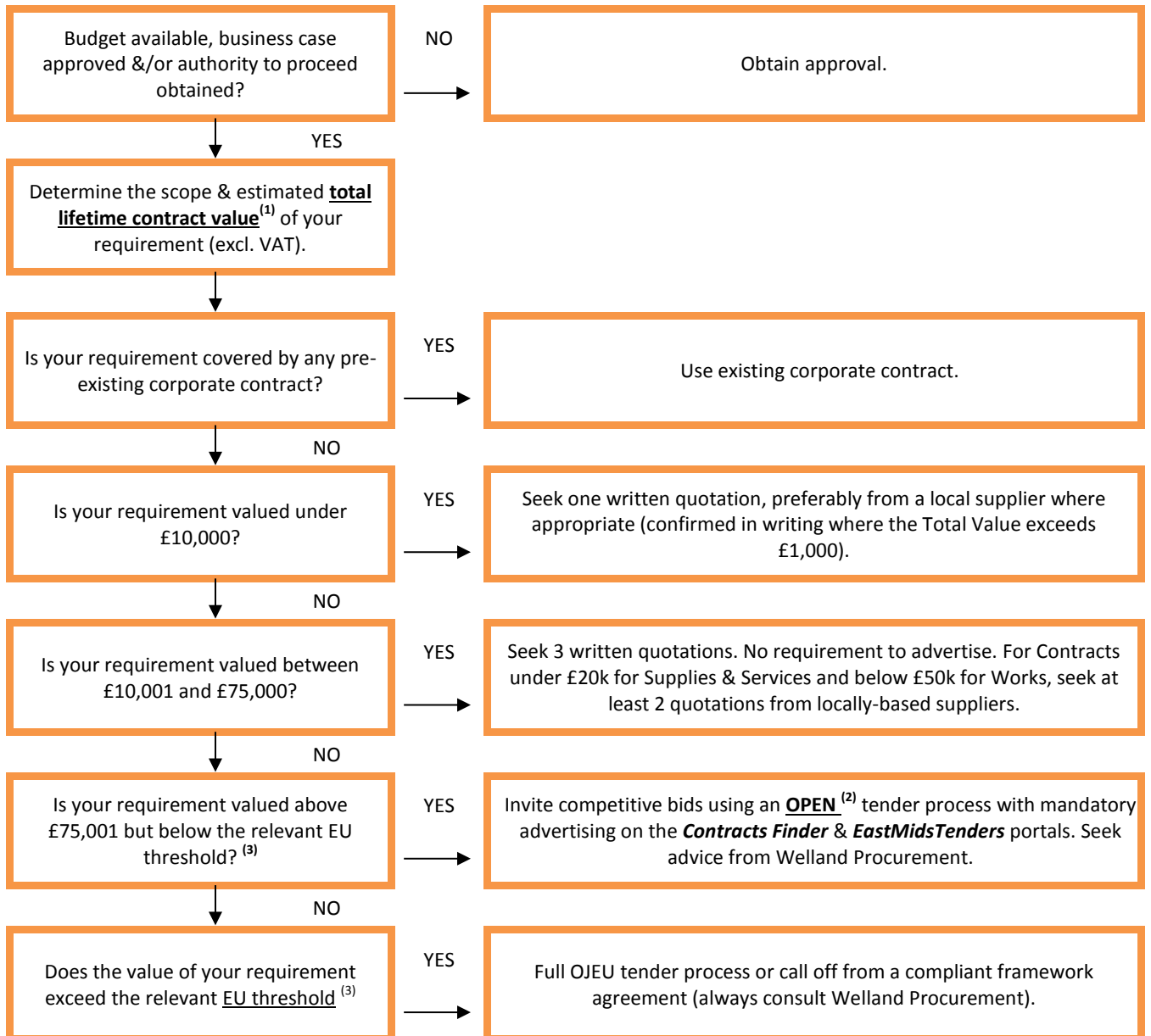
Suppliers/Contractors engaged to deliver Services and Works contracts with a total value in excess of £250,000 should be subject to financial assessment **which may include but should not be limited to an Equifax commercial credit check** in order to assess their financial viability.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

9. COMPETITION REQUIREMENTS: PURCHASE, DISPOSAL & PARTNERSHIPS

9.1 Purchasing – Competition Requirements

9.1.1 Where an option to proceed with a competitive procurement exercise has been chosen, the following flow chart will determine the appropriate procedure to use.



- ⁽¹⁾ When calculating the total lifetime value of a contract to appoint a consultant, ALL potential phases of work must be considered.
- ⁽²⁾ The use of a RESTRICTED tender process with a separate pre-qualification stage is not permitted under the Public Contracts Regulations 2015 for **Supplies, Services and Works** contracts if the total value is under £181,302. However, the RESTRICTED tender process can be used for Works contracts above £181,302.
- ⁽³⁾ The EU thresholds applicable from 01/01/2018 to 31/12/2019:-
- Supplies & Services contracts: £181,302
 - Works contracts: £4,551,413
 - Light Touch Regime for Health, Social, Education and certain other Service Contracts: £615,278

9.1.2 The Contract Officer must calculate the total value of the contract, taking into account what scope there might be for expansion on the initial requirements.

9.1.3 Where it can be demonstrated that there are insufficient suitably qualified candidates to meet the competition requirement, Contract Officers must consult with Welland Procurement for further guidance.

9.1.4 A Contract Officer must not enter into separate contracts nor select a method of calculating the total value in order to circumvent the application of these Contract Procedure Rules or to evade EU thresholds.

9.1.5 A Contract Officer may choose to go out to tender following the procedures laid out in the flowchart at 9.1.1 above, for an amount less than that specified. **However, all other relevant contract procedure rules must still be followed and the advice of Welland Procurement should be sought.**

9.2 Assets for Disposal

9.2.1 Prior to disposal the surplus asset must be offered for internal use elsewhere in the Council.

9.2.2 Assets for disposal with an estimated total value of over £500 must be disposed of by competitive tender or public auction (including online auction facilities such as eBay) unless written approval is obtained from the Section 151 Officer for a different method of disposal to be used. The method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Section 151 Officer.

9.2.3 The Contract Officer must ensure that any regulations relating to safe and proper disposal are followed.

9.3 Providing Services to External Purchasers

9.3.1 The Chief Executive, Monitoring Officer, the Section 151 Officer, Welland Procurement and Financial Regulations must be consulted where contracts to undertake work on behalf of organisations other than the Council are to be considered.

9.4 Collaborative and Partnership Arrangements

9.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these Contract Procedure Rules. If in doubt, Contract Officers must seek the advice of the Business Manager - Legal and Welland Procurement.

9.5 The Appointment of Consultants to Provide Services

9.5.1 Contract Officers must seek the advice and guidance of Welland Procurement prior to commencing any procurement process which could lead to the appointment of consultants.

9.5.2 [Consultants](#), including technical and management consultants, shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules and as outlined in the flowchart under Rule 9.1.1.

9.5.3 The engagement of a consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided (inclusive of ALL potential phases of work and associated costs) and shall be subject to completion of a formal letter or contract of appointment.

9.5.4 Records of consultancy appointments shall be maintained in accordance with Rule 7.

9.5.5 Consultants shall be required to provide evidence of, and maintain professional indemnity [insurance](#) policies to the satisfaction of the relevant Chief Officer after consultation with the Section 151 Officer or in his absence the Deputy Section 151 Officer for the periods specified in the respective agreement and any subsequent liability.

9.5.6 All consultancy appointments should clearly stipulate that the copyright in any report or other work or information created as a result of the contract shall be assigned by the contractor to the Council absolutely with full title guarantee.

9.5.7 It is the responsibility of the person arranging the consultancy contract to determine whether or not payments are to be made to the consultant's employer, to the consultant directly or to a personal service company (PSC). This is a limited company owned by the consultant and is commonly used to reduce tax and National Insurance liability. If payment is to be to the contractor personally or through a personal service company, advice must be sought from the S151 Officer and the Business Manager – Human Resources OD before any appointment is made.

10. PRE-TENDER MARKET RESEARCH AND CONSULTATION

10.1 The Contract Officer responsible for the purchase:

- (i) Should seek advice from Welland Procurement
- (ii) May consult potential suppliers prior to the issue of the invitation to tender in general terms about the nature, level and standard of the supply, contract

packaging and other relevant matters, **provided** this does not prejudice the objective selection of any potential candidate, but;

- (iii) Must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential candidates or distort competition. This applies to all contracts and is especially relevant in the case of software contracts.

11. CONTRACT AWARD CRITERIA

11.1 The Contract Officer must define award criteria that are appropriate to the purchase and designed to secure an outcome giving demonstrable [Value for Money](#) for the Council. The basic criteria shall be:

- (i) 'Most economically advantageous tender', where considerations other than price also apply, or;
- (ii) 'Lowest price' where payment is to be made by the authority
- (iii) 'Highest price' if payment is to be received

If the first criterion is adopted a whole life costing approach is applicable and must be further defined by reference to sub-criteria which may refer only to relevant considerations.

These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

The extent and weighting of these sub criteria must be decided, declared and documented prior to first advertising the contract opportunity.

The Contract Officer shall ensure the weighting of non-financial criteria within a proposed contract ensures equal treatment of all potential contractors and does not preclude, or give undue preference to, any contractor, and that all dealings with contractors are undertaken on a fair and equitable basis.

11.2 Award criteria must not include:

- (i) [Non-commercial considerations](#)
- (ii) Matters that discriminate against suppliers from the European Economic Area or signatories to the Government Procurement Agreement

12. INVITATIONS TO TENDER/QUOTATIONS

- 12.1 The Invitation to Tender or Quotation shall state that no tender will be considered unless it is received by the date, time and conditions stipulated in the Invitation to Tender or Quotation.
- 12.2 The conditions applying to Invitations to Tender shall include the following:
- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers or descriptions contained in bills of quantities, including details of workmanship, health and safety and quality.
 - (b) The relevant British, European or International standards that apply to the subject matter of the contract in order to describe the required quality.
 - (c) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose)
 - (d) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion.
 - (e) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
 - (f) A description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance, including any non-financial criteria.
 - (g) Where written tenders are to be received, notification that tenders must be enclosed in a securely sealed plain envelope or container which bears the word 'tender' followed by the subject to which it relates (but no other name or mark indicating the sender) and the date and time by which tenders must be returned and marked for the attention of the 'The Chief Executive'.
 - (h) Tenders received by fax or other electronic means (e.g. e-mail) will be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Section 151 Officer and the Business Manager - Legal.
 - (i) The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with; in particular, whether the overall price prevails over the rates in the tender or vice versa.
- 12.3 All invitations to tender or quotations must specify the terms and conditions of contract that will apply (see Rule 18).
- 12.4 The invitation to tender or quotation must state that the Council does not bind itself to accept the lowest tender, or any tender (after the application of financial and non-financial criteria).

- 12.5 All candidates invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Should questions arise during the tendering period which in the Council's judgement are of material significance then Contract Officers must write to all tenderers to explain the nature of the question and our formal reply.

13. SHORTLISTING

- 13.1 Shortlisting is illegal in tenders below the EU Services Threshold. All tenders below the applicable threshold, whether for goods, works or services, must follow an open procedure, meaning that all tenders must be evaluated, subject to any grounds for exclusion. These may include any specified minimum technical or professional requirements.
- 13.2 Under an EU procedure that allows shortlisting, this must be based on the published selection criteria and weightings which must have regard to the financial and technical standards relevant to the contract.

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

- 14.1 Candidates must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of tenders. The EU procedure lays down specific time periods (see guidance on the Welland Procurement website).
- 14.2 All tenders that are submitted in writing must be marked for the attention of and returned to the Chief Executive.
- 14.3 Tenders received by electronic means must be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Section 151 Officer and the Business Manager - Legal.
- 14.4 Tenders not received by the specified time and date must not be considered unless the conditions detailed under 14.11 prevail.
- 14.5 Tenders that do not comply with the requirements of 12.2 must be rejected and recorded as such on the Tender Log Sheet.
- 14.6 The Business Manager - Democratic Services shall be responsible for the safekeeping of tenders until the appointed time of opening. Each tender must be:
- (i) Suitably recorded so as to subsequently verify the date and precise time it was received;
 - (ii) Adequately protected immediately on receipt to guard against amendment of its contents;
 - (iii) Recorded immediately on receipt in the Tender Record Log.

- 14.7 The Chief Executive must ensure that all tenders are opened at the same time when the period for their submission has ended. When written tenders are received these must be opened in the presence of a Chief Officer and one officer representing the Chief Executive. The Contract Officer or his or her representative must be present, but may not open the Tenders. Where the [total value](#) is more than the [EU threshold](#), one officer must be the Section 151 Officer or his representative. **Tenders above the EU threshold must only be received via an electronic tendering system.**
- 14.8 Upon opening, a summary of the main terms of each tender must be recorded in the Tender Record Log, i.e. significant issues that are unique to each tender submission and were not stated in the tender invitation documents such as tender sum, construction period, etc. If it is not possible to determine the total value of a bid from a bidder's Form of Tender for the purpose of recording it on the Tender Record Log, then the officers in attendance are required to initial all key tender documents in blue ink. The Tender Record Log must be signed by two officers, one on behalf of the Chief Executive.
- 14.9 The tender record log must be in a form approved by the Monitoring Officer and the Section 151 Officer.
- 14.10 Following tender opening, all tenders must be promptly passed to the Contract Officer responsible for evaluation.
- 14.11 Treatment of Late Tenders:
- (i) Any tender received after the specified date and time must not be considered, unless the Chief Officer with the approval of the Section 151 Officer and the Business Manager - Legal consider that circumstances warrant it, such as where there is evidence of posting in time for delivery by the due date and time in the normal course of post delivery (Note: in this instance, the other tenders must not have been opened). Appropriate supporting documentation must be maintained to substantiate the Chief Officer's decision.
 - (ii) Under no circumstances must any late tender be considered after the other tenders have been opened.
 - (iii) Any tender submitted after the specified date and time must be returned promptly to the tenderer by the appropriate Chief Officer unless accepted in accordance with 14.11 (i).
 - (iv) Any tender excluded from the tender opening process may be opened to enable it to be returned promptly but no details of the tender shall be disclosed.
- 14.12 The Contract Officer must not disclose the names of Candidates to any staff involved in the receipt, custody or opening of Tenders.

15. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

- 15.1 **Providing clarification of an invitation to tender to potential or actual candidates or seeking clarification of a tender, whether in writing or by way of a meeting, is**

permitted but must not be conducted such as to distort competition. Where a clarification is of general relevance to the procurement process, the information must be provided to all candidates.

15.2 Except when following specific procedures, negotiation is not allowed under the EU Rules or UK Regulations. Clarification is allowed and if required please seek the advice of Welland Procurement.

15.4 Where clarification results in a fundamental change to the specification or contract terms (as agreed by Welland Procurement and the Business Manager - Legal on an individual basis), the contract must not be awarded but re-tendered.

16. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING CANDIDATES

16.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of quotations, tenders and the identity of Candidates must be preserved at all times and information about one candidate's response must not be given to another candidate.

16.2 Tenders shall be promptly examined for adequacy, completeness (including Health and Safety competence) and accuracy by the Contract Officer and/or appropriate Technical Officer.

16.3 Tenders must be evaluated and contracts awarded in accordance with the award criteria. During this process, Contract Officers shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. Where there are significant differences, these must be reported to the appropriate Chief Officer and the Section 151 Officer immediately.

16.4 The arithmetic in compliant tenders must be checked. If arithmetical errors or discrepancies are found which would affect the tender figure (in an otherwise successful tender), they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the tender invitation as being dominant, an amended tender price may be requested to accord with the rates given by the tenderer.

16.5 If the tenderer withdraws, or fails to confirm their tender within 10 working days or such period as agreed, the next tender is to be examined and dealt with in the same way. Any exception to the above procedure may only be authorised by the Business Manager - Legal or the Section 151 Officer, after consideration of a suitable report prepared by the Contract Officer, or the Technical Officer who examined the tender.

16.6 All unsuccessful tenderers shall be notified promptly and in accordance with the contract conditions, EU and English law.

16.7 For contracts with a total value above the [EU threshold](#):

16.7.1 The Contract Officer must contact Welland Procurement who will be responsible for drafting all such notifications.

16.8 For contracts with a total value below the [EU threshold](#):

16.8.1 Contract award is notified simultaneously to all bidders. Unsuccessful bidders are provided with their scores and those of the successful bidder for each award criterion and also a brief summary of the relative strengths and weaknesses of their bid. Templates for this purpose and further advice appear on the Welland Procurement website under <http://wellandprocurement.org.uk/newark-and-sherwood-district>.

17.0 INCOME GENERATING CONTRACTS

17.1 Contracts generating income shall only be entered into if the relevant Chief Officer is satisfied that:

- (i) The relevant power to provide a service (for a service contract) and the resources and time required have been properly identified and the proposed contract is in the best interests of the Council;
- (ii) Where the income is to be generated by the granting of a concession, e.g. the opportunity to an external provider to provide an income generating service at a Council event and the estimated value of the concession is:
 - (a) below £10,000 then a minimum of three potential concessionaires should be invited to make offers to the Council
 - (b) above £10,000 then the opportunity should be advertised in accordance with the flowchart under Rule 9.1.1.
and the offers submitted should be evaluated to assess which offer is most economically advantageous to the Council.

17.2 The terms of any contract shall be clearly set out in writing.

SECTION 4: CONTRACT AND OTHER FORMALITIES

18. CONTRACT DOCUMENTS

18.1 Relevant Contracts

18.1.1 All relevant contracts shall be in writing in a form approved by the Business Manager - Legal or their nominated representative.

18.1.2 All relevant contracts, irrespective of value, shall clearly specify:

- (i) What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done) per the specification, bills of quantity or descriptions supplied as part of the tender process

- (ii) The provisions for payment (i.e. the price to be paid and when). The Public Contracts Regulations 2015 require that every contract a contracting authority enters into must provide that payment will be made to the contractor no later than 30 days from the date from which the relevant invoice is regarded as valid and undisputed. This provision also applies to a sub-contract awarded by the contractor and also any sub-sub-contract which the sub-contractor in turn awards
- (iii) The time, or times, within which the contract is to be performed
- (iv) The provisions for the Council to terminate the contract.
- (v) The address at which the works or services are to be undertaken
- (vi) A right of access by the Council to relevant documentation and records held by the Contractor or on their behalf, for monitoring and audit purposes if relevant.
- (vii) [Whistleblowing Policy](#)
- (vii) GDPR requirements relevant to the handling of personal data, its use, storage and disposal during the term of the contract and up to the end of the applicable statutory period of limitation of a contractor's liability.

18.1.3 Additional contractual requirements must include where relevant:

- (i) [Assignment requirements](#)
- (ii) [Nominated sub contractors and nominated supplier requirements](#)
- (iii) [Liquidated damages](#) requirements
- (iv) Any [insurance](#) requirements
- (v) [Health and safety](#) requirements
- (vi) Ombudsman requirements
- (vii) Data protection requirements
- (viii) That charter standards are to be met
- (ix) Equality and Diversity legislation requirements
- (x) Freedom of Information Act requirements
- (xi) [Consultants](#) requirements
- (xii) [Cartels and anti collusion requirements](#)
- (xiii) Necessity for security to be provided.
- (xiv) Business continuity arrangements
- (xv) Disability Discrimination Act requirements
- (xvi) Equalities requirements
- (xvii) Safeguarding requirements

18.1.4 The formal advice of the Business Manager - Legal must be sought for the following contracts:

- (i) Where the [total value](#) exceeds £75,000 or involves the purchase of application software
- (ii) Those involving leasing arrangements
- (iii) Where it is proposed to use a supplier's own terms
- (iv) Those that are complex in any other way

18.2 Contract Formalities

18.2.1 Agreements shall be completed as follows:

| <u>Total Value</u> | Method of Completion | By |
|------------------------------------|---|---|
| Below EU threshold | Signature | Please refer to list of officers authorised to sign contracts |
| Above EU threshold | Advice must be sought from the Business Manager - Human Resources, OD & Legal as to whether the contract should be signed or sealed | Please refer to list of officers authorised to sign contracts Also see Rule 18.3 |

18.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Business Manager - Legal, after consultation with the Section 151 Officer.

18.2.3 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind the company.

18.3 Sealing

18.3.1 Where contracts are to be sealed they must be forwarded to Legal Services for entry in the Seal Register and the affixing and attesting of the Seal. They must be accompanied by the relevant Council or Committee authority.

18.3.2 Contracts shall be sealed in accordance with the Council's Constitution.

18.3.3 Advice must be sought from the Business Manager - Legal whether a contract should be sealed when:

- (i) The Council may wish to enforce the contract more than six years after its end;
- or
- (ii) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
 - (iii) There is any doubt about the authority of the person signing for the other contracting party, or
 - (iv) The [total value](#) exceeds the [EU threshold](#).

19. BONDS AND PARENT COMPANY GUARANTEES

19.1 The Contract Officer, when assessing the contractor's financial viability, shall consider whether the Council requires security for due performance of the contract.

- 19.2 The Contract Officer must consult the Section 151 Officer about whether a Parent Company Guarantee is necessary when a Candidate is a subsidiary of a parent company and the [total value](#) exceeds the [EU threshold](#).
- 19.3 Where security is considered to be appropriate and required, the Contract Officer, in consultation with the appropriate officers, shall specify in the tender the nature and amount of the security to be given. This as a minimum shall be at least 10% of the total value of the contract.
- 19.4 The security shall be obtained by the contractor in a format, and from an institution or bank approved by the Section 151 Officer.

20. PREVENTION OF CORRUPTION AND COLLUSION

20.1 The Contract Officer must comply with the Officer's Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Contract Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 20.2 below.

20.2 The following clause must be put in every written Council contract:

"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- a) Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*
- b) Commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972, or*
- c) Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause."

- 20.3 The Contract Officer and/or Technical Officer shall undertake periodic reviews of tenders submitted by successful tenderers to consider the potential for tenderer collusion and cartels.
- 20.4 All Officers, Members, potential and existing contractors must be made aware of the Council's [Whistleblowing Policy](#).

21. DECLARATION OF INTERESTS

- 21.1 If it comes to the knowledge of a Member or an employee of the authority that a contract in which he or she has a personal or prejudicial interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer.
- 21.2 Such written notice is required irrespective of whether the interest is direct or indirect. Interests are defined in the Members and Officers [Codes of Conduct](#).
- 21.3 A shareholding in a body less than a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not an interest for the purposes of these Contract Procedure Rules.
- 21.4 The Monitoring Officer shall maintain a record of all declarations of interests notified by Members and Officers.
- 21.5 The Monitoring Officer shall ensure that the attention of all Members is drawn to the National Code of Local Government Conduct.

SECTION 5: CONTRACT MANAGEMENT

22. MANAGING CONTRACTS

- 22.1 Contract management should be proportionate to the total value, risk and complexity of the contract.
- 22.2 Contract Officers must follow the procedures set out in these Contract Procedure Rules as well as the good practice guidance on contract management available on the Welland Procurement Portal.

23. RISK ASSESSMENT

- 23.1 A risk register must be prepared for all contracts with a total value over the [EU threshold](#) to ensure that identified contract risks are managed by named Officers over the lifetime of the contract.
- 23.2 For all contracts with a potential value under the EU threshold, Contract Officers must, where appropriate, undertake risk assessments and, for identified risks, ensure contingency and risk mitigation measures are in place.

24. CURRENCY OF CONTRACT PROCEDURES

24.1 Monitoring and Review

- 24.1.1 During the life of the contract, the Contract Officer must closely monitor and address the following areas:
- (i) Performance
 - (ii) Compliance with specification and contract
 - (iii) Cost
 - (iv) Any [Value for Money](#) requirements
 - (v) User satisfaction
 - (vi) On-going economic and financial standing of the supplier/contractor. Periodic Equifax commercial credit reports are to be sought for all suppliers/contractors linked to major programmes and projects being delivered by the Council with a total value in excess of £250,000 and for the duration of the contract.
 - (vii) On-going technical ability and capacity of the supplier/contractor
 - (viii) On-going risk assessment & risk mitigation
- 24.1.2 Contract Officers must keep management aware of progress, so that any required corrective action can be taken promptly.
- 24.1.3 Appropriate supporting documentation shall be maintained to substantiate the monitoring undertaken.

24.1.4 In respect of construction contracts:

- (i) The Contract Officer shall report progress to the Capital Monitoring Group on a regular basis and in an agreed format.
- (ii) Where there is any unforeseen specification adjustments which occur during the construction phase, the Contract Officer must seek to find savings within the total project budget and advise SLT to ensure they agree the savings are realistic. Alternatively, they must seek additional funding via a report to Policy & Finance Committee where the amount is in excess of delegated authority.
- (iii) Where savings cannot be found the Contract Officer must advise SLT as soon as practicable.
- (iv) The Section 151 Officer must be kept informed of any additional costs and potential savings. The Section 151 Officer will report these to Policy & Finance Committee.

24.1.5 All contracts which have a value higher than the relevant [EU threshold](#), or which are high risk, are to be subject to periodic formal review with the contractor.

24.1.6 A risk register should be established for all contracts exceeding the EU threshold to ensure that contract outcomes are fully delivered.

24.2 Certificates/Interim Payments

24.2.1 No certificate of work performed on a contract shall be raised prior to the signing of the contract, subject to compliance with appropriate contract conditions. Any exceptions to this requirement must be approved by the Monitoring Officer and the Section 151 Officer.

24.2.2 Interim payments to contractors shall only be made by the Section 151 Officer or his nominated officer on receipt of an approved form of certificate signed by an authorised officer.

24.2.3 Where a performance bond is required for a contract, no payment is to be made until the bond has been received. Any exceptions to this requirement must be approved by the Monitoring Officer and the Section 151 Officer.

24.2.4 Any contractual retention monies shall be deducted from payments in accordance with contract conditions.

24.3 Variations to the Contract

24.3.1 EU contracts or framework agreements may be modified without a new procurement procedure only in clearly defined situations as provided for under Regulation 72 of the Public Contracts Regulations 2015.

24.3.2 In the case of contracts with a total value below the EU threshold, permissible grounds for amendment include the following:

- (i) Any variations made to the contract in accordance with the terms of the contract.
- (ii) Variations approved and authorised by the Contract Officer together with the appropriate Business Manager.
- (iii) Major variations (which result in the value of the contract increasing by more than 20% of the original contract sum or £50,000, whichever is the lesser) shall require the prior approval of the Contract Officer, or if appropriate, the Policy & Finance Committee or Council

24.3.3 Concerning construction contracts, variations to the contract shall only be made on approved forms.

24.3.4 The Contract Officer shall inform the Section 151 Officer and the Policy & Finance Committee of substantial variations likely to result in over or under-spends.

24.4 Extensions of Time/ Contract Completion

24.4.1 The Contract Officer shall ensure that extensions of time concerning constructional contracts are considered in accordance with the terms of the Contract.

24.4.2 The Contract Officer shall take due regard to actual contract progress, all appropriate supporting documentation, and all other extenuating circumstances when considering an extension of time.

24.4.3 Extensions of time shall only be awarded on the issue of approved forms by the Contract Officer.

24.4.4 The Contract Officer shall ensure that the procedures for contract completion are in accordance with the terms of the contract.

24.4.5 Approved forms shall be used for indicating contract completion by the Contract Officer.

24.5 Price Fluctuations

24.5.1 The Contract Officer shall ensure that the basis of price fluctuations, where applicable, is appropriate and properly detailed in the tender/contract documentation and shall take advice from the Section 151 Officer or his nominee.

24.5.2 The Contract Officer shall ensure that any price fluctuations are valid, in accordance with the terms of the contract, and correctly included in interim valuations where appropriate.

24.6 Contractual Claims

- 24.6.1 The Contract Officer shall ensure that the calculation of sums due to the contractor for loss and/or expense claims is in accordance with the terms of the contract.
- 24.6.2 The Contract Officer shall take due regard to all appropriate supporting documentation when considering a contractor's contractual claim.

24.7 Cancellations (including Determinations)

- 24.7.1 The Contract Officer must refer any attempt to cancel a contract or any situation where the right to cancel a contract might arise, to the Legal Section for advice before any acknowledgement or notice is issued.
- 24.7.2 Cancellations shall only be made in accordance with the terms of the contract, or in conjunction with offences made under the Bribery Act 2010 or section 117(2) of the Local Government Act 1972

24.8 Liquidations and Bankruptcies

- 24.8.1 The Contract Officer shall ensure that all actions taken in the event of a contractor liquidation or bankruptcy are in accordance with the conditions of contract.
- 24.8.2 For construction contracts, the Contract Officer shall:
 - (a) Notify the Monitoring Officer immediately.
 - (b) Secure the site in question
 - (c) Ensure that outstanding works are completed as soon as possible
 - (d) Ensure that the remaining work is undertaken in the most economic, effective and efficient manner
 - (e) Ensure that appropriate claims are lodged with the receiver/liquidator
 - (f) Ensure that the appropriate bondsperson is notified
 - (g) Ensure appropriate [insurance](#) is obtained
- 24.8.3 The Contract Officer shall take advice from the Monitoring Officer and Section 151 Officer of the procedures to be followed in the event of a liquidation or bankruptcy and ensure that such procedures are adhered to in the event of such a situation occurring.

24.9 Final Accounts

- 24.9.1 The Contract Officer shall ensure that final account and certificate procedures are in accordance with the terms of the contract.
- 24.9.2 The Contract Officer shall ensure that final accounts submitted by the contractor are complete and accurate.
- 24.9.3 The final payment shall not be made until the Section 151 Officer has given approval following consideration of the final account and supporting documents.

24.9.4 The Section 151 Officer (or his authorised representative) shall have right of access to, and examination of, sites and supporting documentation at various stages of work, in conjunction with such explanations as required. Such visits shall be undertaken, and documentation reviewed, with an appropriate Technical Officer or the Contract Officer.

25. POST CONTRACT PROCEDURES

25.1 Recovering Liquidated and Ascertained Damages

25.1.1 The Contract Officer shall ensure that liquidated and ascertained damages are calculated whenever unauthorised delay occurs on contracts.

25.1.2 Liquidated and ascertained damages shall be promptly deducted in accordance with the terms of the contract. The Section 151 Officer shall be promptly notified of the existence of liquated damages.

25.2 Post Contract Reporting

25.2.1 The Contract Officer shall ensure that, where appropriate, accurate and timely management information is provided at the completion of the contract.

25.2.2 Where the [total value](#) of the contract exceeds the [EU threshold](#), the Contract Officer must make a written report to the relevant Chief Officer considering:

- (i) If weaknesses in control procedures have occurred;
- (ii) That corrective action, where necessary, has been taken;
- (iii) To what extent the original objectives of the contract have been achieved.

SECTION 6: DEFINITIONS

Agent: A person or organisation acting on behalf of the Council or on behalf of another organisation.

Award Criteria: The criteria by which the successful quotation or tender is to be selected (see further Rules 11 and 12.2f).

Award Procedure: The procedure for awarding a contract as specified in Rules 9, 11 and 16.

Best Value: The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council. This terminology has now in many instances been superseded by [Value for Money](#).

Bond: An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.

Candidate: Any person who asks or is invited to submit a quotation or tender.

Chief Executive: Relates to the Head of the Council's Paid Service

Chief Officer: Relates to the Chief Executive, Deputy Chief Executive and Directors.

Code of Conduct: The code regulating conduct of Officers as set out in the Council's Constitution.

Committee: A committee that has power to make decisions for the Council, including a joint committee with another local authority.

Constitution: The constitutional document approved by the Council which:

- Allocates powers and responsibility within the Council and between it and others
- Delegates authority to act to Committees and Officers
- Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Contract: Any agreement between the Council and any other party, which is intended to be legally binding. The term therefore applies to all contracts, together with all orders placed on behalf of the Council.

Contractor: Any company, partnership, sole trader, individual, local or public utility used in connection with the supply of goods, materials, professional or technical services, or for the supply of works.

Consultant: Someone employed to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contracting Decision: Any of the following decisions:

- Withdrawal of invitation to tender
- Whom to invite to submit a quotation or tender
- Shortlisting
- Award of contract
- Any decision to terminate a contract.

Contract Officer: The officer designated by the Chief Officer to deal with the contract in question.

Council: Deemed to include reference to Committees or an officer acting in accordance with delegated authority on behalf of the Council,

Deputy Section 151 Officer: Relates to the officer formally designated to act as deputy to the Section 151 Officer

EU Procedure: The procedure required by the EU where the [total value](#) exceeds the [EU threshold](#)

EU Threshold: The contract value at which the EU Public Procurement Directives apply at the time the contract is advertised.

Financial Regulations: The financial regulations specifying responsibilities for financial matters detailed in the Council's Constitution.

Framework Agreement: It is an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Used in the case of repetitive purchases to choose suppliers who, when required will be able to meet the Council's purchasing needs. A framework does not include a commitment by the purchaser to guarantee a volume of work to a supplier. Framework agreements may be used in conjunction with any procedure. If the total value of all call offs over the life of the framework lifetime is estimated to be above the relevant EU threshold then the EU rules governing advertising and awarding the contract must be applied as if it were a contract.

Gateway Review: A formal evaluation of the project at the conclusion of a Key stage to determine whether or not the project should proceed to the next stage.

High Risk: A high-risk purchase is one that presents the potential for substantial exposure on the Council's part if it were to fail or go wrong, as determined by the Business Manager - Community Safety.

High Value: A high-value purchase is where the value exceeds the EU threshold values.

Invitation to Tender: Invitation to tender documents in the form required by these Contract Procedure Rules.

Line Manager: The Officer's immediate superior or the Officer designated by the Chief Officer to exercise the role reserved to the line manager by these Contract Procedure Rules.

Monitoring Officer: Relates to the Officer formally designated under Section 5 of the 1989 Act (designation and reports of Monitoring Officer) or, if that person is unable to act owing to absence or illness the person nominated as his/her deputy under Subsection 7 of that Act.

Nominated Officer: Relates to an officer given appropriate delegated authority by the Chief Officer.

Nominated Suppliers and Sub-contractors: Those persons specified in a main contract for the discharge of any part of that contract.

Non-commercial Considerations:

- a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.

Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be [non-commercial considerations](#) to the extent necessary or expedient to comply with Best

Value; or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.

Parent Company Guarantee: A contract that binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.

Procurement Intranet Pages: The suite of guidance documents, together with a number of standard documents and forms, which support the implementation of these Contract Procedure Rules. The guidance is available on the Council's intranet.

Welland Procurement: The Officer charged with providing strategic direction and advice to secure [Value for Money](#) in the Council's procurement activities.

Quotation: A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).

Relevant Contract: Contracts to which these Contract Procedure Rules apply (see Rule 5).

Section 151 Officer: Relates to the designated Responsible Financial Officer. This is a statutory post appointed by full Council to have responsibility for the financial affairs of the Council as required by Section 151 of the Local Government Act 1972.

Shortlisting: The process of selecting Candidates who are to be invited to quote or bid or to proceed to final evaluation.

Standards: Set by professional bodies in respect of technical, engineering, environmental and quality issues.

Technical Officer: Relates to an appropriate officer with detailed technical knowledge of the contract in question

Tender: A Candidate's proposal submitted in response to an invitation to tender.

Tender Record Log: The log maintained by the Business Manager - Democratic Services to record details of Tenders

Total Value: Please refer to the Public Contracts Regulations 2015 Part 2 (6) Methods for calculating the estimated value of a procurement. When calculating the total value of a contract to appoint a consultant, ALL potential phases of work must be considered.

TUPE Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246): Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting-out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with

continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Unforeseeable emergency: Urgency in this instance is defined as circumstances beyond the Council's control, and not due to a lack of expeditious action being taken internally

Value for Money: Value for Money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

Whole Life Costing: Whole cost of ownership including acquisition costs, operational costs and end life costs.

HYPERLINK INFORMATION:

CONSTRUCTION CONTRACTS

- (i) The contract officer shall ensure that necessary action is taken to initiate appropriate contract details (such as drawings, costings etc).
- (ii) A brief, suitably authorised and approved by appropriate officers, shall be initiated, where appropriate, prior to the tender stage, which supports the project appraisal process.
- (iii) Where appropriate, a project team should be set up to ensure that all necessary processes relating to project appraisal have been considered and undertaken.

ASSIGNMENT

Every formal contract either for the execution of work, or the supply of goods or materials, or the provision of services, shall contain a provision that :

The contractor shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of this contract without the written permission of the Council. Sub-letting of any part(s) of the work, except to the extent permitted in writing by the Council, shall be prohibited.

NOMINATED SUB-CONTRACTORS AND NOMINATED SUPPLIERS

Tenders for sub-contracts to be performed, or services to be provided, or goods or materials to be supplied by nominated sub contractors or nominated suppliers, shall be invited in accordance with the methods prescribed in Rule 12.

Tenders shall be administered by the Contract officer in accordance with the arrangements prescribed in the Contract Procedure Rules

The Contract Officer shall consider the requirement for a method statement to be included in the contract, which considers the extent to which nominated sub-contractors or suppliers are used and how they are chosen.

LIQUIDATED DAMAGES

Contracts which are estimated to exceed £75,000 in value or amount and which are for the execution of works (or for the supply of goods, materials or services by a particular date or series of dates), or which are for a lesser value if appropriate, shall provide for liquidated damages.

Liquidated damages shall be assessed by the Contract Officer in conjunction with the appropriate Technical Officer if applicable. Such damages shall be determined on a relevant and suitable basis, which is properly substantiated by appropriate supporting documentation.

Where liquidated or ascertained damages are not considered to be appropriate within a contract by the Contract Officer, the approval of the appropriate Chief Officer and Section 151 Officer must be obtained.

The requirement for liquidated or ascertained damages for contracts estimated to be £75,000 or less is at the Contract Officer's discretion, bearing in mind the risk that delays in the completion of small value contracts could result in the delay of more important contracts.

INSURANCE (employers' liability, public liability insurance, professional liability/indemnity where appropriate)

In connection with the carrying out of all works, irrespective of value, the contractor shall indemnify the Council and provide such insurance as may be required under the conditions of the contract. This shall, as a minimum, indemnify the Authority against injury and damage to persons and property. The minimum value for any one occasion or series of occasions arising out of one event shall be based upon:

- (a) Circumstances relevant to the particular contract in question, or
- (b) A minimum value periodically determined by the Section 151 Officer

The Contract Officer shall ensure that the appropriate insurance documents have been submitted by the contractor in conjunction with the contract conditions.

The Contract Officer shall ensure that the adequacy of the submitted insurance documents is confirmed by the Council's Insurance Officer.

The Contract Officer shall ensure that insurance cover is maintained throughout both the period of the contract and the maintenance period (where appropriate).

HEALTH AND SAFETY

Contracts must include the requirements of work and safety management as per the guidance issued by the Risk and Resilience Section

The Contract Officer shall consider the Health and Safety aspects of all relevant contracts in conjunction with the Business Manager - Community Safety.

The Contract Officer shall refer to the Council's Health and Safety guidance for Officers regarding the Control of Contractors where appropriate.

The Contract Officer shall supply to the contractor all necessary Health and Safety information.

In connection with the carrying out of all works, irrespective of value, the contractor shall provide to the Council Health and Safety details as may be required by Statute and under the conditions of the contract.

The Contract Officer shall ensure that the appropriate Health and Safety details have been submitted by the contractor in conjunction with the contract conditions.

The Contract Officer shall ensure the adequacy of the submitted Health and Safety documents, in conjunction with the appropriate Technical Officer as appropriate.

WHISTLEBLOWING POLICY

The Contract Officer shall ensure that contract documents include the Council's [Whistleblowing](#) Policy.

The contract documents shall state that the Contractor shall ensure that staff employed by the Contractor (including sub-contractor staff where appropriate) are aware of the Council's Whistleblowing Policy and the arrangements to be followed in the event of them having any concerns and wishing to make a disclosure.

CARTELS AND ANTI COLLUSION

The Contract Officer shall ensure that contract documents include a declaration of non-collusion, which is a fundamental term of the contract. This declaration should cover collusion with associated or affiliated companies or subsidiaries as well as unrelated competitors.

The Contract Officer shall ensure that the contractor is aware that it is a requirement that a list of all affiliates and subsidiaries is included as part of the tender return.

There shall be a clear statement within the contract documents that:

- While returned documents will be treated in the strictest confidence, they will be made available to Trading Standards Departments, the Office of Fair Trading and other appropriate regulators where appropriate;
- The Public Register of Restrictive Agreements will be consulted where appropriate.

The Contract Officer shall ensure that a signed declaration of non-collusion is received from each contractor invited to tender.

ENGAGEMENT OF CONSULTANTS

It shall be a condition of the engagement of any consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf (which may include aspects such as design and preparation of a specification), that in relation to that contract he shall:

- (i) Comply with these Contract Procedure Rules and the Council's Financial Regulations as though he were an officer, subject also to the proviso that any modification or changes to the Council's procedures (to be followed in inviting and opening tenders) be approved in advance by the responsible Contract Officer, through whom all liaison with the Council shall occur.
- (ii) At any time during the carrying out of the contract, produce to the Monitoring Officer, Section 151 Officer, or the Contract Officer, or their authorised representative(s), on request, all records maintained by him in relation to the contract.
- (iii) On completion of a contract, pass all such records to the appropriate Contract Officer; and;
- (iv) In connection with building construction or engineering schemes, appropriate "as built" drawings shall be handed over to the authority within six months of completion.

All consultants shall be engaged using, where appropriate, standard terms and conditions set by the appropriate professional body. Payment shall be in accordance with agreed schedules of service and scales of fees, or lump sum fees, modified as necessary to reflect individual circumstances.

The Contract Officer shall ensure that any consultants engaged hold appropriate professional indemnity [insurance](#), the extent of which shall be at the discretion of the Contract Officer dependent upon the complexity, scope and value of the scheme.

Ownership of intellectual property shall remain with the Authority at all times.