Ashford Borough Council

Contract Standing Orders

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List of Acronyms

Term	Definition
ABC	Ashford Borough Council
CSO	Contract Standing Orders
EU	European Union
HR	Human Resources
ITT	Invitation to Tender
KBP	Kent Business Portal
MEAT	Most Economically Advantages Tender
OJEU	Official Journal of the European Union
PID	Project Initiation Document (PID)
PIN	Prior Information Notice
PQQ	Pre-Qualification Questionnaire
SME	Small, Medium Sized Enterprises
SQQ	Standard Selection Questionnaire
UK	United Kingdom

1.0 Contract Standing Orders

1.1 Introduction

Contract Standing Orders are the overarching policy that sets out how contracts and services should be procured by the Authority

Contract Standing Orders (CSO) are required by Section 135 of the Local Government Act 1972.

CSO promotes good purchasing practice, public accountability and deters corruption. This procedure covers procurement of Works, Supplies (Goods) and Services undertaken on behalf of the Council and within a partnering arrangement, regardless of the source of funding and sets out minimum requirements to be followed. CSO applies to all contracts regardless of value, including purchase orders and concessions

The Procurement Guidance appended to these CSO sets out the process that should be followed when procuring Works, Supplies (Goods) and Services undertaken by the Authority and should be read in conjunction with these Standing Orders.

1.2 Value for Money

In some parts of these CSO, Officers are given discretion in what they do. If this is the case, then they are only able to exercise that discretion or issue such an instruction if they can show that it allows the Council to achieve value for money and the efficient provision of services by, or to the Council in all the circumstances.

1.3 Best Value

When preparing Specifications Officers must be guided by the requirements of Best Value. Whole-life cycle requirements should be considered including economic, environmental and social value, and not just initial costs

1.4 VAT

All figures quoted in the document are exclusive of VAT

1.5 Interpretation and Definitions

1.5.1 The Head of Law and Governance is responsible for the interpretation of these Contract Standing Orders and matters of law generally, relating to them.

1.5.2 A glossary of terms is included in CSO Appendix B.

1.6 Compliance with Contract Standing Orders and Legislation

1.6.1 Every contract made by the Council or on its behalf shall comply with the EU Treaty, the EU Public Procurement Directives and all relevant EU and domestic legislation, Contract Standing Orders, and the council's Financial Procedure Rules. EU and UK legislation will always override the provisions of these CSO's.

1.6.2 Subject to 1.7 below these CSO's apply to all Contracts between the Borough Council, or any company wholly owned by the council and any Contractor (including consultants) whether or not the Contract involves the Council paying or receiving money or any other consideration.

1.6.3 The Corporate Procurement Strategy and Procurement Guidance held and disseminated by the Procurement and Contract Manager shall supplement these CSOs, but these CSOs will always take precedence over the provision of such Procurement Guidance.

1.6.4 Contract tendering procedures are contained in the Council's Procurement Guidance which shall be updated and amended from time to time to comply with these Standing Orders.

1.6.5 The procurement route for a project is decided between the Project Officer, the Procurement and Contract Manager and Head of Law and Governance.

1.6.6 The singular shall include the plural and the masculine gender shall include the feminine gender and vice versa.

1.7 Exceptions to Contract Standing Orders

These Contract Standing Orders shall apply to all Contracts except:-

(a) if the Council or the Cabinet decides otherwise and gives its reasons in the Minutes.

(b) in the case of an emergency or other special circumstance identified by the appropriate Head of Service. If this happens, the Head of Service must include a report in the Information Digest. The report must identify the particular Procedure rule(s) which have not been followed and the reasons.

(c) Contracts of employment entered into by the Head of HR and Customer Services in relation to directly employed staff.

Where Consultants or other individuals (including temporary staff) are appointed to carry out specific services, CSO's *do* apply.

(d) when dealing with the acquisition or disposal of interests in or rights over land

(e) when dealing with the Council funding of particular voluntary sector bodies

(f) when using Framework Agreements entered into by third parties subject to;

(i) the proposed agreement having considered by the Procurement and Contract Manager

(ii) the proposed documentation having been agreed by the Head of Law and Governance.

1.8 Exceptions to market testing

Exceptions to the need for tenders or quotations are conditional on any statutory or European constraints, including rules of disaggregation that would not allow the breaking down of a contractual need to avoid open tender rules applying. There is no exception to the need for open tender through public advertisement for contract values exceeding £25,000 except where the council's 'emergency' or 'urgency' procedures apply, or in certain cases of legal service need covered by the exception detailed in the Procurement Guidance 3.2

1.9 Amendment and Review

1.9.1 These CSO's may only be amended by submitting a report to the Cabinet which will make recommendations to the Full Council.

1.9.2 The Procurement and Contract Manager must, after consultation with the Head of Law and Governance and the Head of Finance, review Contract Standing Orders and the financial thresholds therein at least every five years, to take account of changes in EU thresholds, retail price index and other factors so that the effectiveness and impact is maintained. Any recommendations should be reported to Full Council.

2.0 Certificate under Local Authorities (Contracts) Regulations 1997

2.1 The Local Government (Contracts) Act 1997 and regulations made thereunder provide for a local authority to certify that it has the powers to enter into a contract.

2.2 If any Officer is asked to issue a certificate under the Local Authorities (Contracts) Regulations 1997, the officer must immediately report the situation to the Head of Law and Governance.

2.3 Any Certificate under the Local Authorities (Contracts) Regulations 1997 shall only be issued if the Council agrees with the proposal following a joint report to the Cabinet by the Audit Partnership Manager, the Head of Law and Governance and the Chief Executive. The form of any such Certificate must be approved by the Council's Monitoring Officer and signed by the Council's statutory Chief Finance Officer.

2.4 The Cabinet will make a recommendation to the Full Council.

3.0 Contracts Excluded From Competition – Single Supplier Sourcing

3.1 Single Supplier Sourcing guidance

Whilst there is a general presumption against single supplier tendering and sourcing for all procurements (Quotations or Tenders must normally be sought for all Contracts) it is sometimes suitable and unavoidable (where there is to be no market testing followed), but these should be the exception and decisions made transparent. The full exceptions and some examples where exceptions may apply are detailed in the Procurement Guidance at 3.2

4.0 Contracts which must be made under Competition

4.1 EU Tendering

4.1.1 Whilst this Standing Order gives Financial Limits regard must always be had to the EU Requirements (EU Treaty) in respect of Low Value Advertising.

4.1.2 The EU Treaty applies to all procurement activity regardless of value, including contracts below the thresholds at which advertising in the Official Journal of the European Union is required and including contracts which are exempt from application of the EU Procurement Directives

Fundamental principles flowing from the Treaty include;

- Transparency – contract procedures must be transparent and contract opportunities should generally be publicised
- Equal treatment and non-discrimination – potential suppliers must be treated equally
- Proportionality – procurement procedures and decision must be proportionate
- Mutual recognition – giving equal validity to qualifications and standards from other Member States where appropriate

4.2 Inviting Tenders for Contracts at or over EU Thresholds

4.2.1 EU law sets minimum harmonised rules (EU Public Procurement Directive). These rules apply to tenders who monetary value exceeds a certain amount (current thresholds listed in Guidance). These 'above threshold' tenders are, presumably, of cross-border interest; the tender value makes it worth-while for a business to submit a tender abroad.

For all tenders, the council;

- may not discriminate against a business because it is registered in another EU country
- may not refer to specific brands, trademarks or patents when describing the characteristics of products & services they wish to purchase

- may not refuse to accept supporting documents (certificates, diplomas, etc.) issued by another EU country, as long as they provide the same level of guarantee
- must make all information regarding tenders available to all interested companies, regardless of what EU country they are registered in.

The council has the right to exclude a business from a call for tenders if it;

- is bankrupt or being wound up
- has suspended its activities **or** its activities are administered by a court
- has been found guilty of grave misconduct
- has not paid taxes or social security contributions
- has made false declarations to a public authority

Only in specific cases the council may award contracts without publishing a call for tenders**;**

- emergencies due to unforeseeable events
- contracts that - for technical reasons, i.e. works on Utility Company owned equipment (eg. water mains) or because of exclusive rights - can be carried out by one particular company only.
- contracts that by law are excluded from public procurement (acquisition/rental of existing buildings, employment contracts, programme material for broadcasting, etc.)

4.2.2 Where a services, supplies, (goods) or works contract has an estimated value in excess of the EU Threshold, then Tenders shall be invited in accordance with European Procurement Legislation using the open, restricted, competitive procedure with negotiation, competitive dialogue, innovative partnership or negotiated (applicable to concession contracts only) procedure by placing a notice in OJEU no later than any other advertisement placed in any other publication. An advertisement for such Tender will also be placed on Contracts Finder and the council's chosen e:tendering portal following the placing of the notice on OJEU.

4.3 Inviting Tenders for Contracts below EU Thresholds

Where a contract is below the EU Threshold, then Tenders shall be invited in accordance with:-

(a) any requirements in the European Procurement Legislation relating to below EU Threshold contracts, if appropriate;
(b) these Contract Standing Orders
(c) and, Procurement Guidance attached

4.4 Collaboration

The Council may procure goods, services or works to any value in collaboration with other local authorities or other public or voluntary sector bodies. Where the Council is the lead buyer within the consortium of the goods, works or services

contracted for, these CSOs shall apply. Where the Council is not the lead buyer procurement procedures shall follow the spirit of these CSOs, be in accordance with EU Public Procurement Directives and UK Regulations, and approved by the relevant Head of Service on the advice of the Procurement and Contract Manager.

4.5 Estimate of Contract Cost

Prior to issue of Tender documentation, the Head of Service must estimate what he thinks the proposed Contract will cost and keep a record of his estimate and how he made the calculation. Such estimate shall be calculated on the basis of the value of the contract over the life of the contract including any period of extensions(s). The Budget must also be agreed and/or funding in place for the project, and the relevant committee and minute number recorded.

4.6 Public Advertisement

4.6.1 A public advertisement must (unless otherwise agreed by the Head of Law and Governance) be placed by the Procurement and Contract Manager.

(a) whenever the estimated cost or income exceeds £25,000 except in the case of Housing Revenue Account Programme of Works where this shall only apply to the first phase of any contract subject to full financial vetting being carried out when any (individual) extension exceeds £75,000 in value.

(b) if a Head of Service thinks it is in the Council's interest.

(c) if required under EU Rules or Government legislation.

4.6.2 Prior to placing an advertisement the Head of Service must have a clearly written selection criteria which will be used for selecting those to be invited to tender. The selection criteria shall not include any non-commercial matters unless the Head of Law and Governance is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply. Selection Criteria should be based on the technical, economic and financial ability of the supplier. A written record must be kept by the Head of Service identifying the reasons why anyone who has responded to the advertisement has not been selected for tendering purposes. This record and the selection criteria should be retained with the contract documentation.

4.6.3 If EU Rules or legislation apply, then those Rules or legislation must govern the way in which the advertisement is placed. All EU advertisements must be placed by the council's Procurement and Contract Manager through the Office for Official Publications of the European Union, in consultation with Legal Services. The EU advertisement must be despatched before any national advertisement appears.

4.6.4 If the estimated cost of the project exceeds £25,000 the project must be advertised by the Procurement and Contract Manager through Contracts Finder the Government's online procurement service (in addition to any other e:procurement advertising portal). If EU rules apply this notice should not be published before it has been published on OJEU or at least 48 hours have elapsed from the receipt of the confirmation of the notice from OJEU.

4.7 Tendering Term

4.7.1 Suppliers invited to respond must be given an adequate period in which to prepare and submit a tender, consistent with the urgency of the contract requirement. Best practice recommends a minimum of at least four weeks should be allowed for submission of Tenders.

4.7.2 Where the estimated value of the Contract exceed the EU Tendering Threshold for works, services or supplies, the procedure must follow the EU Tendering periods. Details of the timescale for tendering is available in the Procurement Guidance 4.10.8

4.8 Transparency Code 2015

4.8.1 Government has published the Local Government Transparency Code which sets out the minimum requirements for local authorities to publish open data for re-use and in a timely way (see Procurement Guidance Appendix C)

4.8.2 **Procurement Information**

The Council must publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000. Details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000 must also be published. These details are held on the Contracts Register (see Procurement Guidance 8.10)

5.0 Surety Bonds/Parent Company Guarantees/Collateral Warranty

5.1.1 If after assessment of the project a risk is identified, and the Head of Service requires a Surety Bond, it has to be:-

(a) in a form to be determined by the Head of Law and Governance and stated in the tender documentation

(b) valued at 10% of the Contract Sum unless otherwise agreed with the Head of Finance

(c) with a financial institution approved by the Head of Finance.

5.1.2 The Head of Service can obtain a parent company guarantee instead of a Bond, in which case, it must be in a form which is acceptable to the Head of Law and Governance.

5.1.3 The Head of Service can obtain a Collateral Warranty which must be in a form which is acceptable to the Head of Law and Governance.

6.0 Tendering and Quotation Procedures

6.1 Tenders and Quotes

6.1.1 The Council has a statutory obligation under the Government's Best Value Review regime to seek competitive prices. Generally, it is the level of value and risk that determines if we ask for a quote or whether something goes out to tender.

6.1.2 The quotation process is normally used for relatively low value and low risk purchases. For higher value purchases which require greater accountability the more formal tendering process should be adopted. The tender document lays down the terms and conditions of the offer; the work requirement to be done, and the standard and quality expected.

6.1.3 In consultation with the Procurement and Contract Manager the Manager responsible for the project will make a choice if tenders or quotes are to be sought. In all cases there is a requirement to publish the opportunity (unless below publishing threshold). If quotes are sought an auditable account of the process should still be retained.

6.2 Fixed Budget Tenders

6.2.1 Where a project has a fixed level of funding and it is not practical to specify in detail the extent of the work, supply or service required, tenderers should be given the budget figure and asked to specify what they would provide for the money.

6.2.2 The Tender documentation needs to set out how the Tender will be evaluated.

6.2.3 The Head of Service is responsible for making sure the selection process is clearly documented and "transparent" and should keep a full written record of his evaluation process.

6.3 E-Tendering

Tenders will be managed through the corporate electronic tender facility including issuing, submission, receipt and opening of tenders. The use of e:mail submission for tenders will not be accepted.

6.4 Tender/Quotation Return: Receiving, Looking after and Opening of Tenders

Except in the case of tendering via the corporate electronic tendering facility for which the rules in CSO 6.3 and Procurement Guidance 6.1 shall apply, the receipt and opening of Tenders shall managed by the Procurement and Contract Manager and conducted as follows;

(a) All tenders shall be addressed to the Head of HR and Customer Services, Customer Contact Centre and the Tender shall remain in their custody until the time appointed for its opening.

(b) Tenders shall be opened and details recorded by the Procurement and Contract Manager (or her duly authorised representative) and an authorised representative of the Service that is dealing with the project.

(c) In the case of 'over OJEU' threshold tenders someone objective and independent to the procurement exercise should be present.

6.5 Marked Tenders

If the Tender envelope or package reveals the identity of the Tenderer:-

(a) the Tender must be opened in accordance with CSO 6.4

(b) if the Head of Service wants to accept the Tender, he can only do so if the Head of Law and Governance.

6.6 Late Tenders

If a Tender envelope or package is received after the time and date for then return of tenders then it shall not be considered, unless the tenderer can provide sufficient evidence (in the opinion of the council) that the tender should have been received prior to the deadline, but for reasons outside of his control was not. This must be made clear to prospective tenderers in the Instructions to Tenderers.

6.7 Tender Negotiation

This will only be permitted where:-

(a) the Tender has been invited under the EU competitive procedure with negotiation, competitive dialogue, or negotiated procedure and notice has been given by the Procurement and Contract Manager in conjunction with the Head of Law and Governance in the Supplement to the Official Journal of the European Communities.

OR

(b) the Tender figure is below the appropriate EU and the Head of Law and Governance has agreed to the use of a negotiated procedure.

OR

(c) the aim is to negotiate the continuation of an existing Contract in accordance with the provision of detailed in the Procurement Guidance 3.2

6.8 Tender/Quotation in Excess of Estimate

6.8.1 Subject to 6.8.1(a), 6.8.1(b) and 6.8.2, if the most acceptable Tender or Quotation exceeds the budget estimate, it can only be accepted if it is approved by the Cabinet and only then if it is within the budget head threshold. If it exceeds that amount the Cabinet must make a recommendation to the Full Council,

(a) If the cost of the scheme (including fees) is within the Capital Programme, and does not exceed the estimate by more than 10% or £25,000 (whichever is the less) the Tender/Quotation may be accepted by the Head of Service with the agreement of the Head of Finance and Portfolio Holder, if compensatory savings on other approved capital schemes which are within the Capital Programme and which will be underspent at completion can be identified.

(b) for a scheme funded from the Revenue Budget, a Tender/Quotation can be accepted which exceeds the estimate by up to 10% if the Head of Service can find equivalent savings within the approved Revenue Budget. Agreement for this course of action from the Head of Finance and Portfolio Holder is also required

6.8.2 The provisions of 6.8.1 may, in the case of Housing Revenue Account Programme of works be waived by the Head of Housing subject to the prior agreement of the Head of Finance

6.8.3 All waivers under 6.8 shall be collated by the Head of Finance and reported to Cabinet within the Budget Monitoring report.

6.9 Evaluation of Tender/Quotations

6.9.1 The procurement documentation must explain how bids will be evaluated and clearly define how the bidder's response to Price and Quality aspects (incorporating the Social Value Act) will be assessed. Consideration to price/quality split, questions to be asked, the relative weightings applied to questions, scoring methodology, model answers, interviews, presentations.

Officers must consider Public Services (Social Value) Act 2012 and how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and how in conducting the process of procurement, it might act with a view to securing that improvement.

These improvements and additional benefits can take almost any form, ranging from the very tangible, such as jobs for the long term unemployed, or sub-contracting opportunities for small business, to softer, but equally important benefits such as engagement with communities or groups of individuals.

6.9.2 Tenders shall be evaluated by a panel of a minimum of three where possible. Tender evaluation shall be carried out in an objective, equitable and accountable manner in accordance with the award criteria set out in the tender documentation. A written report must be produced detailing how the scoring was undertaken.

The evaluation panel should consist of experts in the relevant fields to include technical specialists, cultural, financial or legal expertise depending on the project requirements to ensure a full and thorough process.

6.9.3 The way Quotations will be evaluated needs to be recorded by the Head of Service in advance unless price is to be the only criterion.

6.10 Acceptance of Tenders/Quotations

6.10.1 No Tender or Quotation should be accepted by notifying the proposed Contractor in advance of the Contract itself being issued unless the Head of Law and Governance agree.

6.10.2 The authority to award contracts is set out in Appendix A (financial threshold and route to market information) and subject to:

The award of contractor should be based upon:

(a) The most economically advantageous tender (MEAT) to the Council as evaluated in accordance with the tender evaluation criteria set out in the advert and tender documents; or

(b) The highest tender if payment is to be received by the Council

UNLESS;

the Cabinet (in relation to Cabinet functions) or the Council or appropriate Committee (in relation to Council functions) decides otherwise following a report from the Head of Service concerned

6.10.3 Where a tender contains errors or discrepancies affecting the tender sum or rates, the relevant Senior Officer, prior to the tender award decision, can, provided no information is given to the tenderer regarding the effect of such action, give the tenderer the option to:-

(a) Correct the prices or rates concerned

(b) Continue without correcting the prices or rates

(c) Withdraw the tender

6.10.4 No Tender or Quotation which would be part of a larger Contract should be accepted unless it fully satisfies the conditions of the principal Contract concerning sub-letting.

6.10.5 No Tender or Quotation shall be accepted unless the Head of Service is satisfied that the Tenderer has adequate public liability and other relevant insurance.

6.11 Tender Results and Standstill Period

Until a formal contract has been agreed with the successful Tenderer, all sums involved should be treated as confidential. They must only be disclosed to Officers, Members or Leaseholders who need to know in connection with their duties, property responsibility (in the case of Leaseholders) or to comply with these Contract Standing Orders.

The Standstill Period is a period of 10 calendar days where day 1 is the day after notification has been issued

7.0 Contractual Arrangements

7.1 General Requirements

For the purposes of the Localism Act 2011 every contract shall be in writing and be the subject of one of the following:-

(a) a Contract prepared or settled by the Head of Law and Governance.

(b) one of the national standard forms of Contract previously agreed with the Head of Law and Governance for that type of work.

(c) some other documentation approved by the Head of Law and Governance.
(d) an Official Order (subject to Procurement Guidance 7.1)

7.2 Commencement of Work

No supply of works, goods, or services is to commence, or goods/materials ordered until a contractual arrangement is in place between the Council and the Contractor (formal contract signed and/or official order has been raised) or unless authorised in writing by the Head of Law and Governance.

7.3 Variations during the Course of the Contract

7.3.1 Funding must be identified before any variation is approved. Every variation to a Contract shall be authorised in writing by a person authorised to sign Official Orders (in the case of goods or services

procured by way of an Order) or by a Manager in the case of other types of Contract.

7.3.2 If authorising any variation is likely to cause the original Contract Sum (including any contingency sum) or total project budget to be exceeded by more than 10% the Senior Officer shall not issue such variation unless the Head of Service has agreed. If the variation is seen as a material increase to the original tender sum then the Head of Law and Governance to be consulted before a variation is issued. The effect of this Standing Order shall not restrict the issue of a variation if it would result in a stoppage of the Contract works or a breach of the contractual conditions.

7.4 Contract Records

The Head of Service will maintain accurate and proper records of all contracts for which she/he is responsible.

7.5 Contracts Register

The Council has a statutory duty to hold and publish an electronic register of all contracts (Contracts Register) above a total value of £5,000. This shall be managed centrally by the Procurement and Contract Manager and maintained by each Contract Officer using the intranet or similar. The register will be updated on a quarterly basis. Such register shall specify for each contract, the name and address of contractor, a summary of the works to be executed, or the goods and services supplied and the contract duration and value or estimated value. The register shall be open for inspection, and published on the council's website. (further information in the Procurement Guidance 8.10)

7.6 Custody and Retention of Contracts

A copy of contracts awarded by the Council is retained for the records by the Legal Team under the supervision of The Head of Law and Governance.

Contracts signed as a deed are retained for 12 years after the contract term has expired. Contracts not signed as a deed (signed under hand) are retained for 6 years after the contract term has expired.

Officers involved in contract management should keep a copy of each contract under their management either electronically in the relevant project folder and/or as a hard copy for their records. The same terms of retention detailed above is applicable.

8.0 Declaration of Interest

8.1.1 At the beginning of any Contract process the following persons shall declare any interest, as defined in the Code of Conduct for Staff set out in the Conditions of Service, which may affect the Contract process:-

(a) All Council Officials

(b) Elected Members of the Council

(c) Any other person involved in the contract process

8.1.2 The 'Declaration of Interest' form can be found on the Council's Intranet under HR.

9.0 Prevention of Corruption

9.1.1 A Council Employee must not invite or accept any gift or reward in respect of the award or performance of any Contract. High standards of conduct are obligatory and corrupt behaviour will lead to dismissal.

9.1.2 The following clause, (or an equivalent clause in standard forms of contract or other wording as approved by Legal Services) must be put in every written Council Contract

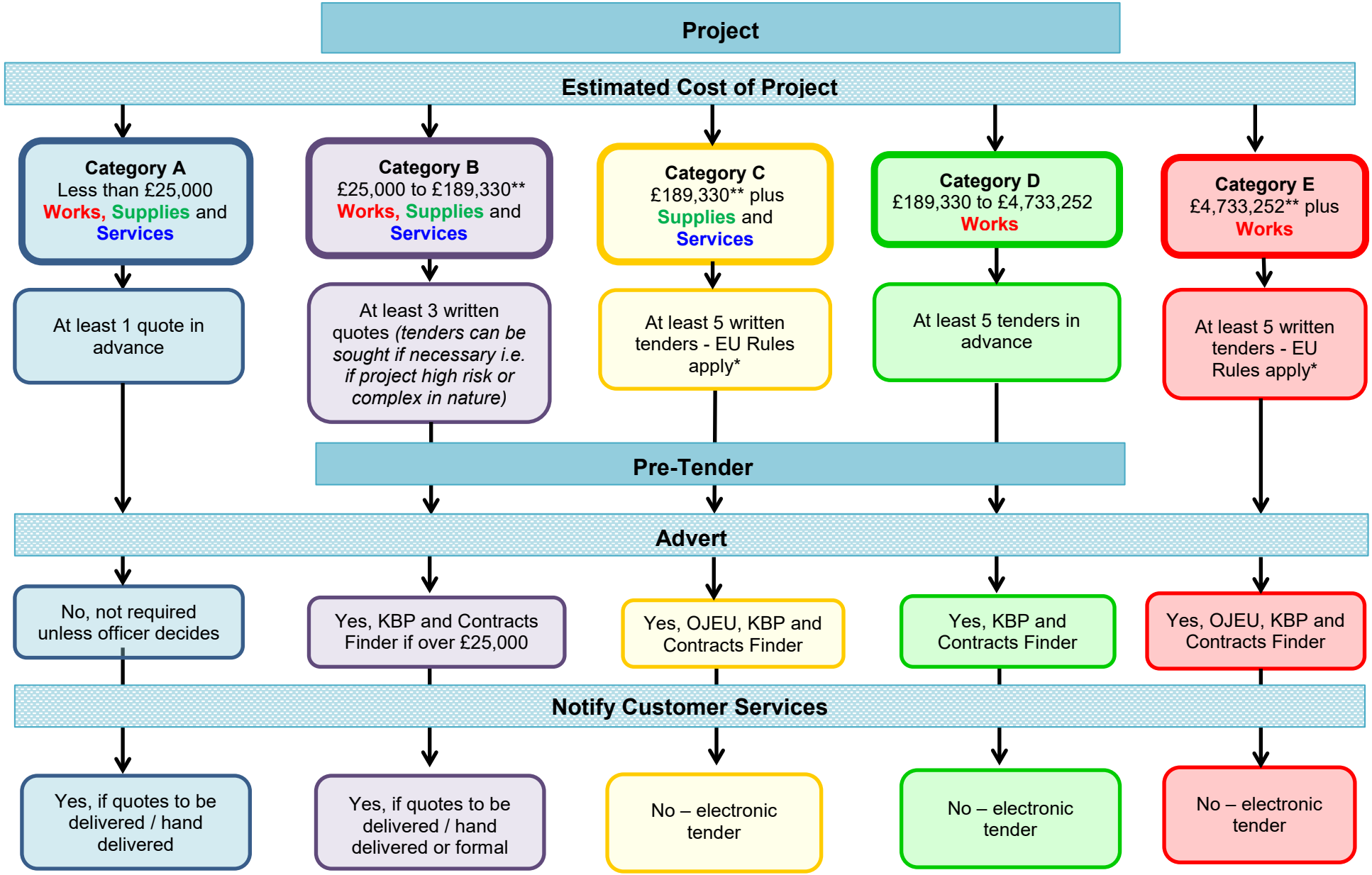
"The Council may terminate this Contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following;

(a) offer, give or agree to give anyone any inducement or reward in respect of this or any other Council Contract; or

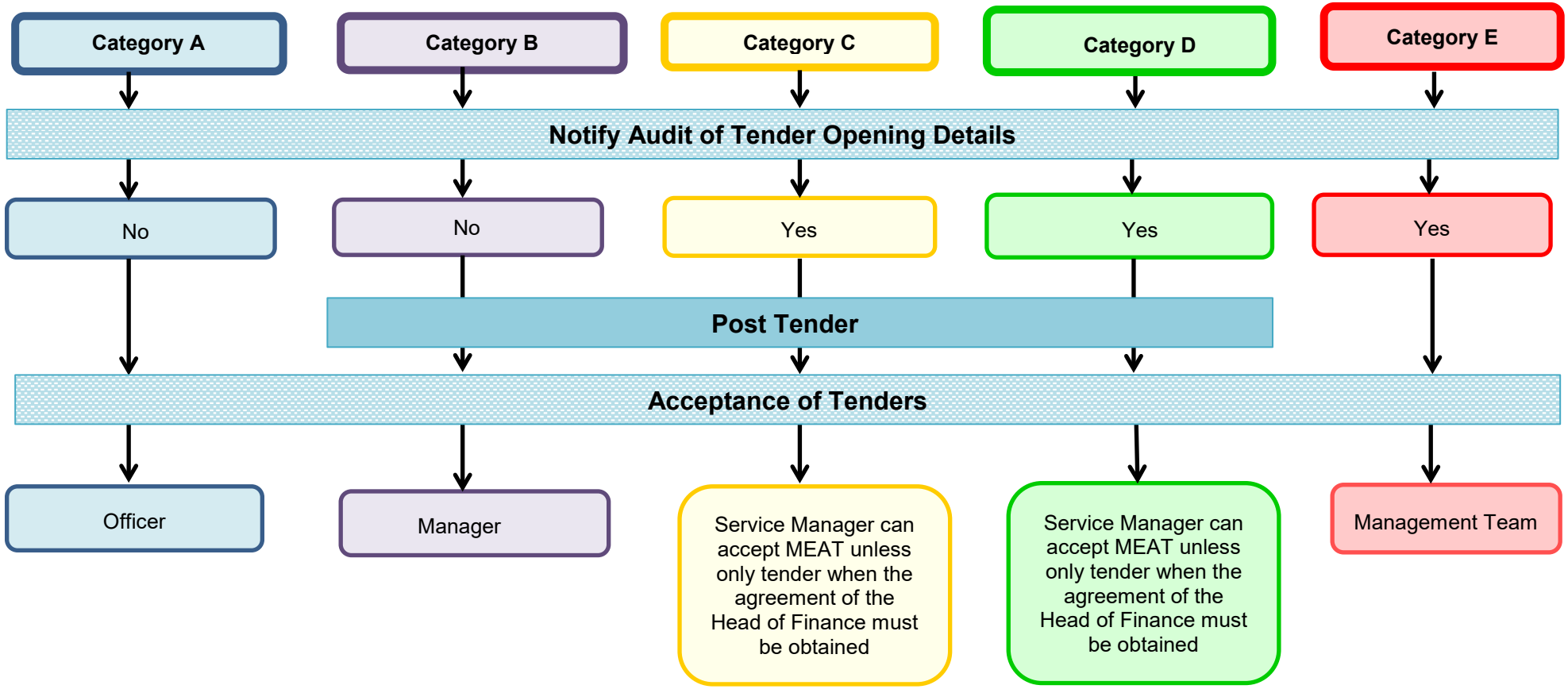
(b) commit an offence under the Bribery Act 2010; or

(c) commit any fraud in connection with this or any other Council Contract whether alone or in conjunction with Council Members or Employees

Appendix A: Flow Chart to clarify tendering/quotation procedure



Appendix A: Flow Chart to clarify tendering/quotation procedure (contd.)



NOTES:

(1) KBP – Kent Business Portal – a web portal to advertise opportunities
(2) Contracts Finder – information about local and central government contracts
(3) OJEU - Official Journal of the European Union – European Gazette of record
(4) *EU Rules – Tenders will be invited in accordance with
(5) **EU Thresholds: are revised every two years and the current thresholds are effective from 1 January 2020 (£189,330 for Supplies (Goods) and Services and £4,733,252 for Works)
(6) Financial reference sought of successful bid only if Head of Service feels it is necessary
(7) MEAT (Most Economically Advantageous Tender)
(8) A Tender (rather than a quote) within threshold £25,000 to £189,330 ** can be sought if appropriate

Appendix B: Glossary of Terms

In these Contract Standing Orders, the following terms have the following meanings:-

Aggregation	Adding together the value of separate fs for the same supply, service.
Alcatel period	See Standstill Period
Best Value	The process of establishing quality, prices, and availability that provides the best overall benefit to the council. Consideration of whole-life cycle requirements, and not just initial costs.
Cabinet	Includes any Committee or Sub-Committee of the Cabinet
Call off contract	Clients/Services that are continuously commissioning work might reduce timescales, learning curves and other risks by using framework agreements. Such arrangements allow the client/service to invite tenders from suppliers of goods and services to be carried out over a period of time on a call-off basis as and when required
Consultant	An organisation or individual employed by the council for a specific task, usually for a fixed period where specialist knowledge or objective review is required.(see section Procurement of External Expertise)
Contract	Any legally binding agreement or official order issued by a Head of Service or other authorised Officer for the supply of goods, services, or the execution of works to or for the council
Contract Notice	Notice published in the Official Journal of the European Union (OJEU) by contracting authorities, seeking expressions of interest or inviting organisations to tender
Contract Value	The total monetary value of a contract over its full duration (not annual value)
Contractor	The legal personality with which the Council contracts
Contracts Register	The council's electronic register of all contracts over £5,000 entered into for goods, works or services
Domestic Approved Lists	An approved list of economic operators wholly procurement and maintained by Ashford Borough Council
Dynamic Purchasing System	An electronic process for making commonly used purchases of which meet the requirements of the contracting authority and which is limited in duration, open through its validity to any economic operator that satisfies the selection criteria and has submitted an indicative tender that complies with the specification.
Electronic Procurement	The business-to-business purchase and sale of supplies and services conducted electronically (via the internet or email)

EU Public Procurement Directive	The main EU legislation that covers public procurement from time to time
EU Thresholds**	The monetary value above which advertisements for work, supply and services must be placed in the OJEU. (as of 1/1/20 at £189,330 for goods and services contracts and £4,733.252 for works contracts) The values are reviewed every two years.
Evaluation	Detailed assessment and comparison of competitive submissions/tenders from contractors or suppliers against stipulated criteria for quality and value.
Financial Procedure Rules	The Financial Procedure Rules of Ashford Borough Council
Frameworks Arrangements	Zero value contracts for goods, services or works under which terms, conditions, quality standards and prices rea agreed in accordance with EU Public Procurement Directives.
Goods and Services	As defined in the European Procurement Directive ("goods are also referred to as supplies)
Head of Service	The appointed Head of Service, Chief Executive or any person authorised by either of them.
Invitation to Tender	An invitation to contractors, suppliers or service providers to bid for the provision of works, goods or services. Also known as an 'ITT'
Kent Business Portal	A web based portal using to advertise forthcoming tendering opportunities
Local Supplier	This definition varies dependent on the context and purpose of the contract. It may relate to the percentage of labour employed in performance of the contract that reside in the Borough of Ashford or the proximity of the supplier's offices in relation to the place where performance of the contract is to be delivered *Note: where this is subject to EU rules, any reference to local suppliers must link to the subject matter of the contract. Anything under the EU threshold still must comply with the general principles of community law, transparency, non-discrimination, equal treatment, etc. Any requirements in this case for local suppliers has to fit these tests, and must be made clear in the initial advert on the business portal so that any challenge can be dealt with at the beginning rather than at the end. In addition there must be a requirement for officers to record the fact that they considered whether the contract they were to let would have any cross border interest. Even if they don't think it does, a note that they considered it is important for combating any challenges that the council did not act within the treaty principles.*

	The commission states that the following factors will be significant: *a) The subject matter of the procurement* *b) The estimated value of the procurement* *c) The place of performance or delivery* *d) The size and structure of the relevant service market* *The commission also states that it will be down to individual Contracting Authorities to apply these factors themselves on a case-by-case basis. In the event that a Contracting Authority concludes that there is no cross border interest, a full consideration of the factors above should be documented. The fact that a contract is beneath the relevant threshold will not be enough of a reason for there to be no cross border interest.*
Mini-competition	If the terms laid out in the framework agreement are not specific enough for the purchasing authority to be able to identify which supplier could offer them best value for money for that particular requirement, a further mini-competition would be held between all the suppliers on the framework agreement who are capable of meeting the need.
Most economically advantageous tender (MEAT)	A process of determining the best bid using weighted criteria.
Official Order	An electronic or hard copy confirmation and commitment made between the Council and an economic operator to contract under agreed terms. Typically includes a unique reference number generated in accordance with the services procedures. All orders must be issued in accordance with Financial Procedure Rules
OJEU	Official Journal of the European Union
Partnering contracts	Contracts with an intention for risks and rewards to be shared and a formalised greater emphasis on collaborative working and open book accounting
Pre-qualification questionnaire (PQQ)	A questionnaire completed by organisation or providers that wish to be considered for a procurement activity or placed on an approved list. The purpose is to assess their general suitability in terms of financial and economic standing, technical capability and experience, quality assurance, health and safety procedures, environmental issues and equalities considerations. Questions may include subjective and non-subjective questions which are evaluated to establish a relative ranking of those submitted as well as pass/fail questions which are deterministic. Also used SQQ (Standard Selection Questionnaire)

Prior Information Notice (PIN)	A short Notice published in the Official Journal of the European Union (OJEU) by contracting authorities indicating that a call for tenders is planned during the coming three months. The publication of a PIN means that the deadline for submitting the tender from the publication of the call may be shortened.
Procurement	The process of acquiring goods, works and services, covering acquisition from external and in-house providers. The process spans the whole life cycle from identification of needs, through to the end of a contract or the end of the useful life of an asset.
Procurement Strategy	The document setting out the Council's approach to procurement and key priorities and actions for the short, medium and long term
Project Initiation Document (PID)	A document, virtual or real, to record a project's agreed particulars. The document is shared with project stakeholders and includes statements of the original brief, scope, authority and limitations and identifies persons who have contributed to or determined to these items
Quotation	A written or verbal price given by a contractor, supplier or service provider, after being requested either verbally or in writing. A quotation may be the written confirmation of an earlier, verbal offer
Select List	An Approved List of organisations approved by the Council to carry out specific works and services. (No longer in existence within the Council)
Shortlisting	The process of selecting a limited number of bidders or tenderers to proceed from one stage of a procurement process to the next.
SME	There are three broad parameters with define SME's as detailed by the European Commission • micro-entities are companies with up to 10 employees • Small companies employ up to 50 workers • Medium-sized enterprises have up to 250 employees. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding 50 million euro (approx. £40 million) , and/or an annual balance sheet total not exceeding 43 million euro (approx. £34 million)
Social Value Act 2012	The Public Services (Social Value) Act 2012 encourages councils to consider the social, economic and environmental impact of purchasing decision. Social Value criteria should be used to evaluate tenders where applicable.
Specification	A description of requirements and standards to which the goods, works or services should conform. Its purpose is to present prospective suppliers with a clear, accurate and full description of the organisation's needs, to enable them to propose a solution to meet them and/or an accurate price.

Stage Payment	An agreed percentage or part of the contract price, which is payable when specified stages of completion/delivery have been reached
Standstill period	A 10 day calendar day period, immediately after the results of tender evaluation are announced, within which all tenderers are given the opportunity to review the outcome of the evaluation and must raise any contentions or queries to be eligible for consideration. During this period a contract must not be awarded by deed or implication indicating that the reported outcome has already been acted upon. (also referred to as the Alcatel standstill for over EU threshold projects) (15 days for tenderers notified by non-electronic means)
Supplier	A company providing goods or services, or undertaking works (otherwise known as Contractor)
Surety Bond	Bonds or guarantees given to Authorities by specialist insurers, on behalf of suppliers and at their expense, binding the insurers to compensate clients (up to the amount of the bond obtained) in the event of a default
Tender	A formal written offer made in competition to supply specified goods or services or carry out specified work at a stated price or rate
Transparency Code 2015	The Local Government Transparency Code sets out the minimum requirements for local authorities to publish open data for re-use and in a timely way
Two stage selective tendering	A procedure typically used to achieve an early appointment of a contractor to a lump sum contract. For the 1st stage the objective is to competitively appoint, on the basis of limited information, a preferred contractor for further negotiation (see attachment)
Value for Money	A term used to access whether or not the maximum benefit has been obtained from the goods and services an organisation acquires and provides within the resources available to it. It not only measures the cost of goods and services, but also takes into account the mix of quality, cost, and resource use, fitness for purpose, timeliness and convenience to judge whether or not, together, they constitute good value. Often described in terms of the 'three Es'; economy, efficiency and effectiveness • Economy – careful use of resources to save expense, time or effort • Efficiency – delivering the same level of service for less cost, time or effort • Effectiveness – delivering a better service or getting a better return for the same amount of expense, time or effort
Waiver	An authorised departure from Contract Procedure Rules. May only be applied with limited application.

Whole life costs	Refers to the total cost of ownership over the life of an asset. Costs considered include the financial cost which is relatively simple to calculate and also the environmental and social costs which are more difficult to quantify and assign numerical values. Typical areas of expenditure which are included in calculating the whole-life cost include, planning, design, construction and acquisition, operations, maintenance, renewal and rehabilitation, depreciation and cost of finance and replacement or disposal.
Works	Building, construction and engineering related works.

Ashford Borough Council

Procurement Guidance

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List of Acronyms

Term	Definition
CHAS	Health and Safety Standard
CSO	Contract Standing Orders
EC	European Commission
EU	European Union
HR	Human Resources
ITT	Invitation to tender
KBP	Kent Business Portal
MEAT	Most Economically Advantages Tender
OJEU	Official Journal of the European Union
PID	Project Information Document
PIN	Project Initiation Document
PQQ	Pre-Qualifying Questionnaire
SME	Small Medium Enterprise
SSIP	Safety Schemes in Procurement
SSQ	Standard Selection Questionnaire
TED	Tenders Electronic Daily
TUPE	Transfer of Undertakings Protection of Employment
UK	United Kingdom

1.0 Introduction

1.1 Scope

This is the Council's Procurement Guidance giving principles and procedures for effective procurement mentioned in the Council's Contract Standing Orders. Contract Standing Orders and these Guidelines set a framework for making decisions in procurement but cannot cover every eventuality. If you are unsure how to proceed seek advice from the Procurement and Contract Manager.

Procurement of goods, works and services on behalf of the council is a professional activity, and needs to be treated as such.

Many Officers throughout the Council have responsibility for procurement as part of devolved financial management. This guide is intended to be of practical value to all staff where they are;

- Deciding to procure,
- Purchasing goods, works and services on behalf of the Council, or
- Managing contracts

Procurement applies to;

- Goods
- Works
- Services (including Consultancy)

Even if there is no formal tendering process, the basic procurement principles outlined in these guidelines must be followed to make sure that any resulting legally binding agreement is in the Council's interest.

1.2 Making competition work

Competitive tendering can;

- Provide clear public accountability – a clear record of the process
- Protect employees from any suggestion of bias
- Provide a level playing field against which to judge the market
- Ensure value for money
- Give potential suppliers the same clear understanding of the Council's requirements
- Provide a sound base for a properly constructed written contract
- Prevent complacency

Competitive tendering means;

- All tenderers receive the same information/identical paperwork
- All tenderers work to the same timescale – fixed despatch/closing/opening dates

- Properly controlled tender opening procedures (including e-tendering arrangement) guarantee confidentially.
- Conditions that protect the Council are included.

1.3 Working with your supplier

Good contracting means encouraging the building of professional relationships with suppliers and developing partnerships to obtain the best from the market place. It is important to do this to provide quality services.

This Guide is intended to help pave the way to more effective ways of dealing with the Council's suppliers. In this respect;

- Staff need to be aware of the state of the market when it comes to ordering or commissioning
- Staff must prepare clear specifications
- Unsuccessful tenderers need debriefing so that they know where they went wrong.
- Probity must be maintained in all Council/supplier relationships

1.4 The supply chain

When we talk about purchasing we tend to concentrate upon the actual buying activity but in fact purchasing is about a chain of activities and covers:

- Understanding the needs of users
- Understanding the marketplace
- Understanding possible risk
- Identifying and dealing with obstacles
- Determining appropriate finance
- Specifying products and services
- Setting Client standards
- Conducting competitive processes
- Negotiating contracts (where permitted)
- Implementing contracts
- Monitoring contractor performance
- Making payments to contracts
- Managing variations to contracts
- Renewing contracts

2.0 Good Procurement Practice – the Process

2.1 What does procurement mean

Professional procurement is concerned with obtaining the best out of the marketplace

In law, the (very basic) elements of a contract are;

- Offer
- Acceptance
- Consideration (the price or reward you pay or receive)

2.2 Risk Assessment

With every contract there is a risk associated with full or partial failure. The level or risk will depend on the type and length of contract, stability of the service, conditions in the supply market and the risk to the user in terms of cost, quality and impact of contract failure. There are a number of elements to risk assessment;

Identify potential problems and their causes;

a) Service failure
b) Customer dissatisfaction
c) Risk of contractor/supplier lock in
d) Difficult and costly relationship management
e) Risk of business failure of contract
    - Assess the probability of occurrence
    - Assess operation impact
    - Identify party best able to manage the risk
    - Devise strategies to minimise the risk

3.0 Contracts Excluded From Competition

3.1 Single Supplier Sourcing guidance

Whilst there is a general presumption against single supplier tendering and sourcing for all procurements (Quotations or Tenders must normally be sought for all Contracts) it is sometimes suitable and unavoidable (where there is to be no market testing followed), but these should be the exception and decisions made transparent. The full exceptions and some examples where exceptions may apply are detailed in the Procurement Guidance at 3.2

What needs to be demonstrated is not that a single contractor can simply provide the most efficient and effective proposal, but that one of the exceptions in

Procurement Guidance 3.2 applies. Managers not the contractor, are responsible for making this judgment.

Single supplier sourcing should not be used in the following instances:

(a) simply because a contractor (or individual is known to the council), or
(b) simply because there is too little time to test the market properly (unless there is a genuine need for 'emergency' or 'urgency')

or

(c) single supplier sourcing simply being logistically more convenient.

The presumption against single supplier tendering and sourcing is that best value legislation over the use of public money dictates it is necessary to be transparent and be able to demonstrate that procurements secure value for money when tested.

Single supplier sourcing is reasonable in some circumstances and where desirable managers must document their reasons.

Therefore, **in all cases** regarding the use of the contract standing orders exceptions to market testing a completed **single supplier sourcing online standard form (Appendix A)** must be sent to the Head of Finance for audit purposes.

For all proposed single supply sourcing procurements above £25,000 and below £189,330 the approval of the Head of Service is required. Where the estimate exceeds £189,330 be considered at Director level - electronic clearance will be enabled through the online form.

However, where the project is externally funded or where the Council will be reimbursed for the cost of the scheme, i.e. Section 106, the above approval route is not required.

Under CSO it is necessary to report waiver actions to members. In future, the summaries of and justifications for actions prepared by the Head of Service as part of the standard form will be annexed to the Head of Finance Budget Monitoring Reports to the Cabinet (in exempt appendices if necessary in the interests of confidentiality where appropriate).

3.2 Exceptions to market testing

The exceptions to market testing are where;

(a) The Head of Service is satisfied that goods or materials are only available from one manufacturer or that services can only be supplied by one contractor.
(b) The identity of the person supplying a professional service is important.
(c) It is specialist work and the skill of the particular contractor is important.
(d) Parts are being bought for existing machinery or plant.

(e) Goods or materials are bought through a consortium of which the council is a member.

(f) The contract is a continuation of an existing contract. This exception only applies if the new contract is negotiated with the contractor based on rates and prices which were originally agreed (in the existing contract) through the normal tendering process. This exception can only be used to allow any one contract to be **extended once except** for Housing Revenue Account programme of works contracts. In cases involving the Housing Revenue Account programme of works contracts the following will apply:

(i) any proposed extension is agreed by the Head of Law and Governance.
(ii) any contract or extension shall not exceed four years in duration
(iii) the original advert and tender documentation having suggested the possibility of any potential extension
(iv) the Head of Housing being satisfied that following a review of the contractor's previous performance that it is proper for an extension to be granted

(g) Equipment needs to be maintained by the manufacturer of that equipment and only the manufacturer can provide the maintenance.

(h) Equipment is supplied under terms which need maintenance undertaken by a named provider.

(i) Contracts are needed for the retention of legal counsel and other legal experts for advice or advocacy services, and the appointment of expert witnesses, in contemplation of actual or potential legal proceedings, inquiries, tribunals etc.

This approach to procurement of legal services reflects the special fiduciary nature of the lawyer/client relationship to which mutual trust and confidentiality are integral, and makes the personal and professional suitability and identity of the lawyer (or other expert) critical. In addition, in the context of (potentially) litigious matters, public advertisement and detailed specification of outputs as part of a market testing approach will usually be inappropriate or impractical.

Nonetheless there remains a need to ensure the Council receives value for money in such arrangements and that statutory rules are followed where needed. This may include some market testing where the nature of the legal work means it is readily able to be specified in advance e.g. some types of project-based non-contentious work. Otherwise, it will be important to demonstrate that procurement is open, based on highly informed market judgments as to the proper balance between cost and quality and is the subject of appropriate consultation with client officers and the Management Team where appropriate.

If there is any doubt about whether any exception can be used, the Head of Service should seek the advice of the Head of Law and Governance. The Head of the Audit Partnership may also be consulted.

Reminder - These exceptions are conditional on any statutory or European constraints; please consult the Head of Law and Governance if there is any doubt.

4.0 Procurement process

4.1 Pre-Procurement Considerations

Lack of time and inadequate preparation are the main enemies of effective procurement. Think ahead. Make sure that you know the timescales involved in carrying out the exercise and the amount of preparation need.

The European Procurement Directives can have significant implications. In particular do not fall into the trap of assuming the European Procurement Directives only apply to contracts above the thresholds – there are overriding Treaty provisions which affect all contracts (CSO 4.1.2). Remember that the Procurement and Contract Manager, Audit, Financial and Head of Law and Governance are there to consult.

In procuring any contract, Offices shall, where appropriate, consider the following matters prior to inviting Tenders:

(a) the nature of the services, supplies of works contract to be tendered;
(b) the estimated value over the whole term of the contract (including any extensions)
(c) the contract term and any period of extension(s) anticipated by the contract;
(d) the tender or quotation procedure to be adopted including any part of the procedure will be conducted otherwise than by electronic means (take a radical and critical view of any traditional arrangements)
(e) is there an opportunity to join forces with another service or other Councils.
(f) the procurement timetable
(g) the evaluation criteria and process;
(h) any business risk associated with entering the contract;
(i) insurance requirements
(j) issue of any statutory Notices, i.e. Leasehold
(k) the Council' Best Value duties
(l) the Council's duty under the Public Services (Social Value) Act 2012 (duty applies only for Services but should be considered for all contracts)
(m) any staffing implications including TUPE and pensions; and
(n) the relevant financial, legal and other considerations

4.2 Researching the Market, Market Testing/Indicative Bids

You need to research and understand the market. Do this by identifying and talking to possible suppliers, hold 'Meet the Buyer' events, etc. Do not under-estimate the value of stimulating market interest, but always ensure those you talk to understand that ultimately there will be a formal contract competition. Be careful not to give any undertaking that will compromise your independence.

If an Officer wants to find out about the market price of an item or service (either for Best Value benchmarking or for some other reason) then the officer must make it clear in the invitation that he is not planning to choose a service provider but is simply finding out whether or not the Council will ask for Tenders at a later date.

4.3 Project Initiation Document (PID)

The PID (link on Intranet) is the top project planning document. It contains all the information needed to get the project started, and communicate key information to the project's stakeholders.

It can be assembled from information included in other documents including the business case, terms of reference, risk register, etc. The PID should be conveyed to all stakeholders and agreed and signed off. In short, it is the "who, why, and what" part of the project. It defines all major aspects of a project and forms the basis for its management and the assessment of overall success. The PID provides a reference point throughout the project for both the customer and Project Team.

A PID often contains the following;

- Project Goals
- Defines the project and the scope
- Project Organisation
- Defines the roles and responsibilities of project participants
- Business Case
- Constraints
- Stakeholders

4.4 Tender Documentation

Making tender documents user friendly is essential if you are to get the best from the market place. Many examples of good practice existing – do not be reluctant to draw on them.

If a tender is to be effective (and in accordance with CSO) it must contain a services of elements, some of which are mandatory under Contract Regulations.

Examples of what should be included in tender documentation are:

- Instructions to Tenderers

- The closing date
- Tender evaluation criteria
- Definition of Size and Scope
- A comprehensive specification of the requirements – use outcomes when possible
- Contract period
- The Tender
- Collusive Tendering Certificate
- Equality Act Declaration
- Pricing Format (including treatment of VAT)
- Tendered rates, prices, costs, options
- A statement in respect of Freedom of Information, Equality and Diversity, Anti-bribery, Data Processing, Indemnity etc

4.5 Public Advertisement

4.5.1 All contract opportunities must be advertised via the Kent Business Portal and Contract's Finder (if necessary*)*. Other advertisements may also be placed:

- on the Council's website;
- local paper;
- in national official/trade journals;
- the Official Journal of the European Union (O.J.E.U.)/Tenders Electronic Daily (TED), where the total value of the contract is above the EU threshold.

These adverts should direct interested suppliers to the Kent Business Portal.

Advertisements must not appear in any other publication in advance of publication in OJEU

4.5.2 The procedure for public advertisement for all projects is as follows:

An advertisement needs to be placed by the Procurement and Contract Manager on the Kent Business Portal giving potential suppliers at least 10 clear working days to either express an interest, pre-qualify or quote/tender for the project.

Minimum advertisement requirements as appropriate:

- contract number
- project details, including location
- planned start, end dates and/or length of project
- project timetable
- number of units (if appropriate)
- OJEU flag
- if opportunity open to other councils

- estimated quantity (if appropriate)
- estimated annual value (if appropriate)
- estimated total contract value
- council contact details
- if tenders or quotations to be sought
- evaluation criteria for pre-qualification
- evaluation criteria for quote/tender evaluation
- minimum/maximum supplier tender shortlist information (if appropriate)
- last date for registering interest
- return details for pre-qualification and/or quote/tender
- any attachments

4.6 Call-Off Contracts

4.6.1 A Head of Service should think about tendering for an annual (or "call off") Contract if he is likely to need a number of similar requirements during a financial year but cannot realistically estimate the amount of work or cost involved. In such cases, orders may be issued as required on the basis of previously tendered rates or prices.

4.6.2 Officers must not break down (disaggregate) what would normally have been a single Contract into smaller lots in order to avoid the provisions of these Contract Standing Orders or appropriate EU Directives. However, officers should consider procuring works in packages that would attract SME's to tender, whilst adhering to legislation.

4.7 Approved Lists and Framework Agreements

4.7.1 **Framework tendering**

Clients that are continuously commissioning work might reduce timescales, learning curves and other risks by using framework agreements. Such agreements allow the client to invite tenders from suppliers of works, goods and services to be carried out over a period of time on a call-off basis as and when required.

Framework agreements can offer a number of benefits to the authority including:

- A one-off exercise to set up the overarching agreement and establish broad terms and conditions
- Able to instigate a selection procedure for individual projects without having to undertake a time-consuming pre-qualification process which might be subject to OJEU procurement rules. This should also reduce tender costs.
- The ability to "call-off" contracts or services at short notice without having to undertake a comprehensive contract award process
- A reduction in administrative effort and costs

- A mutually beneficial longer-term relationship with providers
- Allow the flexibility to determine the specific service requirements at the call-off stage. This is particularly useful where individually tailored services are required to meet individual outcomes for services users
- Framework agreements are also useful for suppliers because they support longer term business planning.

There are a number of disadvantages to framework agreements including:

- They are closed to new providers for the duration of the agreement, and may prove a disincentive for new providers to develop services
- They may impact negatively on those small medium sized enterprises (SMEs) and third sector organisations which rely heavily on high volume low cost contracts.

4.7.2 **Approved Lists**

Heads of Services with the assistance of the Procurement and Contract Manager may set up Approved Lists for contractors for the supply of works, goods and services as appropriate.

Approved Lists:

(a) Shall be established by advertised competition and where possible formalised by Framework agreements, unless they are an external 3rd party Approved List approved in accordance with the Contract Standing Orders.

(b) Shall contain the names and addresses of all Contractors who meet the approved list criteria

(c) The list should be re-advertised every four years, and reviewed periodically. For clarification review means;

- The reassessment of the financial, technical ability and performance of those Economic Operators on the list unless such matters will be investigated at the end of each time bids are invited from that list, and
- The deletion of those Economic Operators no longer qualified, with a written record kept justifying the deletion

(d) On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to re-apply.

(e) The criteria for admission to and suspension and exclusion from internally maintained Approved Lists shall be specified in writing by the relevant Head of Service, or their approved representative. The general management and maintenance of approved lists needs to be specified in writing and include how many will be allowed on the list, how the opportunities may be rotated, replacing suppliers on the list, how the list is available for inspection, if the list is available to other services (this should be detailed in the tender documents).

(f) Any Contractor may, by giving written notice to the Council, withdraw from any Approved List.

(g) The council may procure goods, services or works to any value in collaboration with other local authorities, public or voluntary sector bodies and procurement consortia. Where the council is the lead buyer the CSO's shall apply. Where the council is not the lead buyer, procurement procedures shall follow the spirit of the CSO's, be in accordance with EU Public Procurement Directives and UK Regulations, and approved by the relevant Head of Service on the advice of the Procurement and Contract Manager and Head of Law and Governance, but in any event must achieve Value for Money and Best Value.

(h) Construction line and standing lists of providers maintained by other public sector bodies and procurement consortia compiled following responses to a public advertisement shall be deemed to be Approved List for the purpose of the CSO's.

(i) The term of Framework Agreements (including any extension period) should not exceed 4 years, except in cases duly justified by Contracting Authorities and where an EU Procurement Directive applied and was included in the contract notice.

4.8 Route to Market

4.8.1 The tender procedure in accordance with CSO's and these guidance notes must be followed.

4.8.2 Local Contractors should be considered when making purchases of goods, works and services that are not covered by an existing contract, and a local supplier should be invited where appropriate for projects up to £25,000 in value. Any business supplying works or services to the council up to this value will be expected to comply with certain minimum requirements; fixed address, telephone landline, appropriate public liability, employers and professional indemnity insurance. All contracts must be risk assessed.

4.8.3 The Ashford Business Guide is a useful tool to research local suppliers, and the Kent Invicta Chamber of Commerce and Tenterden District Chamber of Commerce hold member lists.

4.8.4 The Council recognises the market aim to simplify or remove Pre-Qualification processes that many SME's find a barrier to doing business. In response the Council has approved the following certification schemes for which economic operators holding accreditation to will be deemed to satisfy the required. Heads of Service can nominate additional schemes to be included in the list of to the Procurement and Contract Manager who will liaise with the Head of Law and Governance on a decision. A current list of approved schemes will be held by the Procurement and Contract Manager and published on the Council's Website;

- PAS91 – is a standard pre-qualification question format for construction related projects, for buyers to use which is mandated by government.
- Standard Selection Questionnaire as adopted by the Government's Crown Commercial Services
- CHAS – Health and Safety Standard
- SSIP (Safety Schemes in Procurement) – Health and Safety Standard pre-qualification

4.8.5 To ensure adequate competition, but to maximise use of local companies, local suppliers that express an interest in projects that fall within other financial thresholds, greater than £25,000, should also be considered and given an opportunity to quote. If applicable, the ITT should include at least 2 local suppliers to demonstrate that best value is being obtained.

The requirements of The Public Services (Social Value) Act 2012 should be incorporated into all procurements, to ensure that that social, economic and environmental benefits from each procurement are realised, and should directly relate to the subject matter of the contract.

4.8.6 To encourage/promote incentive and reward for good performance, current incumbents or up to two previous suppliers of similar works can be automatically included in ITT shortlists. In exercising this option, Heads of Service need to avoid over limiting testing of the market and must ensure they can demonstrate Best Value.

4.9 Contracts for the Execution of WORK, SUPPLIES (GOODS) AND SERVICES
(Please also refer to Appendix A in CSO)

4.9.1 **Contracts for less than £25,000 in value**

At least one written quote in advance (unless Schedule of Rates contract or emergency works). Although the tendering procedures for Contracts not exceeding a total value of £25,000 are less formal than for Contracts of greater amounts, Officers should at all times bear in mind the need to seek value for money and be able to demonstrate that they have obtained it.

4.9.2 **Contracts estimated to be between £25,000 and £189,330** in total value**

At least three written quotations via the tender process shall be invited through advertisement on the Kent Business Portal and if required any other routes to advertising as appropriate, (unless the requirement has been waived - CSO 1.7) and tendered electronically.

If the estimated cost of the project exceeds £25,000 the project must be also advertised through Contracts Finder the Government's online procurement service.

a) Current incumbent(s) of scheme, or last supplier(s) (2 max.) to deliver similar works invited to quote/tender automatically (if appropriate).
b) The Head of Service needs to be satisfied, as far as possible, that anyone invited to tender for the work is technically competent and in a position to fulfil the contract.
c) The Head of Service must prior to selecting any prospective tenders have a clearly written selection criteria which should be detailed in the Invitation to Tender (ITT)
d) Prior to inviting tenders a satisfactory financial reference may be obtained
e) If e:tendering not being used, the Head of Service should ask for quotations/tenders to be returned in a plain sealed envelope labelled "Quotation or Tender", followed by the subject to which it relates, and the deadline date/time for return. The envelope must be addressed to the Head of Service/Senior Officer/Manager. Customer Services to be advised of arrangements for quotation/tender return if not tendered electronically.
f) Quotation/Tender envelopes shall be kept in a secure place by the Head of Service until it is time for them to be opened.
g) All quotations shall be opened at the same time, if possible, on the day that quotations/tenders close.
h) The Head of Service/Senior Officer/Manager can accept the most favourable lowest quotation as long as it is for less than £189,330 and in accordance with the council's selected scoring method.

4.9.3 Contracts in excess of £189,330 in total value for <u>SUPPLIES (GOODS) AND SERVICES</u>**

a) EU Rules apply – full competitive process following advertisement in the OJEU.
b) If estimated cost of scheme is £180,000 or above, and nearing OJEU limits officers will be advised to advertise in OJEU as tender returns could put the price over the current thresholds.
c) In addition to the OJEU publication an advert should be placed in the following reflecting the same timescales in the OJEU advert;
    - Kent Business Portal (local procurement portal)
    - Contracts Finder (Government's online procurement service)
    - Adverts could also be placed on Council website, relevant trade journals and local press

    These notices should not be published before it has been published on OJEU or at least 48 hours have elapsed from the receipt of the confirmation of the notice from OJEU.

d) At least 5 written tenders shall be invited and tendered electronically.

4.9.4 Contracts estimated to be between £189,330** and £4,733.252** in total value for WORKS

a) At least 5 written tenders in advance following advertisement by public notice on the Kent Business Portal, and if required any other routes to advertising as appropriate, giving potential suppliers at least ten clear working days to express an interest, and electronically tendered. (unless the requirement has been waived – CSO 1.7 or Emergency Works) and tendered electronically.
b) The project must be advertised through Contracts Finder the Government's online procurement service.
c) Current incumbent(s) of scheme, or last supplier(s) (max. 2) to deliver similar works invited to quote/tender automatically (if appropriate)
d) The Head of Service must prior to selecting any prospective tenders have a clearly written selection criteria. The selection criteria shall not include any non-commercial matters unless the Head of Law and Governance is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply. Criteria should be clearly detailed in ITT
e) The Head of Service needs to be satisfied, as far as possible, that anyone invited to tender for the work is technically competent and in a position to fulfil the contract.
f) The tenderer who submitted the most favourable tenderer may be financially vetting. If an unsatisfactory financial reference is obtained, the supplier will be disqualified.
g) A Surety Bond or guarantee from a parent company is not required unless specifically requested by the Head of Service. If a Surety Bond is required for any contract, then the tender documentation needs to ask all tenderers to price for the Bond as a separate item.
h) The Head of Service can accept the most favourable tender received as long as it is for less than £4,733.252. **

4.9.5 Contracts estimated to be £4,733.252** plus for WORKS

a) EU Rules apply – full competitive process following advertisement in the OJEU.
b) In addition to the OJEU publication an advert should be placed in the following reflecting the same timescales in the OJEU advert;
    - Kent Business Portal (local procurement portal)
    - Contracts Finder (Government's online procurement service)
    - Adverts could also be placed on Council website, relevant trade journals and local press.

    These notices should not be published before it has been published on OJEU or at least 48 hours have elapsed from the receipt of the confirmation of the notice from OJEU

c) At least 5 written tenders shall be invited and tendered electronically.

d) The Head of Service must prior to selecting any prospective tenders have a clearly written selection criteria. The selection criteria shall not include any non-commercial matters unless the Head of Law and Governance is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply.
e) Prior to inviting tenders a satisfactory financial reference must be obtained in respect of the proposed tenderer together with evidence of technical competence.
f) A Surety Bond or guarantee from a parent company is required unless the Head of Service determines otherwise. If a Surety Bond is required for any contract, then the tender documentation needs to ask all tenderers to price for the Bond as a separate item.
g) Management Team approval to be obtained to accept the most favourable tender if within budget

4.10 EU Tender Thresholds

4.10.1 Any contract with a total value of more than the amounts listed below are subject to The Public Contracts Regulations 2015 and the Council is required to advertise the contract opportunity in the Official Journal of the European Union (OJEU) via different types of Notices. The thresholds are reviewed every two years with the latest review completed in 1 January 2020. The current thresholds are:

Type of Contract	Threshold
Service & Supply (Goods)	£189,330
Works	£4,733,252

Source: OJEU 01/01/20

4.10.2 **Types of OJEU notice**

There are three main types of OJEU notice:

- Prior Information Notice;
- Contract Notice;
- Contract Award Notice.

4.10.3 **Prior Information Notice (PIN)**

PINs are advanced notice of a Contract Notice and inform interested economic operators that a tender will happen at a later date. Issuing of a PIN reduces the amount of time spent in the tender process

4.10.4 **Contract Notice**

This notice is prepared for each contract. The purpose is to let the market know that tendering for a specific demand is envisaged. The notice must follow a certain form and must provide specific details of the contract including conditions for applicants to be selected for the contract

4.10.5 **Contract Award Notice**

Within 48 days of the award of a contract, you must despatch a contract award notice, detailing to whom the contract was awarded. Such notice applies to all contracts over the O.J.E.U. thresholds. Central Government and the EC monitor Council expenditure through these notices. The Council can be fined for not issuing Contract Award Notices.

4.10.6 **EU Tendering Timescale**

The Public Contracts Regulations 2015 apply to all procurements commenced on or after 26 February 2015.

The contract award procedures come with an array of minimum timescales, and possible reductions to those timescales. In addition, for procurements under the 2015 Regulations, non-central government contracting authorities enjoy a certain amount of flexibility around the setting of timescales, subject to agreement with and safeguards for bidders.

Note that the periods given are the minimum timescales permitted by the legislation. Consideration should always be given to the complexity of the procurement, and a reasonable time must be given to allow suppliers to compile their responses. (see Table at Procurement Guidance 4.10.8)

4.10.7 **EU Tendering Procedures**

The Public Contracts Directive provides for five award procedures;

Open – all those interested may respond to the advertisement in the OJEU by submitting a tender for the project

Restricted – a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the project

Competitive with negotiation – a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the project. The council may then open negotiations with the tenderers to seek improved offers

Competitive dialogue – a selection is made of those who respond to the advertisement and the council enters into dialogue with potential bidders who will be invited to tender.

Innovation partnership – a selection is made of those who respond to the advertisement and the council uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing

‘product’ on the market. The council is allowed to award partnerships to more than one supplier.

It also remains possible, albeit in very limited circumstances to use a negotiated procedure without a notice (see Table at Procurement Guidance 4.10.8)

4.10.8 **EU Tendering Timescale and Procedure**

Note: days are calendar days unless stated otherwise

Choice of procedure and stage	**Standard timescales**	**Options for sub-central contracting authorities**	**Tenders submitted electronically**	**Requirement is urgent and longer time limit is impractical as a result**	**PIN (Prior Information Notice) published no more than 12 months and no less than 35 days from despatch of contract notice**
OPEN					
Despatch of contract notice to receipt of responses	35 days		5 day reduction	Period reduced to 15 days	Period reduced to 15 days
Standstill	10 days				
RESTRICTED					
Despatch of contract notice to receipt of responses	30 days			Period reduce to 15 days	
ITT to receipt of bids	30 days	May agree time-limit with tenderers – in absence of agreement minimum period is 10 days	5 day reduction	Period reduced to 10 days	Period reduce to 10 days
Standstill	10 days				

Choice of procedure and stage	Standard timescales	Options for sub-central contracting authorities	Tenders submitted electronically	Requirement is urgent and longer time limit is impractical as a result	PIN (Prior Information Notice) published no more than 12 months and no less than 35 days from despatch of contract notice
COMPETITIVE WITH NEGOTIATION					
Despatch of Contract Notice to expressions of interest	30 days			Period reduced to 15 days	
ITN to receipt of initial tenders	30 days	May agree time limit with tenderers – in absence of agreement minimum period is 10 days	5 day reduction	Period reduced to 10 days	Period reduced to 10 days
Standstill	10 days				
COMPETITIVE DIALOGUE					
Despatch of contract notice to expressions of interest	30 days				
Standstill	10 days				
INNOVATION PARTNERSHIP					
Despatch of contract notice to expressions of interest	30 days				
Standstill	10 days				

4.11 The Public Services (Social Value) Act 2012

The Act applies to all council service contracts (as defined under The Public Contracts Regulations 2006). That is those service contracts valued at or above the European Public Procurement threshold. However, as good practice the council should consider the provisions of the Act in all procurements.

Officers must consider Public Services (Social Value) Act 2012 and how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area and how in conducting the process of procurement, it might act with a view to securing that improvement.

Example of typical social value issues include:

- Economic – use and development of local supply chains, pledge to support the local economy, recruitment of apprentices
- Social - provision of work experience opportunities, volunteering, community liaison, employment of long term unemployed
- Environmental – purchase of 'low emission' vehicles, proposals for recycling waste materials, use of low energy equipment (see Environmental Procurement below)

The includes the provisos that:

- The authority considers only matters that are relevant to what is being procured
- The consideration of matters must be proportionate
- The principles of value for money and equal access are preserved

The process of taking social value into consideration might include:

- When procuring specific contracts, identifying relevant, non-discriminatory matters of social value that are proportionate and appropriate
- Preparing verifiable, testable, weighted selection criteria along with any special conditions that might be included in contract terms
- Including social value criteria in OJEU contract notices and other notices, as well as tender documents
- Requiring tenders to demonstrate how social value will be created and delivered.
- Monitoring the delivery of social value

4.12 Environmental Procurement

4.12.1 Procurement is important to the Council's environmental strategies and the well-being of the borough as a whole.

Green (environmentally friendly) products are not necessarily more expensive. The initially cheaper products may cost more in the long term when whole-life costs are taken into account. These whole-life

costs (e.g. burden on air-conditioning plant of less energy efficient IT equipment) along with administrative costs (e.g. health and safety requirements for hazardous substances), disposal costs and any likely changes in legislation must be taken into consideration. Purchases that do not take into account positive environmental factors or those that avoid the consequences of adverse environmental factors must be challenged.

4.12.2 **Specification of Environmentally-Friendly Supplies**

A certain amount of freedom is allowed under EU Procurement Directives in specifying green requirements, for example that a product should be made of recyclable materials or that particular materials such as ozone depleting substances should not be used. The manner in which the requirements are specified must not discriminate against providers or against products from other EU member states.

4.13 Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and Procurement

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) and the European Acquired Rights Directives protect employee's rights in circumstances where the business in which they work transfers by transferring their employment on the same terms and conditions with continuity of service. In addition, dismissals for a reason connected with a transfer will generally be unfair.

4.13.1 **What is a transfer?**

TUPE applies in "relevant transfers" which may occur in a range of situations. Broadly they fall into the categories of business transfers or service provisions transfers.

Service Provisions transfers are the main area which impacts on the Council's procurement. These generally happen in one of three ways:

a) where services are carried out by the Council and then outsourced to an outside contractor; or
b) where services are carried out by an outside contractor and are then re-assigned to another outside contractor; or
c) where services are carried out by an outside contractor and are then brought in-house and carried out by the Council

TUPE does not apply where the contract is mainly for the supply of supplies or the activities carried out are in connection with a single specific event or task of short-term duration.

4.13.2 **TUPE and Council Tenders/contracts**

In preparing any tender/contract for services consideration should be given to any TUPE implications that may arise.

TUPE transfers of staff will exist between the existing contractor or contractors providing the service and the incoming contractor or contractors who will subsequently be providing the service. Whilst the transfers will be the responsibility of the contractors concerned, the Council will need to make any potential transfer known in any tender documents in order that tenderers can submit accurate prices and can make themselves fully aware of their obligations.

Any tender documents must include a contact point at the current incumbent from which TUPE transfer information can be sought and/or details of staff for whom TUPE will apply. Under TUPE the current incumbent is required to provide certain employee information to the incoming employer/contractor.

The Council should also give consideration to the incumbent contractor in allowing them sufficient time to notify their staff of a potential TUPE transfer in good time for any tender or other reprovision of the service. Any employer/contractor transferring staff under TUPE does have a duty to provide specific information and conduct adequate consultation with its staff prior to any transfer taking place.

The Council's standard contract terms for services contain a requirement for contractors to supply TUPE transfer information for any reprovision of the service.

The standard terms also dictate that the Contractor cannot artificially increase the terms and conditions of staff subject to transfer prior to any TUPE transfer.

Legal Services should be contacted for advice prior to any tender in which TUPE may apply.

5.0 Procurement of External Expertise

The following principles and amended procedures are intended to strengthen the justification, decision-making and transparency around the contracting-in of certain external expertise. They apply regardless of the source of funding. Further, these procedures introduce arrangements for managing and reporting of decisions or proposed actions to waive the need for tenders or quotations for providing services.

A copy of the Online Form to be submitted to the Approval Group is found in Appendix B

5.1 Section A – Buying-in of External Expertise (redefining the 'use of consultants')

The following information is intended to:

- Distinguish between the various types of need for which external expertise is needed. This is so a clearer understanding may develop of the council's needs, given the 'use of consultants' has had greater prominence as a transparency matter with members, the media, and the public.
- Create suitable procedures to justify, manage and oversee decisions about buying external expertise.
- Create procedures to manage and report the use of the 'exception rules' to contract standing orders, which allow the award of a contract by waiving the need for formal tenders or quotations.

5.2 Defining 'external expertise'

Three categories of external expertise are defined as follows;

5.2.1 **'Specialist advice or specialist services' that are <u>not</u> considered <u>normal</u> day-to-day operational service activity**

'Specialist advice or services' are external advisory or professional services engaged to:

(a) help the council (as a whole or any of its services) develop new policy or new practices, or consider choices to inform decision-making that are not 'business as usual' decisions (see category 3 below)

(b) help carry out non-business as usual decisions taken by the council in circumstances where the council would not usually have the required expertise to take forward a decision made (for example, expertise to help deliver a significant project).

Examples include:

(i) providing external validation of internal work

(ii) providing specialist expertise/skills/advice or analysis that is not available in-house (for example, specialist tax, non-contentious legal and planning advice) and is to inform material policy or procedural change, or choices for actions that are not part of normal day-to-day operational service activity and potentially where budgets need to be set.

(iii) helping implementation of organisational change or with some other significant project where the required expertise is not available in-house

(iv) providing objectivity or independence where in-house work may lead to accusations of bias

(v) professional judgment as technical collateral (for example expert witnesses)

(vi) providing support for high-risk or high value projects

5.2.2 **Interim support**

Interim support is external expertise engaged to help with normal service delivery or carrying out decisions where a council officer would usually perform the role, if available.

Typically, interim support is used to cover for lack of staff because of vacancies or long-term leave (for example maternity cover), and usually involves a fixed term.

5.2.3 **'Business as usual' normal day-to-day operational service needs that can only be sourced externally**

'Business as usual' needs refer to the normal course of day-to-day operational service activity and its support (in other words 'routine'). In this case external expertise is that which can only be provided by external advisers or professional services as the council does not have, could not have or would not usually be expected to have the required expertise to be capable of performing the role.

There are several examples of this need: occupational health advisers, independent legal advice or support (including counsel and solicitor advocates), routine engineering or surveying advice etc.

If a procurement is treated as falling within one of the three categories above it does not and will not be deemed to fall within any other category

5.3 Processes to follow for each expertise type:

5.3.1 ***Category 1. Specialist advice or specialist services***

The justification to engage specialist advice or services under the definition at Section A **must:**

In advance be set out by completing the 'specialist adviser or services' online standard form.

(a) Be sent to the Head of Finance to keep a central record.
(b) Be considered by the Head of Service where the estimated value of service exceeds £25,000 and budget is available. Where the estimate exceeds £25,000 be considered at Director level.
(c) In cases where no budget is available the Head of Service must consider whether alternative budgets are available and if not a report on the matter must be presented to the Cabinet, if not within the Head of Service's limit of delegation.
(d) Follow the council's contract standing orders governing the need for quotations or tenders. Note, that other than in circumstances where the council's 'emergency' or 'urgency' procedures apply,

or where the proposed new waiver covering certain legal service needs applies no waiver of the requirement for public advertisement for services valued at greater than £180,000 will be permitted. This is for two reasons:

(i) the council is under a mandatory duty to achieve best value and at this level of contract value it is considered essential to test the market appropriately and open up the potential for competition.

(ii) the level is close to the European Procurement threshold for service contracts (currently £189,330). Under EU procurement regulations services are defined as either Part A or Part B. Separate guidance on the EU procurement rules will be provided by the Head of Legal and Democratic Services.

5.3.2 In cases where a manager proposes to waive the need for quotations or tenders above the minimum of £25,000 the procedures for 'single supplier sourcing' must be followed (see CSO 3.1 and Procurement Guidance 3.1)

5.3.3 Liaise with the Head of Law and Governance over the terms and conditions of a proposed contract.

Note: the Head of Finance may postpone payments if these procedures are not followed and refer the matter to the Head of Service and the Management Team for swift resolution and action.

5.3.4 ***Category 2. Interim support***

The justification to engage interim support must:

In advance follow the council's procedures for engaging temporary or agency staff and be the subject of a 'request to fill (by agency)' to Management Team (following the same procedure for permanent recruitment).

(a) Assuming approval is given to proceed, then engagement must follow the procurement procedures for temporary and agency staff involving first consideration by one or more of the council's three preferred suppliers (see the Intranet for full guidance).

(b) Where under that guidance a preferred supplier is unable to fulfil needs, the agreement of the Head of HR and Customer Services is needed for a manager to procure from another source. This will be recorded by HR and Customer Services.

(c) A check on the employment status of any individual engaged for interim support must be made with the Head of HR and Customer Services. This is important given the potential employment rights for and tax implications of agency staff.

(d) No extension beyond 12 months will be allowed without referral to Legal Services and the justification considered by the Management Team.

Note: the Head of Finance may postpone payments if these procedures are not followed and will refer the matter to the Head of Service and the Management Team for swift resolution and action.

5.3.5 ***Category 3. Business as Usual' external only expertise***

Buying of services for normal day-to-day operational service activity that can only be provided externally must follow the council's contract standing orders and importantly the rules governing the need for tenders or quotations. Note, that other than in circumstances where the council's 'emergency' or 'urgency' procedures apply, or where the proposed new waiver covering certain legal service needs applies no waiver of the requirement for public advertisement for services valued at greater than £189,330 will be permitted

(a) In cases where a manager proposes to waive the need for tenders or quotations above the minimum of £25,000 the procedures for 'single supplier sourcing' must be followed (see CSO 3.1 and Procurement Guidance 3.1)
(b) Liaise with the Head of Law and Governance over the terms and conditions of a proposed contract
(c) A check on the employment status of any individual engaged must be made with the Head of HR and Customer Services. This is important given the potential employment issues and tax implications of self-employed contractors
(d) Unless the procurement has stipulated a longer term need (exceeding 12 months) any later extension of arrangement must be the subject of prior consultation with Legal Services and receive the approval of the Management Team.

Note: the Head of Finance may postpone payments if these procedures are not followed and refer the matter to the Head of Service and the Management Team for swift resolution and action.

6.0 Tendering

6.1 E-Tendering

All public sector buyers are required to carry out procurement electronically. This will include posting all contract opportunities online, making all tender documents available, the electronic submission of bids and making all communication digital.

It may not be appropriate to undertake e:tendering for certain projects, i.e. if a scale model needs to be provided.

(a) Invitations to tender despatched and tenders received by electronic means via an Electronic Tender Facility. All e-tendering must comply with EU procurement legislation where applicable.
(b) Tenders received electronically via the Electronic Tender Facility must be held in an Electronic Tender Time-Box until after the appointed closing date and time.
(c) Tenders held in an Electronic Time Box must all be opened at the same time by an the Procurement and Contract Manager (or her duly authorised representative) and an authorised representative of the Service who is dealing with the project, after the appointed closing date and time for Electronic Tender Time Box has passed and the Tender details recorded. In the case of 'over OJEU' threshold tenders someone objective and independent to the procurement exercise should be present.
(d) Where any original Tender documentation is to be submitted in hard copy instead of electronically as part of the tender process using an Electronic Tender Facility, such documentation shall be addressed to the Customer Contact Centre and all documentation shall remain in the custody of this section until the time appointed for its opening.
(e) No person shall disclose the value, number or any other detail of the tenders received to any tenderer or anyone not involved with the tender evaluation procedure.
(f) No tender received after the time and date specified in the invitation to tender for the submission of the tender will be considered.
(g) When opening Tenders, the Procurement and Contract Manager must make sure that a Tender Return Sheet is completed, indicating the suppliers that submitted a tender and the names of those present at the tender opening.

6.2 Tender/Quotation Return: Receiving, Looking after and Opening of Tenders

6.2.1 Except in the case of electronic tendering via the Electronic Tendering Facility for which the rules in CSO 6.3 and Procurement Guidance 6.1

shall apply, the receipt and opening of Tenders shall be conducted as follows;

6.2.2 No Tender/Quotation can be considered unless it is received in a plain sealed envelope or package which clearly state "Tender" or “Quotation” followed by the subject to which it relates, and which bear no mark or identification of the sender. The envelope or package must be addressed to the Customer Contact Centre for Tender or Head of Service for quotes. Tenders must be securely looked after by the Customer Contact Centre until they are passed to the Head of Service at the time when they are due to be opened. Quotes to be retained by the Head of Service

6.2.3 All Tenders shall be opened at the same time, if possible on the day that the Tenders close. If the estimated cost is £189,330 or less, they may be opened by the Procurement and Contract Manager (or her duly authorised representative) and an authorised representative of the Service who is dealing with the project,

6.2.4 When the estimated cost exceeds £189,330 tenders must be opened in the presence Procurement and Contract Manager (or her duly authorised representative) and an authorised representative of the Service who is dealing with the project along with an officer objective and independent to the procurement exercise.

The Customer Contact Centre must not release the Tender envelopes until these people are available.

6.2.5 When opening Tenders, Heads of Service must make sure that a Tender Return Sheet is completed. Each Tender sum must be recorded on this Sheet, which must be signed by all those present at the opening retained on the Project Folder

6.2.6 The Head of Service is responsible for keeping the Tender documentation safe during the evaluation process, after which the successful Tender forms part of the contract. The second most acceptable Tender should be kept by the Head of Service for a minimum of three months.

6.3 Tender Evaluation

6.3.1 European legislation requires that all tender evaluations are carried out in distinct steps between selecting of contractors and the award criteria. For tenders carried out using the restricted procedure the PQQ stage will form the first of these steps. Under other procedures economic operators must satisfy the council’s basic requirements.

All contract awards must be made to the "Most Economically Advantageous Tender" (MEAT), which should include best 'price-quality ratio'. Only for basic commodities should price be the key factor.

"Price" should be assessed using whole life costings applicable to all Works/Goods/Services being procured.

"Quality" should include all criteria which will be used to assess the quality of the procurement activity.

6.3.2 Award criteria should consider quality, capability and price. Suggested criteria include:

- Price
- Whole life costs
- Quality levels
- Plans for service improvement
- Empathy with and contribution to corporate goals and objectives
- Aesthetic and functional characteristics
- Contribution towards Social Value (economic, social and environmental well-being of the local community
- Skills
- Technical merit and technical assistance. In Works contracts include an assessment of Health and Safety Statements and plans in accordance with the CDM regulations
- Investment
- Impact on staff
- Innovation
- Impacts on assets and infrastructure
- Shared risk and reward
- Evidence of sustained and improved service delivery
- Guarantees
- After sales services

6.3.3 To make sure you are comparing like with like, you must ensure that the prices offered relate to the specification and the criteria you have selected for award

The following checklist should help:

- Check all bids received comply with the specification – you may have to examine plans, drawings, samples, etc.
- Check the tenderer has answered all the questions.
- Make a schedule for evaluation, which compares each bid against your declared award criteria

- Where appropriate, arrange presentations by tenderers.
- Consider the “whole life” costs where appropriate (they should be indicated as criteria within the tender)
- Ensure you have budgetary provision
- It is not good practice to get involved in general conversations or routine meetings with tenderers during the tender process. You should state a date where final clarification can be sought, and a route to advise all tenderers of the outcome of any clarification during the tender process. This should be in sufficient time before the tenders are due to be submitted.
- Never discuss details of a bid with any other tenderer – respect commercial confidentially
- Reach a conclusion that you are confident meets the requirement of your award criteria.

6.4 Abnormally low tender

The Council can demand an explanation where a tender appears to be abnormally low, and bids can be rejected where this explanation is unsatisfactory (in consultation with the Head of Law and Governance)

6.5 Evaluation Process

Tender evaluation should be undertaken by the tender project management team in consultation with the Procurement and Contract Manager and the Head of Law and Governance, the team should draw up the tender evaluation criteria (including possible scorings) prior to issuing an invitation to tender as all tenderers must be aware of how a contract will be awarded. The following will provide guidelines that can be used for many tender evaluation processes:

- eliminate any tenders that do not meet the essential minimum criteria,
- eliminate any submissions not received by the published deadline
- eliminate any submission that has significant omissions, which will hinder the ability to conduct a full evaluation.
- the arithmetic in compliant tenders must be checked. If arithmetical errors are found they should corrected and should be notified to the tenderer, who should be requested to confirm or withdraw their Tender.
- do not try to “read into” what may be meant, if part of the tender is not clear it is appropriate to seek clarification.
- prepare a simple matrix to evaluate the selected quality criteria using pre-determined weightings for each element. Criteria must be advertised in the tender in descending order of priority.
- devise a matrix with the criteria that also shows how the scoring will be judged
- devise a scoring system that awards marks dependent on how well the criteria are addressed.

- sufficient people should be involved in quality assessment to ensure that no single person influences the assessment. Assessments should be carried out in isolation to ensure that collusion does not take place. The various assessments can then be drawn together to provide an overall scoring.

6.6 Price Assessment

A number of different pricing assessments can be used. An example of an assessment is shown below where the lowest price being is awarded 100 marks then subsequent tenders being awarded marks dependent on how much above the lowest tender they are:

An example below of the CIPFA (Chartered Institute of Public Finance and Accountancy pricing score method based on the maximum points x (100% - % above lowest price)

Example

Price	% above lowest price (price – lowest price) / lowest price x 100	100% - % above lowest price	Points calculation Maximum points x (100% - % above lowest price)	Points
£500	0/500 x 100 = 0	100% - 0% = 100%	100 x 100%	100
£600	(600-500)/500 x100 = 20%	100% - 20% = 80%	100 x 80%	80
£700	(700-500)/500 x100 = 40%	100% - 40% = 60%	100 x 60%	60
£800	(800-500)/500 x100 = 60%	100% - 60% = 40%	100 x 60%	40

Source: CIPFA Pricing Score Method

6.7 Tender Negotiation

Tender negotiation should only be undertaken after consulting the Head of Law and Governance.

6.7.1 Where a negotiated procedure is used, (or Competitive with Negotiation or Competitive Dialogue):

(a) there must be a clear and rigorous method of evaluating Tenders that takes account of price, quality, innovation and improvement.

(b) all prospective Tenderers must be told in advance how the evaluation will be carried out.

(c) at least two Officers must carry out the evaluation and agree on the results.

6.7.2 Where post-Tender negotiations take place, regarding the above or if only one bid is received

(a) they must always be carried out by more than one Officer from the Council.

(b) clear delegation limits must have been given to the negotiators.
(c) an accurate written record must be made promptly following all formal and informal meetings.
(d) the results of negotiations must be fully documented.

6.8 Tender Results and Standstill Period

6.8.1 All tenderers for a contract must be notified simultaneously and as soon as possible of the intention to award the contract to the successful tenderer, stating a minimum of the following:

- The award criteria
- The ranking of the tenderer in the tender evaluation
- the name of the tenderer who submitted the most favourable tender
- the prices submitted/and or the price/quality assessment (not connected to the tenderer's name)
- and, the relative benefits of the most favourable tender (if appropriate)

6.8.2 For all contracts with a value exceeding £75,000 the council will apply a standstill period (following the Alcatel procedure) notifying all tenderers of the outcome of the tendering exercise giving a minimum of 10 calendar days (if tenderers notified electronically) and 15 calendar days (if non-electronic notification) for comments. The contract cannot be signed until this period has expired. The first day of the standstill period is the day after the Alcatel Notices are sent and the period ends at midnight on the last day. If the last day of the period is not a working day then the period must be extended to midnight on the next working day.

The Standstill period can be applied for contracts with a value less than £75,000 at the discretion of the officer dealing with project.

6.8.3 In the case of contracts with a value in excess of the EU threshold, the outcome of the tendering exercise must be formally notified to unsuccessful Tenderers prior to the Alcatel procedure in accordance with the procedure set out in 6.8.1 above. The successful Tenderer must be advised that the Council may:

(i) until the contract has been signed either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation.
(ii) suspend signing the contract for additional examination, if justified by requests or comments made by unsuccessful tenderers during the standstill period or by any other relevant information received during that period.

6.8.4 If the decision to award is challenged by an unsuccessful tenderer then the contract will not be awarded and the matter shall be referred to the Senior Officer and the Head of Law and Governance if necessary.

6.8.5 In compliance with the Commonhold and Leasehold Reform Act 2002 where a contract contains work to leasehold properties a Notice of Estimates is sent to leaseholder's when tenders are received and evaluated, prior to the contract being signed, detailing the leaseholders estimated contribution. Tenderers should be made aware that their tendered prices may be disclosed prior to a formal contract being signed. This notice can be sent at the same time that price notification is sent to all tenderers.

7.0 Contractual Arrangements

7.1 General Requirements

7.1.1 All Official Orders must comply with the requirements of Financial Procedure Rules. They must not incorporate or be deemed to incorporate (by acknowledging a Contractor's Official Order or otherwise) any condition unless that condition has been approved by the Head of Law and Governance.

7.1.2 If any proposed Contract for the supply of goods, plant, equipment, machinery or vehicles requires or will necessitate either the supplier or a third party providing maintenance or support the Head of Law and Governance needs to approve the terms for such maintenance and/or support.

7.1.3 Every Contract over £189,330 shall be under seal unless the Head of Law and Governance agree it is inappropriate. A Contract of £189,330 or less can be under seal if; the Head of Service considers it should be. If the Council wishes to enforce the contract more than six years after its end then it should be made as a Deed, and can be under seal or under hand.

7.1.4 It is a requirement of the Localism Act 2011 that any contract required to be in writing by virtue of these Procedure Rules must either by under seal or signed by at least two Officers of the Council, one of which is the Head of Service.

7.1.5 The Head of Service is subject to the provisions of the Contract Standing Orders and Procurement Guidance and is authorised to sign contracts not required to be under seal.

7.1.6 Financial vetting (carried out by Financial Services) of a supplier should only be undertaken, in the opinion of the council, if a significant risk has been identified. The Head of Service, or their delegated representative is responsible for undertaking a risk assessment. The following general guidance should be followed:

Goods and Services;

a) Payment on delivery/completion
b) If there is significant risk that the goods will become defective then financial checks should be undertaken, and an insurance backed warranty should be provided to cover the risk.
c) Simple goods (no working parts); payment on delivery and no financial check necessary
d) Complex goods; with a value for any individual item exceeding £5,000 or collective value exceeding £50,000 an insurance backed warranty to cover all costs should be provided in addition to any product liability insurance, financial check may be required following risk assessment
e) Where payment or commitment in advance is unavoidable, and the value of the goods is in excess of £5,000 then a financial check should be sought with the supplier's permission.

Works;

a) The complexity, type of property and contract period for the project, not simply the value of the works should be risk assessed.
b) Payment on completion of work significantly reduces risk.
c) Generally, contractors engaged on projects with a contract period in excess of 26 weeks, and for projects undertaken on commercial property with a contract period in excess of 4 weeks should be financially vetted.
d) Where the failure of the contractor to complete the project for any reason would result in significant loss, delay or disrepute to the Council then the contractor should be financially vetted
e) Consider asking the contractor to supply a Surety Bond or Parent Company Guarantee

7.2 What the Contract must include;

7.2.1 Every Contract must:

(a) specify what goods, services or work are to be supplied or performed.
(b) specify the price to be paid, the estimated price or basis upon which the price is to be calculated (including inflationary issues where appropriate), and say what discounts or other deductions have been agreed.
(c) specify the time or times within which the Contract is to be performed

(d) Include standard Terms and Conditions in a form agreed by Legal Services.
(e) Include supplier's Terms and Conditions, provided to Legal Services so that onerous provisions can be amended or the risk can be acknowledged and managed by the Responsible Officer
(f) require that goods or services used or supplied and workmanship carried out is in agreement with the appropriate Standard. If there is an appropriate and current Agreement, Standard Specification or Standard Code of Practice issued by either the British Standards Institution or a recognised body of any Member state of the EU, then that Agreement and/or Standard should be specified with the addition of the wording "or equivalent".
(g) ensure that relevant Council policies (including its whistle-blowing policy are reflected in the documentation.
(h) Provide for liquidated damages to be paid by the Contractor if any Contract for works worth more than £25,000 is not carried out properly in relation to the terms of the contract. This provision shall not apply to the supply of goods, plant, equipment, machinery and vehicles or if the Head of Service does not feel it is appropriate. A Contract worth £25,000 or less may provide for liquidated damages to be paid by the Contractor if the Head of Service considers it appropriate
(i) if possible, make provision for continuous improvement in accordance with the principles of Best Value.
(j) include, where a contract is let on the basis of cost/quality criteria, the management processes and procedures accepted through the quality submission that must be adhered to for all material/services procured through that contract
(k) Where a contract has a requirement for Social Value and/or added value, that all the relevant value offerings promised by the contractor is included in the contract.

7.2.2 Every Contract must include a clause which allows the Council to cancel the Contract and recover from the Contractor any subsequent loss if:

(a) the Contractor (or any of his employees) has offered or given any gift or other benefit to an Officer in an attempt to influence the outcome of a Contract decision.
(b) the Contractor has shown (or not shown) any favour or disfavour to any person in relation to the Contract.
(c) the Contractor (or any of his employees) commits an offence under the Bribery Act 2010 or any subsequent amendments to these Acts.
(d) the Contractor (or any of his employees) gives any fee or reward that is an offence under Section 117 Sub-Section (2) of the Local Government Act 1972.

7.2.3 The Head of Law and Governance may waive the requirement of Procurement Guidance 7.2.2 where permitted by law if he feels that it is not appropriate. The reason for any waiver must be recorded in writing and retained with the contract documentation.

8.0 Managing Contracts

8.1 Introduction

Contract Management makes sure that all parties to a contract fully understand their obligations and fulfil them as efficiently and effectively as possible to maximise best value. Every contract must have a Contract Manager who will be responsible and accountable for the contract and its performance

Once the contract is in place the contract management function has two main interdependent components;

- The performance of the contract and the establishment and management of various processes, procedures and protocols that underpin the contract, including the identification, allocation and management of risks.
- The relationship between client and contract

8.2 Contract performance

The Contract Manager has specific duties and responsibilities;

- Set –up the contract
- Managing the relationship
- Monitoring costs
- Reviewing and reporting on performance
- Managing variations
- Authorising payment and managing payment mechanisms such as incentives
- Dispute resolution and, where conciliation fails, applying the sanctions provided for in the contract, which may include termination
- Keeping records and ensuring an audit trail
- Assessing and managing risk
- Managing added and/or social value
- Encouraging continuation improvements
- Maintaining ethical standards
- Contingency planning
- Managing the change from one contractor to another
- Supervision of the contract
- Resident and stakeholder liaison

- Recording of any lessons learnt
- Managing Contract Exit/Reprocurement
- Completing post contract evaluation
- Market management to inform benchmarking, contingency planning and future delivery

8.3 Performance/contractor failure and management

Risk is a significant factor that the Contract Manager must manage if the best is to be drawn from the contract

The level of risk associated with an individual contract will depend on the type and length of the contract, the stability of the service, conditions in the supply market and the risk to the user in terms of cost, quality and the impact of contract failure.

It is vital to ensure that any means devised to lessen the likelihood of risk include practical early termination provision, indemnity and insurance provisions.

8.4 Variations

In all but the most specific or short term contracts, there may be a need to deal with variations. These are not necessarily matters that you can control or predict, but a well-constructed contract will cover most eventualities (for example it will include provision for extensions by time, volume, value and continuous improvement in performance and cost and changes to social value offerings)

Processes for variations are included within the terms and conditions of a standard contract and may be dealt with my Contract Managers as negotiated variations. However, the Head of Finance may become involved in the original contract sum is likely to be exceeded (CSO 7.3). In any event, details of changes must be recorded in writing and kept with the contract documentation.

8.5 Price

Unless there is a fixed price arrangement, in the running of most contracts there comes a time when your supplier may want to adjust the price. If the Contract is constructed properly, it will contain a clear basis on which such adjustments can be calculated.

Contract Standing Orders allow for variations and are specific about who has authority to deal with these.

There are various techniques that can be used to control price escalation or decrease. Cost related formulae, indices or specific relationships with

published prices are most commonly used. When using indices make sure they are relevant to the requirement – do not assume that the Retail Price Indices is necessarily the best, or only, benchmark. Advice should be sought from the Head of Finance.

8.6 Other changes

In long term contracts there may be changes of requirement and technology. There may be changes to increase efficiency. The contract arrangements should be flexible enough to accommodate these.

8.7 Dealing with poor performance

There are occasions when contracts do not work satisfactorily. It is a primary role of the Contract Manager to deal with these issues and there are some essential elements to this process;

- Agree performance criteria and review progress
- Keep everybody informed
- Record everything, maintain a site diary
- Ensure that all communications are acknowledged
- Determine the extent of client, user and contractor involvement
- Define and understand the cause of the problem
- Deal with problems urgently
- Consider whether and at what stage sanctions are appropriate

8.8 Termination

When the contract terminates, it comes to an end. Usually this is a predicted and natural conclusion causing little or no discomfort to either party. However an unplanned termination may have significant impact on the Council's operations and the Contract Manager must ensure that there is an exit strategy to minimise this risk.

Every contract must contain a clause that allows for immediate termination in the case of liquidation, bankruptcy, corruption, collusive tendering or a material break.

It is also wise to include a clause that provides for termination and for dealing with poor performance. In such cases however you will need to ensure that reasonable notice is given and there is clear documentary evidence to support termination.

Any decision on contract termination must be referred to the Head of Legal Services.

8.9 Nominated and/or Named Sub-Contractors or Suppliers

8.9.1 No Sub-Contractor or supplier is to be nominated or named unless the proposed Sub-Contractor or supplier has been vetted for technical competence.

8.9.2 In the case of nominated Sub-Contractors:

(a) These Contract Standing Orders/Procurement Guidance shall as far as possible operate as if the Contract were between the Council and the Sub-Contractor.
(b) the terms of the Tender or Quotation must require the proposed Sub-Contractor to agree that (if selected) he will enter into a Contract with the main Contractor on terms similar to those in the main Contract as far as the work to be undertaken or goods to be supplied is/are concerned.
(c) the Head of Service must tell the main Contractor the identity of the Sub-Contractor whose Tender or Quotation is, in his opinion, the most satisfactory. If that nomination is accepted by the main Contractor, the Head of Service shall accept the Tender or Quotation of the Sub-Contractor.

8.10 Contracts Register

Each Contract Manager will be expected to update the Contracts Register on a quarterly basis, with the following information;

- Department/Section
- Project Contract
- Contract reference number and/or OJEU reference number
- Information provided by (name of officer)
- Total Value (aggregate value if longer than 1 year, or a series of continuations / call offs): estimate or tender total
- Start Date
- End Date
- Extension Period
- Contract Award date
- Supplier/Contractor Details – Name and Location (local office to be used if applicable)
- Contractual Arrangements: agreement, formal contract (type of contract used), framework (in house or 3rd party), how order was placed
- How works have been procured: tenders/quotes
- How Supplier/Contractor sourced, approved list, public advert, other means
- Enterprise Category (SME Status – Small, Medium Enterprise): Medium/Small/Micro or Voluntary or Charitable organisation
- VAT Information (Value Added Tax that cannot be recovered)
- Notes

8.11 Custody and Retention of Contracts

8.11.1 A copy of contracts awarded by the Council is retained for the records by the Legal Team under the supervision of The Head of Law and Governance.

Contracts signed as a deed are retained for 12 years after the contract term has expired. Contracts not signed as a deed (signed under hand) are retained for 6 years after the contract term has expired.

Officers involved in contract management should keep a copy of each contract under their management either electronically in the relevant project folder and/or as a hard copy for their records. The same terms of retention detailed above is applicable.

9.0 Partnering

9.1.1 There is an increasing requirement for partnering contracts. In so far as such is to be with the private sector these procedure rules will apply but such arrangements may be considered a special circumstance and the provisions of CSO 1.7(b) may apply. Prior to the commencement of any negotiations (as compared to establishing whether such partnering may be of benefit to the Council) the Head of Service should discuss at Management Team.

9.1.2 In the case of partnering arrangements with bodies designated as public bodies for the purposes of the Local Authorities (Goods and Services) Act 1970 these procedure rules in so far as they relate to tendering requirements shall not apply but any proposal to enter into negotiations shall be subject to the prior approval of the Deputy Chief Executive.

9.1.3 In all instances regard must be had to the Financial Procedure rules in relation to proposals to Externalise Services/Competitive tendering.

9.1.4 Any partnering arrangement must be the subject of a written agreement (in a form to be agreed by the Head of Law and Governance) clearly setting out the partners respective responsibilities and liabilities.

9.1.5 Partnering Contracts may involve other public sector bodes, the private sector, charities and other agencies. The success factors that should be included in any partnership arrangement should include:

- A focus on agreed outputs
- A culture of continuous improvement
- A friendly but professional and business-like relationship
- Both parties strive to achieve openness and trust

- Information shared opening and efforts made to solve problems together at an early stage, before they become critical
- Innovation encouraged with both parties being proactive not reactive
- Poor performance confronted and joint solutions sought
- Both parties work towards the achievement of mutual objectives
- Services delivered on time, within budget, in accordance with specification and required standards
- Both parties prepared to change, with difference respected and risk appropriately apportioned
- Avoidance of a contract management bureaucracy
- Arrangement for continuous dialogue, both informal and formal
- Flexibility to meet changing circumstances
- A sharing of risk and reward

10.0 Managing the risk of Procurement Fraud

10.1 Following a standard risk management process, procurement fraud risk should be identified and assessed and appropriate strategies for their management should be implemented and kept under review.

Fraud and corruption can occur during the procurement phase (including preliminary market consultation) and the contract management phase of the procurement cycle. A number of procurement and contract fraud risks (not exhaustive) are listed in the table below;

Procurement fraud risks	
Price fixing	Suppliers collude to fix the prices they will charge
Market sharing	Suppliers collude to divide up markets between them (eg. geographical market share)
Bid rigging	Suppliers collude to ensure a particular bidder wins the contract, for example by reaching an agreement on the bids that will be submitted. Bid rigging may involve 'cover pricing' where high bids which are not intended to be successful make the favoured bid more attractive, and may involve 'compensation' payments to those bidders who do not win. 'Bid suppression' is where one or several bidders withdraw their bid (or fail to bid) or 'Bid rotation' is where bidders take turns at submitting the lowest price.
Manipulation of specifications	Specifications are manipulated to favour a particular bidder. Or specifications not fully developed before contract award. Manipulation of specifications can result from inappropriate involvement in the shaping the requirement during preliminary market consultation

Manipulation of procurement procedures	The procurement procedure is manipulated to ensure a particular bidder is successful. For example: Rigging of exclusion/selection (PQQ) criteria and contract award criteria Unjustified recourse to single sourcing (direct negotiation) or contract scope change without the need for re-competition Unjustified contract extension Abuse of competitive dialogue procedure, negotiated procedure with competition or innovation partnership procedure (eg. by disclosing confidential and commercially sensitive information about other bids to a particular bidder during negotiations) The problem can be exacerbated by the complexity of public procurement procedures
Bribery for awarding a contract	A bribe is given to a council employee or councillor to secure the award of a contract
Bribery for disclosing confidential information	A bribe is given to a council employee (or councillor) to secure the disclosure of confidential and commercially sensitive information such as the content of competing bids.
Conflict of Interest	A council employee or councillor does not disclose a pecuniary or other personal interest in a contract. This might be perceived to compromise their impartiality and independence in the context of the procurement or contract management process
Cyber-fraud	Hacking into council systems to obtain confidential and commercially sensitive information

Contract Management Risks	
Overcharging	Overbilling in relation to the goods and services which have been delivered. This included unjustified expenses claimed by consultants.
Duplicate payments	The council is charged twice for the same goods or services
False invoices	A form of identify fraud. Payment to a genuine supplier is diverted to a bank account controlled by the fraudster. This could also be an internal fraud perpetrated by a council employee. External fraudsters can exploit information published by the council under the transparency agenda.

False claims and variations	Unjustified contractual claims and payments for contract variations. This type of fraud is often associated with under-priced bids ('loss leaders')
False performance reporting	Payment is claimed for levels of performance that have not been achieved.
Phantom suppliers	A fictitious company, or a real company that does not have a genuine relationship with the council, is set up as a supplier and received payment
Sub-standard materials	Cheaper materials are substituted for those specified in the contract. The use of sub-standard materials may also carry health and safety risks and environmental risks.

10.2 The Council operates a system of internal control to mitigate the risk of procurement fraud, a number of measures are listed below, and should be reviewed periodically;

Internal Controls	
Financial regulations	• Financial delegates/authorisation limits • Record keeping/audit trail requirements • Separation of duties in ordering process including separation of responsibility for raising orders, authorising expenditure and receiving the goods and services so that no single individual has control over the whole process • Supplier set-up process • A policy of no purchase order, no payment • Risk management • Reporting of fraud and corruption • Reporting of money laundering
Contract Standing Orders and procurement procedures	• Thresholds for competition (quotations and tenders) • Compliance with EU procurement law • Authorisation of single sourcing and waivers • Conflict of interest • Confidentiality • Due diligence on prospective suppliers (PQQ's/supplier suitability assessment) including sub-contractors • Contract register • Regular contract reviews • Separation of duties in sourcing process including authorisation of expenditure, receipt, opening and recording of tenders (especially where non-electronic), tender evaluation, minimum of two to be present during any competitive dialogue or negotiations

	• Mandatory use of standard templates eg for tender evaluation
Scheme of delegation	How authority is delegated to councillors and officers
Councillor code of conduct	Includes required to declare interests
Employee code of conduct	Includes required to declare interests
Register of interest	Both councillor and employee interest should be record in a register
Register of gifts and hospitality	Non-trivial gifts and hospitality received by councillors and employees should be recorded in a register
Risk register	The council should maintain a strategic risk register
Confidential reporting policy (whistleblowing)	Confidential 'hotline'
Procurement documents	• Mandatory use of standard documents • Pre-qualification questionnaire (PQQ)/supplier suitability questions for low value requirements include EU mandatory and discretionary exclusion grounds • Non-collusive tendering certificates • Information on sub-contractor to be disclosed before commencement • Standard terms and conditions of control include non-collusion clause and provide for termination/removal of contractor personnel for fraud and bribery

APPENDICES

Appendix A – Buying in of External Expertise and Single Source Supplier Flow Chart

Process Flowchart

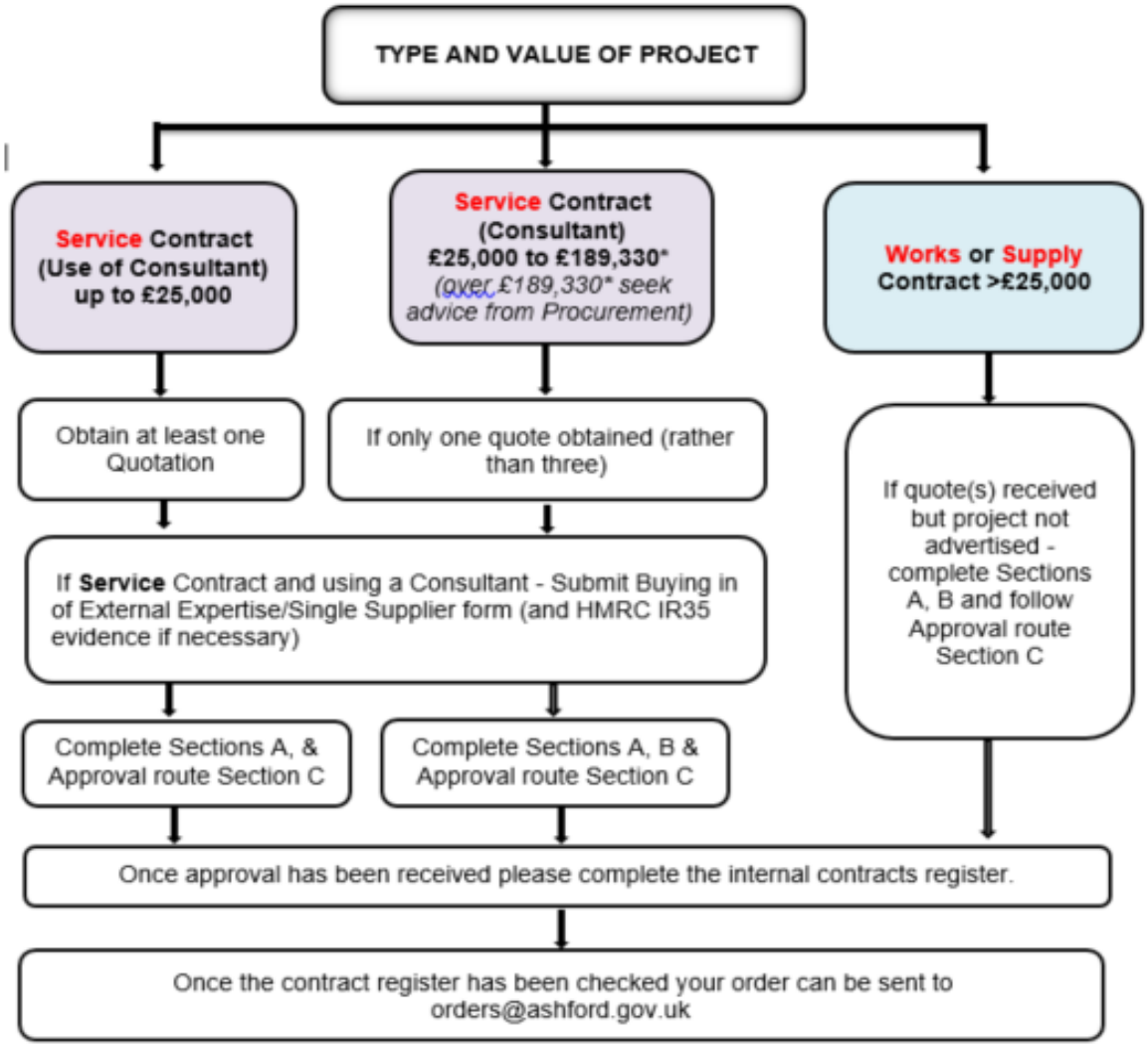
Buying in of External Expertise (Consultants) (any value) *and/or*

Single Source Supplier

Contract Standing Orders should be referred to before a procurement exercise is undertaken and prior to following this process.

Kathy and 'Orders' will not be notified of any appointment until the contract register is completed.

This process is to be followed when you want to employ a Consultant (any project value) **(Buying in of External Expertise)**, and/or if you are only obtaining one quotation where the value of the project up to £25,000 **(Single Source Supplier).**



**EU Threshold for Services Contract January 2020*

Appendix B - Buying in of External Expertise and Single Source Supplier Form

(Refer to CSO 3.1 and Procurement Guidance 3.1)

Buying in of External Expertise (Consultant) any value) and/or Single Source Supplier

Contract Standing Orders should be referred to before a procurement exercise is undertaken, and prior to following this process

1. **Form to be completed by the Project Manager.**
2. **If 'Buying in of External Expertise - select one category from either category 1, 2 or 3 ✓AND indicate if single source supplier.**
3. **If 'Buying in of External Expertise' HMRC form to be completed scanned and submitted with this form.**
4. **Completed form and IR35 to be sent to procurement@ashford.gov.uk.**
5. **Form will be circulated to the approval group and Project Manager will be informed of outcome.**
6. **Complete Contracts Register https://ashford.gov.uk/internal-contracts-register once completed Procurement Team will contact Finance to confirm appointment.**
7. **If value of appointment exceeds £25K and Exceptions to Contract Standing Orders have been used, an Information Digest report (held on Intranet) should be completed by the Project Manager and sent to procurement@ashford.gov.uk**
8. **When approval has been received, and a purchase order is required this can be downloaded from the Intranet.**

BUYING IN OF EXTERNAL EXPERTISE		
Category 1	'Specialist Advice or Specialist Services' that are not considered normal to day to day operational service activity	☐
Category 2	Interim Support	☐
Category 3	'Business as usual' normal day-to-day operational service needs that can only be sourced externally	☐

and/or SINGLE SOURCE SUPPLIER		
	Is project value >£25,000 and one quote has been obtained	☐

9. Buying in of External Expertise (in relation to IR35)

If you are 'Buying in External Expertise' HMRC requires us to establish if a worker on a specific engagement, should be classed as employed or self-employed for tax purposes.
Before you complete the 'Buying in of External Expertise' form please use the HMRC tool that can be found at: **https://www.gov.uk/guidance/check-employment-status-for-tax** to carry out this assessment.

Once you have completed this please (save/scan) and attach it to the 'Buying in of External Expertise' (this is our audit trail for HMRC that we have considered the IR35 status of the consultant). (further guidance notes at the end of this form)

SECTION A	BUYING IN OF EXTERNAL EXPERTISE and/or SINGLE SOURCE SUPPLIER – Type of assistance required

1. Project Details

1.1 Project Title
1.2 Briefly describe the Project/Work which requires the need to buy-in external expertise, a consultant or single source supplier

2. Expected Costs

2.1 Full estimated cost for term of the appointment (assessment of full requirements should be made including estimates of requirements needed beyond immediate phase)
2.2 If project is externally funded, please detail;

3. Consultant/Supplier/Contractor's details

3.1 Name and Address

3.2 If you are engaging particular external expertise, what are the reasons why you are not using internal resources or another external partner?
3.3 Procurement process followed and justification of single source supplier (if project exceeds £25,000 – see Section B below)

4. Expected Deliverables

4.1 Short summary of what you expect to be delivered
4.2 Expected Benefits

4.3 Anticipated commencement and completion date						
Start Date				Completion Date		
4.4 Any additional support required for consideration						

5. Budget Available? YES ☐ If Yes, Code ? NO ☐

6. If there is NO Budget – has spend been approved by Management Team? and is so where is project being funded from, i.e. Reserves

7. Is this Rechargeable or Externally Funded? YES ☐ NO ☐ Fully / Partially funded *(delete as appropriate)*

8. If, Buying in of External Expertise and Value is under £25,000 go to SECTION C below.

9. If value of Project was not advertised and/or tendered, and valued over £25,000 complete SECTION B below

SECTION B	**SINGLE SUPPLIER SOURCING – Value over £25,000 and under £189,330* (not advertised and/or not tendered)**

Above £25,000 but below £189,330* and a Manager proposes to waive the need for advertising/tendering and/or or for more than one tender or quotation please complete the section below – CONTRACT STANDING ORDERS: EXCEPTIONS TO MARKET TESTING then SECTION C for Approvals. Once approval received an Information Digest report will also have to be produced, and appended to the next appropriate committee agenda.

UP to £25,000 you can obtain a quotation, gain approval for use of external expertise (SECTION C) and issue an order/contract.

CONTRACT STANDING ORDERS: EXCEPTIONS TO MARKET TESTING

Please select at least one (more than one may apply)

(a) if the Council or the Cabinet decides otherwise and gives its reasons in the Minutes. ☐

(b) in the case of an emergency or other special circumstance identified by the appropriate Head of Service. If this happens, the Head of Service must include a report in the Information Digest. The report must identify the particular Contract Standing Order which has not been followed and the reasons. ☐

(c) The Head of Service is satisfied that services can only be supplied by one supplier/consultant ☐

(d) The identity of the person supplying a professional service is important. ☐

(e) It is specialist work and the skill of the particular supplier/consultant is important ☐

(f) Contracts for the retention of legal counsel and other legal experts for advice or advocacy services, and the appointment of expert witnesses, in or in contemplation of legal proceedings, inquiries, tribunals etc. ☐

This approach to procurement of legal services reflects the special fiduciary nature of the lawyer/client relationship to which mutual trust and confidentiality are integral, and makes the personal and professional suitability and identity of the lawyer (or other expert) critical. In addition, in the context of (potentially) litigious matters, public advertisement and detailed specification of outputs as part of a market testing approach will usually be inappropriate or impractical.

Nonetheless there remains a need to ensure the Council receives value for money in such arrangements and that statutory rules are followed where needed. This may include some market testing where the nature of the legal work means it is readily able to be specified in advance eg: some types of project-based non-contentious work. Otherwise, it will be important to demonstrate that procurement is open, based on highly informed market judgments as to the proper balance between cost and

quality and is the subject of appropriate consultation with client officers and the Management Team where appropriate

If there is any doubt about whether any exception can be used, the Head of Service should seek the advice of the Director of Law and Governance Services. The Head of the Audit Partnership may also be consulted.

SECTION C	**APPROVALS** • Project Lead to complete sections below. • Procurement team to circulate form for electronic sign-off (e.mail – use of voting buttons) by approval groups. • Once approvals received and the Contract Register completed procurement will confirm approvals by e:mail to Finance Kathy.mant@ashford.gov.uk and orders@ashford.gov.uk • Project Lead to complete Order template and send to orders@ashford.gov.uk. • If value of project between £25,000 and £189,330* and a Single Source Supplier is being used an Information Digest Report also needs to be produced and submitted to Committee Section.

Proposed by;			
	NAME	JOB TITLE	SERVICE
Project Lead			

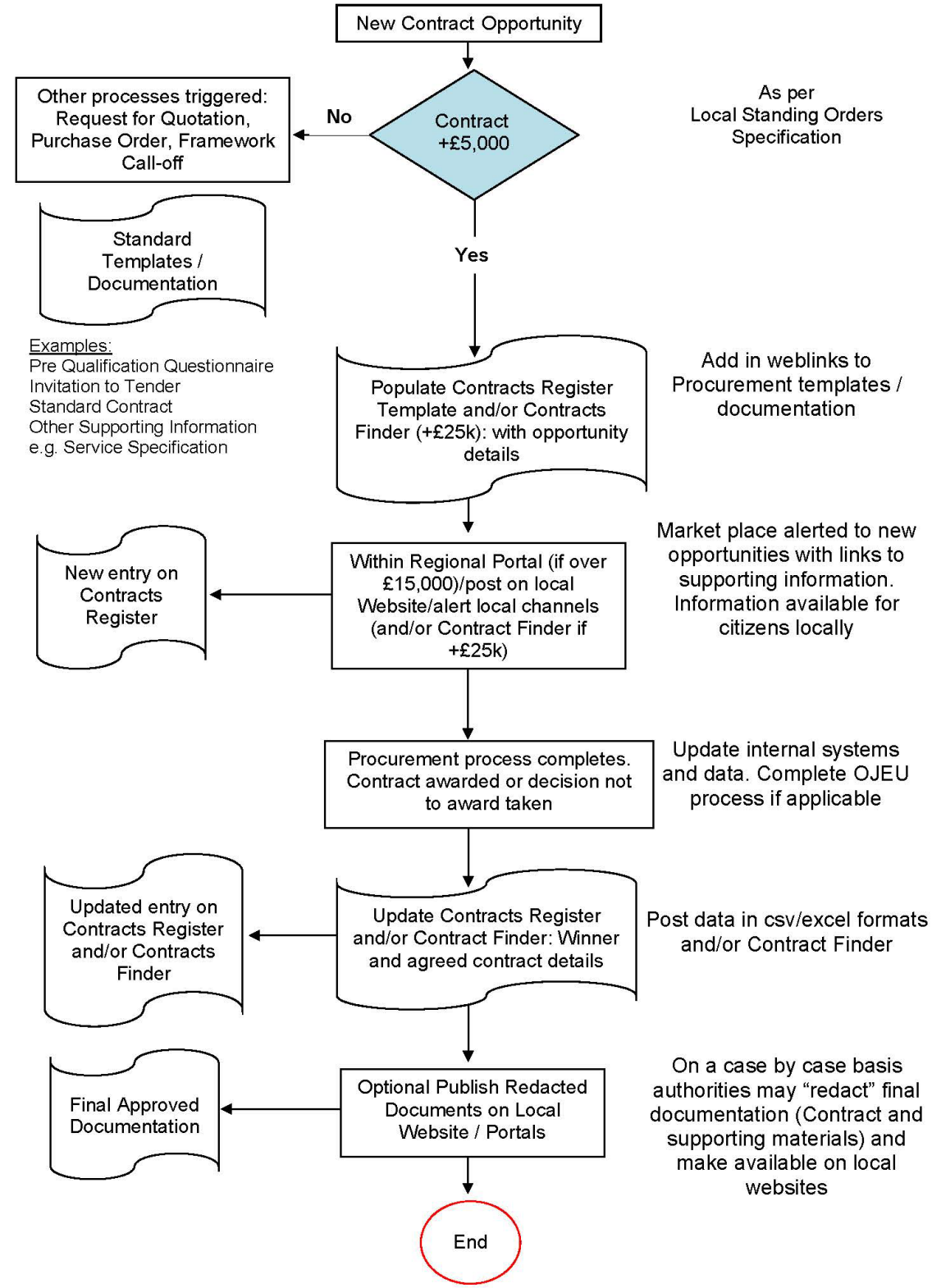
BUYING IN OF EXTERNAL EXPERTISE		
Approval List A: If the estimated cost of appointment is under £25,000 this should be approved by the following		
	NAME	JOB TITLE
Head of Service		

BUYING IN OF EXTERNAL EXPERTISE and/or SINGLE SOURCE SUPPLIER		
Approval List A: If the estimated cost of project is above £25,000 and below £189,330 this should be approved by the following;		
	NAME	JOB TITLE
Head of Service		
Approval List B: If the estimated cost of the project is above £189,330 to be approved by those listed below;		
	NAME	JOB TITLE
Head of Service		
Director		

Approval List C: If the use of Consultant is to cover staff gaps, and you weren't able to fill the position by approaching the companies on the Preferred Supplier List for the Supply of Temporary Agency Staff, this request should also be approved by;	
Head of HR and Customer Services	Michelle Pecci

*EU threshold for 'Supply of Goods and Service Contracts' January 2020

Appendix C – Local Government Transparency Code 2015: Open Data: Process for publishing New Contracts and Tenders documentation and data



Source: Local Government Associated: Local Transparency Guidance – publishing spending and procurement Version 1.2 8th April 2015