



Horsham District Council

Horsham Procurement Code

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HORSHAM PROCUREMENT CODE

INTRODUCTION AND OFFICER ROLES & RESPONSIBILITIES

1. INTRODUCTION

- 1.1. The Council’s Procurement Code establishes the legal framework through which the Council must undertake its commissioning and procurement activity. The purpose of the Horsham Procurement Code is to provide additional information and clarity on the rules for procurement of all the Council’s goods, works and services as required by the Local Government Act 1972. The Procurement Code ensures a system of openness, integrity and accountability and incorporates the legal requirements of the Public Contract Regulations 2015 to which we must comply along with supporting Procurement Policy Notes which are issued by the Cabinet Office
- 1.2. Procurement and Commissioning decisions are important because the money involved is public money and the Council is concerned to ensure that high quality goods, works and services are provided. Efficient use of resources in order to achieve *best value and to achieve the required outcomes* is therefore an imperative. The Council’s reputation is equally important and should be safeguarded from any accusation of dishonesty or corruption.
- 1.3. The Horsham Procurement Code applies to all procurement by the Council of works, goods and services. They do not normally apply to acquisitions and disposals of land or buildings. The Horsham Procurement Code applies to all Council employees and elected Members. The Director of Corporate Resources shall have responsibility for maintenance, update and issuing the Horsham Procurement Code.
- 1.4. Procurement is a complex area and as the Horsham Procurement Code sets out legislation and the rules that need to be followed it can seem daunting because it covers all potential procurements. Many aspects of the Code will not apply to individual procurements. If you want advice or further information, concerning this Horsham Procurement Code, you can contact any of the following officers:-

Dominic Bradley Director of Corporate Resources
Becca Williams Procurement Manager
Lauren Kelly Head of Legal and Democratic Services

2. ROLES AND RESPONSIBILITIES

2.1 Heads of Service:

2.1.1 The Head of Service has responsibility for all procurement activity undertaken by their Department and for ensuring such activity is undertaken in compliance with the Procurement Code. Heads of Service are accountable to the Cabinet for the performance of their duties in relation to contract letting and management, which are:

- Comply with the rules set out in the Horsham Procurement Code, the Councils *Financial Regulations*, the Code of Conduct for Local Government Employees, the Public Contract Regulations 2015, and with all other relevant UK legislation such as the Transparency Code, and Public Services (Social Value) Act 2012,
- To take immediate action in the event of a breach of the Horsham Procurement Code within their area including informing the Director of Corporate Resources of the breach;
- Ensure that there is an adequate approved budget prior to commencement of any formal procurement procedure to cover the full cost of the goods, services or works to be procured
- To ensure that where required, Cabinet Member approval for specific projects is obtained prior to committing expenditure and that the Cabinet Member is kept up to date with the progress of procurement exercises
- Ensure that agents, consultants and contractual partners acting on their behalf also fully comply with these requirements.
- In accordance with the Code of Conduct for Council Employees ensure they or any member of their staff (including any temporary staff or employed consultants) formally declare any personal or financial interest in a contract which may (or be perceived by another person to) inhibit their impartiality in recommending or agreeing to the contract award.
- Not enter into any leasing agreements or other forms of borrowing, including the set up of store or credit cards other than those arranged or approved by the Head of Finance.
- Ensure that the Council's Contract Register is updated with the details of any new, or extension to an existing, contract or agreement with a value of £5,000.00 or more.
- Keep records and documentation of all procurement exercises (see section 13 of the Horsham Procurement Code for details of how long records need to be kept)
- To ensure that where these responsibilities are delegated to other officers within their Department that these officers are familiar with the provisions of the Horsham Procurement Code and that they have received appropriate training before undertaking any procurement activity.
- Ensure that all procurements above the value of £50,000 are completed in consultation with the procurement team.

2.2 Director of Corporate Resources

2.2.1 The Director of Corporate Resources shall be responsible for:

- Ensuring the Horsham Procurement Code and Procurement Toolkit are kept up to date and easily accessible
- Providing training to Officers and Members

2.3 Head of Legal and Democratic Services

- 2.3.1 The Head of Legal and Democratic Services will ensure that:
- The Council's Procurement Code is kept up to date of any relevant legislative changes and any changes to the Council's Constitution.

3. DETERMINING THE CONTRACT VALUE

- 3.1 Prior to commencing a procurement process it is the responsibility of the Head of Service to estimate the *total value* of the contract or project. This will indicate which procurement route must be followed in order to comply with the Procurement Code and with the Public Contract Regulations 2015. The estimated value means the aggregated value payable in Pounds Sterling exclusive of Value Added Tax. Use the Above Threshold contract values (excluding V.A.T) when assessing the procurement route (refer to tables 4.12 and 22)
- 3.2 The total contract value is based on the whole cost of ownership and therefore includes not only the purchase price but all the associated costs over the entire contract period (including any potential extension). These could include installation, training, maintenance, consumable items and disposal costs.
- 3.3 If the expenditure on an item, service or with a particular supplier is recurring then the likely expenditure over a 12 month period must be determined and multiplied by the length of the contract. Where the contract is for an uncertain duration, then as per the requirements of the Public Contract Regulations 2015, the total value shall be determined as the value of the requirement over a period of 48 months.
- 3.4 Where the requirement covers several suppliers providing the same goods, services or works then the contract value shall be the combined sum of all the individual contracts.
- 3.5 Where the Council is collaborating or acting on behalf of other public bodies then the contract value shall be determined as the combined sum of all the individual public bodies requirements.
- 3.6 Where it is intended to package the contract into several different "lots", e.g. based on geographical area or by particular type of requirements, then the contract value shall be the total value of all the combined lots.
- 3.7 In the case of Concession contracts (i.e. where the Service Users as opposed to the Council make payments to the contractor for use of the service) then the total value (i.e. turnover) of the contract must be used to determine the contract value. Procurements for Concession contracts should be undertaken in accordance with Section 11.3.
- 3.8 Contracts cannot be shortened in length to less than 48 months, or a contract requirement split into separate or smaller packages, solely to avoid an Above Threshold or local tender threshold.

4. DETERMINING THE PROCUREMENT ROUTE

- 4.1 All tender processes (any contract value of £50,000 and above for goods and services and £100,000 and above for works contracts)¹ must be notified to the Procurement team.
- 4.2 The majority of the Council's procurement activity falls within the Goods and Services contract categories. The table below (4.12) identifies the procurement route required depending on the value of the contract. Works contracts are generally for construction related projects and therefore only used by a few departments within the Council, the Works thresholds table can be found in section 22.
- 4.3 Where the requirement covers a combination of goods, services and/or works then the element with the greater value will determine the procurement route followed. For example, the purchase of a piece of equipment (goods) for £10,000 together with building related works to fix it in situ costing £20,000 would be a Works contract. These rules also apply in circumstances where there may be a mixture of services some of which may be subject to the *Light Touch Regime*, see section 11.2.
- 4.4 In all instances, if there is a current corporate contract in place for the goods, works or services required then the corporate contract must be used, and no further quotations or tenders are required. Details of corporate contracts are available on the procurement pages of the intranet.
- 4.5 The use of Framework Agreements is permitted for any value of contract, please see section 5 for further information on what a Framework Agreement is and how to access them.
- 4.6 Any procurement exercise triggered as a result of an Expression of Interest submitted under the Community Right to Challenge shall be undertaken in accordance with the requirements detailed in this Horsham Procurement Code.
- 4.7 With the exception of any employee-led mutual organisation tenders or quotations will not be invited or considered from individual Council employees, business partnerships in which a Council employee is a partner, companies in which a Council employee is a paid director or any business where a Council employee has an interest which exceeds a nominal value of £25,000 or one hundredth of the total issued share capital.
- 4.8 The selection and engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to this Procurement Code.
- 4.9 The requirement to seek written quotations or tenders shall not apply where the Council is:
- (a) seeking arbitration or conciliation services;
 - (b) seeking the advice of counsel;
 - (c) seeking services of counsel by way of representation;

¹ A Goods (Supply) contract covers the procurement of products e.g. stationery, vehicles, equipment etc. Services contracts are the procurement of skills and expertise provided by an individual or other organisation (e.g. grounds maintenance, facilities management, training etc.) Works contracts cover the procurement of any building work, building repairs and maintenance, construction, civil engineering etc.

- (d) seeking the services of an expert witness;
- (e) acquiring (or renting) or disposing of land or existing buildings or other immoveable objects;

4.10 Certain partnerships arrangements with other organisations (usually other public bodies) to provide services on behalf of the Council may fall outside of the scope of the Public Contract Regulations 2015. Heads of Service should consult the Director of Corporate Resources or Head of Legal and Democratic Services if such a partnership is being considered.

4.11 The Council does not allow the use of Approved or Preferred Supplier Lists that have not been created by open competition.

4.12 **Procurement Thresholds and Contract Award Procedure - Goods and Services Contracts** (see 22 for Works contracts thresholds)

Total Value	Procurement Route	Receipt of Quotes/ Tenders	Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
Under £19,999.99	Evidence of value for money	N/A	Relevant Budget Holder	Signature and / or purchase order raised	Publish details of all purchases/ contracts over £5,000 in Council's Contracts Register via the e-form
£20,000 - £49,999.99	Three written quotations	Quotations returned electronically to the Department and opened and reviewed by at least two officers or to be electronically opened by an officer using the Councils approved e-tendering package	Relevant Budget Holder	Signature	Publish details of all contracts in Council's Contracts Register via the e-form
£50,000 – £214,904[^] inc. VAT; £179,087 exc. VAT	Local Tender - by advertisement on the SE Shared Services Portal and Contracts Finder. Other media can also be used	Tenders submitted via Council's secure e-tendering platform and electronically opened by two officers once closing date and time has passed.	Up to £100,000 Head of Service approval	Up to £100,000 Signature	Publish details of the Contract Award on SE Shared Services Portal and Contracts Finder
			Over £100,000 but below £250,000 relevant Cabinet Member via Delegated Authority Report*	Over £100,000 Sealing	Publish details of all contracts in Council's Contracts Register via e-form
Above Threshold £214,904[^] inc. VAT; £179,087 exc. VAT	Invitation to tender by advertisement on the SE Shared Services Portal, Contracts Finder and in Find a Tender service. Other media may also be used.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Over £100,000 but below £250,000 relevant Cabinet Member via Delegated Authority Report* -	Sealing	Publish details of the Contract Award on SE Shared Services Portal and Contracts Finder and on Find a Tender.
			Over £250,000** PDAG prior to issue of tenders and Cabinet approval following evaluation***		Publish details of all contract in Council's Contracts Register via e-form

* The Delegated Authority report should be completed using the Cabinet Member Decision template. Once signed, the front page should be sent to Committee Services for publication. Once published you should await five days before you formally award the contract. Please note that publication is public on the website and therefore you need to ensure that the name of the supplier being awarded the contract does not appear on the front page.

** All contracts with a value of over £250,000 must be included on the forward plan for 28 days before any contract award can be made. PDAG must be consulted prior to the issue of tenders as this allows discussion pre tender issue, you do not need to go to PDAG following completion of the tender process.

*** You may wish to seek Cabinet approval prior to commencing the procurement process this approach assists in speeding up the contract award procedure and can be useful to get buy-in up front. If this approach is taken you will need to seek Cabinet Approval to delegate the award of the contract to either the relevant Cabinet Member or Director. This is particularly useful on collaborative procurement projects.

^ This value is inclusive of VAT- previous values were exclusive of VAT.- Please ensure that you take this into account when calculating contract value. Please refer to 3.1 and the Procurement Team for advice.

5. USE OF FRAMEWORK AGREEMENTS

- 5.1 A Framework Agreement is a contract that has been officially tendered for by another local authority, public sector organisation, Purchasing Consortium, or central Government. The contract is awarded to one or more suppliers and has provision to allow other public sector bodies to use the contract without having to undertake their own tender process so long as these public bodies have been clearly identified in the advert which led to the creation of the Framework Agreement. Acquiring goods, works or services under a Framework Agreement can be a very efficient method of procuring the Council's requirements.
- 5.2 Framework Agreements (including Dynamic Purchasing Systems) may be used at any of the threshold levels as an alternative to the procurement routes identified in Tables 4.12 and 22 subject to 5.3 below. A framework agreement should only be used where the benefits justify its use.
- 5.3 Caution must be taken to follow the rules for accessing a Framework Agreement as these rules can vary from one Agreement to another. Failure to comply with the rules of a Framework Agreement could result in the Council being found in breach of the Regulations and either fined or have the contract cancelled. Guidance should be sought from the Procurement Team in order to:
- Establish if the Council can legally access the Framework Agreement;
 - Check that the advertised total contract value of the Framework Agreement has not been exceeded;
 - Determine whether the Council must enter into an agreement with the Authority that created the Framework Agreement prior to using it;
 - Establish the rules of the Framework Agreement governing the selection and invitation of organisations listed on the framework. Where no guidance is provided all organisations listed on the Framework Agreement shall be invited to tender in accordance with the local tender process outlined in this Procurement Code;
 - Establish the evaluation criteria that must be used on the framework agreement to determine the successful Tenderer;
 - Comply with any minimum requirements outlined in the Framework Agreement regarding the provision of information to the bidders;
 - Acknowledge that **only minor modifications** to the Terms and Conditions of the Framework Agreement are permissible. If more substantial contractual modifications are required, the Council must tender for the requirement in its own right;

- Comply with any minimum timescales for bidders to respond to the Council's Invitation to Tender;
- 5.4 Ensure that where the value of the requirement is £50,000 and above for goods and services or £100,000 and above for works, tenders are returned in accordance with Section 11.11. The use of the Framework Providers e-tendering portal is permitted.
- 5.5 Ensure that the provisions for the *Contract Award procedure* detailed in the Framework Agreement including any requirement to observe a "Standstill Period" are followed. In addition, the Council's procedure detailed in Section 12 on Contract Award must be followed.
- 5.6 Once use of the Framework Agreement has been concluded the Head of Service shall ensure details of the subsequent contract are published in accordance with the requirements of the Transparency Code and Council's Contracts Register detailed in with section 18. A contract award notice must also be published on Contracts Finder, if over the value of £50,000.

6. **EXEMPTIONS**

- 6.1 There is provision within the Horsham Procurement Code for the requirements of obtaining quotations or tenders to be waived, however the following conditions apply:
- **NO exemptions can be made if the Above Threshold Procedure applies (other than in cases of force majeure)**
 - **NO exemptions can be made retrospectively.**
- 6.2 An exemption can only be applied when it is to the clear benefit of the Council to exercise an exemption. In considering whether an exemption is appropriate, an assessment needs to be made of the costs, benefits, outcomes and risks that follow should an exemption be agreed. An exemption shall only be agreed where the risks are proportionate to the benefits. The justification for an exemption must be evidenced in writing.
- 6.3 Although it is not an exhaustive list, it is likely that the grounds for the exemption will be one of the following:
- A contract is required as a matter of genuine urgency (e.g. flood alleviation/damage) or in force majeure situations where it is not possible to complete a full tender process.
 - Unforeseen circumstances that any diligent Council could not have foreseen (e.g. national pandemic).
 - There are sound reasons why there would not be a genuine competition or no reasonable alternative is available, for example IT software maintenance.
 - The specification for goods and services is of a particularly specialised nature which only a very limited number of suppliers can meet. Tenders/quotes will be invited from all suitable suppliers
 - The contract period cannot be accurately determined as the service area is undergoing review or restructure which may change future requirements. In these instances, an exemption may be granted for a limited period in order to ensure the correct delivery model can be agreed prior to tender or quotation.
 - An additional piece of work is required that the Council could not have reasonably envisaged and can therefore only be completed by a specific

supplier. For example, upgrades to existing IT systems where it is not financially feasible to use an alternative supplier or replace the whole system. NB – this may result in a contract variation being required rather than an exemption. In all instances if the original contract value is likely to be exceeded you should seek advice from the Head of Legal & Democratic Services.

- 6.4 All exemptions and the reasons for them must be recorded using the [Procurement Exemption Form](#) on the intranet. The Head of Service seeking the exemption must provide clear and sufficient evidence why the contract matches one or more of the criteria set out above. NOTE: this evidence may need to be provided to the Cabinet Office to explain why a procurement process was not undertaken. If there is uncertainty whether the exemption is likely to be granted advice should be sought from the Procurement Team.
- 6.5 All exemptions for a contract value of £99,999.99 or less must be approved by; the relevant Head of Service, the Monitoring Officer (Head of Legal & Democratic Services or nominated representative) and Chief Finance Officer (Director of Resources or nominated representative). If the exemption relates to a request by the Chief Finance Officer, then an alternative Director should approve the exemption. A copy of the approved electronic Exemption Form shall be emailed to the relevant Head of Service, and the Procurement Team for storage.
- 6.6 All exemptions for a contract value of £100,000 and above must be approved by the relevant Head of Service, the Monitoring Officer and the Chief Finance Officer in consultation with the relevant Cabinet Member. A copy of the approved Exemption Form shall be emailed to the relevant Head of Service, the Procurement Team and to Democratic Services for recording in the electronic database of delegated decisions managed by the Director of Corporate Resources.
- 6.7 If the value of the exemption exceeds £250k (allowable on works contract only where the tender threshold is higher) then the request for exemption must be treated as a key decision and taken by Cabinet. It is the responsibility of the Head of Service to seek Cabinet approval.
- 6.8 If an exemption is agreed it will still be necessary to complete the contract administration procedures such as contract formation and checking of insurances and recording in the Contracts Register (section 18) in a timely manner.

7. PRE-PROCUREMENT

- 7.1 Heads of Service should contact the Procurement team well in advance of undertaking any procurement including Concession contracts over the value of £50,000 in value, in order to identify the particular requirements which may need to be incorporated into the project specification and contract.

8. STAKEHOLDER AND EARLY MARKET ENGAGEMENT

- 8.1 Early market engagement with organisations which may be interested in supplying goods or providing services to the council is encouraged.
- 8.2 A structured dialogue with independent experts, trade association bodies or suppliers/organisations operating in the marketplace may help to identify the current capabilities, any new developments or innovations in the pipeline, and assist in

estimating the cost of the requirements and may create more interest in your tender process.

- 8.3 The advice obtained may be used to assist in the creation of the procurement documentation and inform how the procurement process is conducted but Heads of Service must ensure that such use does not distort competition or discriminate against any suppliers or organisations.
- 8.4 It is recommended to consult with the procurement team about approaches to market engagement.

9. LOCALISM ACT 2011: COMMUNITY RIGHT TO CHALLENGE AND SOCIAL VALUE ACT 2012

- 9.1 The Act gives a Right for organisations such as charities, voluntary bodies, Parish Councils and two or more Council employees to submit an expression of interest in running a council service.
- 9.2 The Council has an obligation to consider all expressions of interest and if the application is successful the Council must commence a procurement exercise in accordance with the rules laid down in the Horsham Procurement Code and, where applicable, the Public Contract Regulations.
- 9.3 The Director of Corporate Resources is responsible for receiving, validating and accepting or rejecting expressions of interest in accordance with the Community Right to Challenge.
- 9.4 The Public Services (Social Value) Act 2012 requires the Council to have regard to economic, social and environmental well-being in connection with any Service contract above threshold where the Council commissions an individual, voluntary sector organisation, or company to provide those services on behalf of the Council. It may also be applied voluntarily on below threshold procurements.
- 9.5 Prior to undertaking a procurement process the Lead Officer should consider:
- How the procured service might improve the economic, social and environmental well-being of the *relevant area* (i.e. within the boundaries of the public bodies involved in the procurement exercise);
 - How the economic, social and environmental elements should be incorporated into the relevant procurement documentation such as the specification, evaluation criteria, and contract conditions. Only economic, social and environmental matters which are **relevant** to what is to be procured may be incorporated. Those that are included must be **proportionate** to the requirement being procured.

PROCUREMENT PROCESSES

10. QUOTATION PROCESS

- 10.1 Where the estimated value or amount of a proposed contract is £19,999.99 or less and provision has been made in the Council's annual budget for such expenditure,

the Head of Service or delegated officer concerned shall have the authority to enter into any such contract provided they are satisfied that the Council is receiving value for money. **A purchase order must be raised for all purchases via the Councils financial management system.**

- 10.2 Any contract valued between £20,000 and £49,999.99 for goods and services or between £20,000 and £99,999.99 for works should follow the formal quotation process. If there is any doubt whether the contract may exceed £49,999.99 (goods and services) or £99,999.99 (works) then a formal tender process must be followed.
- 10.3 A request for quotation shall, **where appropriate**, contain the following information (liaise with the [Procurement Team](#) or an up to date list of requirements and access to all the standard documents):
- Background information and instructions to bidders – concise relevant information about the Council, and details of the quotation procedure This must include the evaluation criteria along with any minimum levels of financial, legal and technical capability required. It should also include A statement that the Council is not bound to accept any quotation and that all submissions are at the supplier's own cost
 - The Specification/ Requirements document – details the goods, services or works that are required
 - Council Contract Terms and Conditions in a form approved by the Head of Legal and Democratic Services.
 - Price Schedule – a form/spreadsheet for the bidder to complete enabling them to easily submit a breakdown of the price
 - Method Statements – a series of questions in order to help evaluate the qualitative elements. The bidders may be asked to outline how the goods or services will be delivered and/or their capability/skills/experience of doing this (if appropriate to the contract)
- 10.4 Any requests for company information or requirements to meet minimum criteria or standards for example insurance documents, health and safety policy, evidence of financial strength and turnover etc must be relevant to the contract and proportionate to the value and/or risk of the requirement. Any minimum turnover threshold must be limited to not more than two times the total value of the contract. Documentary evidence that the supplier meets these criteria should only be sought from the preferred bidder prior to making the formal contract award decision.
- 10.5 As a minimum three suppliers, one of whom ideally should be a local² supplier, must be formally requested to provide a written electronic quotation. Suppliers can be chosen by any means deemed suitable by the Head of Service including use of the SE Shared Services Portal where suppliers that have expressed an interest in working with the council register their interest. Where there are less than three suppliers that can be invited to bid for the goods or service then this must be evidenced by the Head of Service by using the procurement exemption process as detailed in section 6.
- 10.6 The quotation process must be transparent, and all suppliers invited to submit a quotation must be issued with the same information at the same time and subject to the same conditions. Should any further information be issued this must be given to all suppliers on the same basis. A reasonable timescale for response must also be given.

² Local is defined as located within the boundaries of Horsham District Council

- 10.7 A record of all correspondence between the council and the suppliers shall be maintained. Details of any additional information provided to suppliers and any clarification questions from suppliers shall also be recorded. Responses to general clarification questions received shall be issued to all suppliers except where the question is of a commercially sensitive nature unique to a particular supplier. In such cases the response shall only be communicated to that particular supplier.
- 10.8 Quotations must be submitted electronically to a frequently monitored email address or via the Council's approved e-tendering package managed by the Procurement team.
- 10.9 After evaluating the quotations the Head of Service must notify all the suppliers of the award decision in writing as soon as practicable, including an offer to provide feedback to unsuccessful suppliers if requested.
- 10.10 The Head of Service must ensure that details of the contract award and successful organisation are published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 18).
- 10.11 All documentation must be kept for a minimum of 12 months. The successful quote should be kept for the duration of the contract period. (See section 13 for more information on record keeping).

11. **TENDER PROCESS**

11.1 **Scope**

11.1.1 There are four main types of tender process:

- a) "Local Tender" - defined as any procurement process below Threshold (see Thresholds);
- b) "Above Threshold Tender" – defined as any procurement above the relevant Threshold;
- c) "Light Touch Regime Tender" – a tender for certain categories of Services, including health, social services, sports/leisure, and certain legal services, which are outside the full regulations of the Public Contract Regulations 2015.
- d) "Concessions Contract" – normally an arrangement where the Service Users as opposed to the Council make payments to the contractor for use of the service. Concession contracts normally follow a "Local Tender" process irrespective of the value.

11.1.2 The duration of a Tender process will be dependent upon the complexity of what is being procured and the type of procurement process being undertaken.

11.1.3 Local tenders for Goods and Services **must** be conducted as a single stage 'open' tender exercise, without the use of any Selection Questionnaire (SQ). An 'open' tender exercise is where the Council advertises the opportunity and all interested parties may complete and return the full tender documentation. Local tenders for

Works projects or “Light Touch” Services above the goods and services threshold may use the national standard Selection Questionnaire. NOTE: There is very little scope to amend the standard Selection Questionnaire.

11.2 Light-touch Above Threshold Tenders

11.2.1 Several Service areas that are not subject to the full above threshold Tender process, but instead are subject to a ‘light touch’ (i.e. simplified) procurement regime, if the value of these services is above £663,540. If the value of the services is below this amount then a local tender process can be followed, some of the services include:

- Social and health services including wellbeing contracts
- Cultural, recreational and leisure/sports services
- Hotel and temporary B&B accommodation
- Catering services
- Legal services
- Bailiff services
- Security services including manned guarding and patrol services
- Post and courier services

11.2.2 For all tenders above threshold covered by this ‘light touch’ regime, the Lead Officer must ensure:

- The requirements are advertised in Find a Tender Service.
- The procurement is undertaken in accordance with the provisions in the Local Tender process
- A Contract Award Notice must be published on conclusion of the procurement

11.3 Concessions Contracts

11.3.1 A Concession contract (i.e. where the Service Users as opposed to the Council make payments to the contractor for use of the service) should be undertaken in accordance with the provisions for a Local Tender process.

11.4 Advertising of Tender Opportunities

11.4.1 **NOTE: The full set of tender documents must be ready and published on the e-tendering Portal at the time the advertisement is placed.** All local tender exercises must be advertised on the SE Shared Services Portal and Contracts Finder as a minimum, via the procurement team. Other media can also be used to ensure adequate market penetration. The advertisement must remain on these sites **for at least 28 days** (although 42 days is recommended) and contain details of the tender exercise including timescales, any minimum selection criteria the suppliers will be expected to meet, details of the award criteria and evaluation process and a link to the website where the tender documents are published.

11.4.2 In addition, all above threshold tenders must be advertised by the Procurement Team in the Find a Tender Service, and comply with the minimum timescales and information that must be provided. The contract notice must contain the estimated contract value excluding V.A.T.

11.5 Selection and Pre-Qualification Questionnaires and Short-listing (Above Threshold and Local Works Tenders Only)

- 11.5.1. The use of a Selection and Pre-Qualification Questionnaires is only permitted for above threshold Tenders and Local Works Tenders above the value of the goods and services threshold. They are not permitted for any other tender as required by legislation.
- 11.5.2 If you are undertaking an above threshold tender process for goods and services using the restricted route, the national standard Selection Questionnaire (SQ) must be used to short-list suppliers that you would like to invite to submit a formal tender. The SQ template can be obtained from the procurement team. The SQ template is a mandatory format set by UK Government with very limited scope to add additional questions.
- 11.5.3 For any Works contracts whether they are above threshold or local then the national standard PQQ [PAS91 2017] must be used if you are following a restricted procedure. There is limited scope to amend the template.
- 11.5.4 The Selection Criteria, weightings and any minimum pass-mark must be clearly communicated to potential suppliers either as part of the advertisement or in the SQ documentation. Selection criteria deal with the ability of the supplier to satisfy certain minimum levels of economic and financial standing, legal capacity and/or technical or professional ability including past experience.
- 11.5.5 Suppliers invited to respond must be given the minimum above threshold time period of 30 days in which to prepare and submit a SQ electronically to the e-tendering portal following advertisement of the opportunity on the SE shared service portal, Contracts Finder and the Find a Tender service. Details of minimum timeframes are available from the procurement team.
- 11.5.6 The Procurement documents must be published at the same time as the advertisement and shall contain the following information
- Information for Tenderers – concise information about the Council, what the requirements are, the document should include;
 - The timetable for the whole procurement process
 - Full details of the evaluation criteria and weightings that will be used to award the contract, along with the details of the evaluation procedure, scoring and minimum criteria required to progress to the invitation to tender stage
 - If it has been decided to invite a minimum and/or a maximum number of companies to tender these numbers must be stated. NB: for all tenders the minimum number of companies invited to tender is five (5)
 - Details of the process used to determine which companies are invited to tender if there are more suitable companies than the maximum number stated in the documents (e.g. “maximum number of companies invited to tender will be 10. In the event there are more than 10 companies the top 10 as determined by the total evaluation score will be invited to tender”)
 - Exemption for Freedom of Information Act, confirmation of non-collusive tendering and non-collusive tendering
 - Specification – detailing the Council’s requirements
 - Contract Terms and Conditions (see 12.5)
 - The Selection Questionnaire / Pre-Qualification Questionnaire (the national standard SQ/PQQ templates can be obtained from the Procurement Team)

11.6 SQ/PQQ Evaluation Process

11.6.1 The Head of Service must ensure that the process is transparent and that all applicants are treated fairly and equally at all times throughout the process. In particular:

- Confidentiality of SQ submissions, and the identity of Applicants are preserved at all times, information about one Applicant's response is not to be given to another Applicant
- SQs must be evaluated only in accordance with the Selection Criteria detailed in the advertisement/documentation, additional criteria or sub-criteria **must not** be used.
- a thorough SQ evaluation is undertaken by a minimum of two officers
- advice is sought from the relevant Service Department (or it may be agreed that the relevant Service Department undertakes the evaluation) on any areas of Selection Criteria that require specialist knowledge in order to evaluate effectively e.g. Financial Information, Equalities and Diversity, Health and Safety, Sustainability etc.
- That there is a formal detailed record of how the evaluation process was conducted and how the shortlist of those companies Invited to Tender (ITT) was reached. Details must be kept of all the discussions and outcomes of any moderation meeting where officers evaluating the submissions have discussed and amended, and the reasons for these amendments recorded.
- the SQ evaluation scoring spreadsheet and assessment is independently checked for accuracy before the Invitation to Tender (ITT) is drawn up

11.6.2. Upon conclusion of the SQ evaluation process the Head of Service must write to all unsuccessful applicants advising them of the reasons why they have been unsuccessful, allowing a short period of time for the applicants to request further information as required. If the applicant requests further information or a formal debrief this should be provided.

11.6.3. Heads of Service are advised to wait 5 days after the unsuccessful applicants have been advised before issuing the Invitation to Tender to the successful companies.

11.7 Invitation to Tender Pack – Local and Above Threshold Tenders

11.7.1 Tenderers must be given an adequate period in which to prepare and submit a proper tender consistent with the urgency of the contract requirement. For local tenders this should not be less than a period of 28 days with day one starting the day after the advertisement is placed, however, in order to ensure market penetration and high quality accurate bids, best practice guidance recommends six weeks. For above threshold tenders it should be the minimum period stipulated for the particular procurement route.

11.7.2 Invitations to tender must be proportionate to the value and level of risk associated with the requirements but shall include the following:

- Information for Tenderers – concise information about the Council, background to the project, details of the procurement process and the timetable for completion, full details of the evaluation criteria and weighting, including any sub-criteria, minimum financial/technical requirements, details of presentations/site visits/interviews that will be used to award the contract (see also 9.6). It should

also include a Form of Tender that includes confirmation of exemption from Freedom of Information Act and confirmation of non-collusive tendering and confirmation of no canvassing and mandatory and discretionary exclusions.

- Specification – detailing the Council’s requirements in enough detail to enable the submission of competitive offers
- Council Contract Terms and Conditions – all contracts to be in writing in a form approved by the Legal & Democratic Services team (see 12.5)
- Price Schedule – a clearly structured form/spreadsheet enabling the bidder to easily submit the full details of the tender prices excluding VAT
- Method Statements – a series of questions in order to evaluate the qualitative elements of the tender. The bidders should be asked questions which outline how the goods, works or service will be delivered and demonstrate their capability/skills/experience of doing this.

11.7.3 The tender documentation must be finalised and available at the time the advert is placed.

11.8 Evaluation Criteria

11.8.1 The evaluation criteria are those used to determine which suppliers are selected for Invitation to Tender in the case of a restricted process or to determine the award of the contract in an open tender process. These criteria fall into two categories Selection Criteria and Award Criteria:

11.9 Selection Criteria

11.9.1 Selection criteria are those which cover elements such as suppliers’ capability, capacity and past experience, for example to satisfy minimum levels of economic and financial standing, and / or technical or professional ability.

11.9.2 In an ‘Open’ procurement process any minimum requirements that suppliers need to meet should be stated in the tender documentation, and suppliers asked only to self-certify that they meet these requirements by completing a checklist. Evidence of compliance to these requirements should not be requested until after the Award Criteria have been applied and a Preferred Bidder has been identified.

11.9.3 The following list shows a range of Selection criteria that may be used and information which the supplier(s) may be asked to provide;

- Evidence that they fulfil the mandatory requirements and discretionary requirements (where applicable) relating to disclosure of criminal and misconduct offences required by Regulation 57 of the UK Public Contracts Regulations, 2015;
- Evidence that they shall hold valid public liability insurance or other required insurances at the values required by the council (or that they are prepared to obtain such levels of insurance cover). The types and levels of insurance cover required will be determined by the nature of the requirement. Guidance on the relevant levels of public liability should be sought from the Finance Team
- Evidence of a sound financial standing – this will normally be through audited trading accounts or other official financial/trading records. The requirements should be relative to the value and risk of the requirement, and if a minimum turnover threshold is required this shall not exceed twice the estimated contract value. The Finance Team should be consulted for advice.
- Evidence that they possess the necessary experience, skills and ability to perform the type of contract for which they are bidding;

- Satisfactory customer references from existing Public or Private Sector organisation clients;
- A copy of their company Health and Safety Policy and confirmation that the supplier conforms with statutory obligations;
- A valid CIS tax exemption certificate (for construction related procurements);
- Evidence of their Equalities Policy, and Environmental Policy and monitoring arrangements and confirmation that the supplier confirms with statutory obligations (optional depending upon the type of procurement);
- Evidence of Safeguarding policies and / or DBS checks where appropriate;
- Evidence of business continuity plans;
- Any other supporting relevant information and documentation as required.

11.9.4 In the case of a 'Restricted' procurement routes (above threshold and local Works tenders only) a national standard Selection Questionnaire may be used and appropriate evidence requested. See section 11.5

11.10 Award Criteria

11.10.1 Award criteria are used to assess the ability of suppliers to meet the Council's specification requirements and the cost of providing the service. This is often referred to as the Most Economically Advantageous Tender (MEAT) evaluation. The Tenderer should be requested to answer method statements (questions) to evidence that they meet the qualitative elements of the Award criteria; in addition, they should be requested to submit a Price Schedule in order to evaluate the price elements of the Award criteria. Information should not be requested that will not be evaluated.

11.10.2 Award criteria are split into Price and Quality criteria and given a percentage score. The criteria must be no less than 60% on price or no greater than 90% on price unless agreed in writing by the relevant Head of Service. An email is an acceptable method of gaining written approval.

11.10.3 Award evaluation criteria may include the following:

- Quality assessment of the requirement, including any technical or functional characteristics of the item or requirement;
- Equalities/accessibility considerations;
- Social, economic and environmental considerations linked to the specific requirement
- Innovation – solutions recommended over and above those detailed in the Specification
- Qualifications and experience of staff assigned to undertake the contract on the Council's behalf (only where this can have a significant impact on the quality of contract performance, for example consultants)
- Timescales, installation, customer service, technical assistance, maintenance considerations
- Allocation of risk
- Contract management considerations including performance monitoring regimes

11.10.4 Evaluation criteria used to determine the award of the contract MUST be clearly detailed in the tender advert / or in the tender documentation which must be available at the time of placing the advert. This information must include details of the relevant weighting of each question or section and detail any sub-criteria used.

It must also state the method that will be used to assess suppliers' responses. Furthermore, if there are any minimum pass-mark requirements for specific sections these must also be detailed in the documentation. The procurement toolkit gives examples of evaluation methodology that are recommended be used.

11.10.5 The evaluation of the price element must be undertaken on the basis of the most economically advantageous tender based on the whole life cost cycle criteria. These may include:

- Costs relating to acquisition (equipment purchase price, installation, training, consultancy etc.)
- Cost of use (e.g. consumption of energy)
- Maintenance costs
- End of life costs such as collection and recycling

11.10.6 All relevant costs should be considered and a Price Schedule developed for inclusion in the tender pack so that all suppliers can accurately submit their price on an equal basis.

11.11 Tender Receipt and Opening *Electronic Receipt (e-tendering)*

11.11.1 All tenders must be submitted using the Council's approved e-tendering solution; all information must be submitted via the e-tendering solution by the date and time stipulated in the *Invitation to Tender*.

11.11.2 All tenders will be stored electronically by the e-tendering system in a secure inbox until the closing date and time has passed. Access to the system will be password protected at individual user level. Only once the deadline for receipt has passed will the e-tendering system allow the user to login and electronically open the tenders. All tenders should be opened by at least two officers simultaneously with one member being from the procurement team. Once the tenders have been opened the Tender Documentation can be downloaded and stored in a secure folder.

11.11.3 Use of any other electronic tendering or bid submission portal/system (e.g. G-Cloud) to receive tenders or quotes via Framework Agreements shall be subject to the prior approval of the Procurement team.

11.11.4 e-auctions - If the Head of Service wishes to use an e-auction to fulfil the requirement, use of such system shall be subject to the prior approval of the Procurement team.

11.11.5 By using e-auctions it is customary in the case of late bids being received that the time (but not the date) for the receipt of tenders is extended to give rival bidders an opportunity to respond. Provided that such arrangements are set out in the tender details this procedure shall not be a breach of the Horsham Procurement Code.

11.11.6 The e-tendering portal can be used for quotation processes. In this instance quotations can be formally opened electronically by the Lead Officer or the procurement team on behalf of the lead officer. The Lead Officer should ensure that the In-tend system is set so that opening of quotations is locked until the closing date and time has passed.

11.12 **General Conduct and Tender Evaluation Process**

11.12.1 The Head of Service shall ensure that every Tender process undertaken is transparent and that all participants are treated fairly and equally at all times throughout the process. In particular:

- ensure that competition is not distorted in circumstances when some participants in a procurement exercise may have previously assisted the Council in preparation of the procurement documentation (e.g. via a market engagement exercise). As a minimum any additional background information which the council provided to participants during a market engagement exercise should be made available to all participants of the procurement exercise;
- a record is maintained of all the correspondence between the council and the participants including details of any additional information provided to participants and any clarification questions from participants which should be submitted in writing by email.
- a reply is issued to all participants answering those clarification questions of a generic nature. Clarification questions specific to a particular participant or containing information of a commercially sensitive nature should only be communicated to that particular participant.
- Should the procurement process need to be extended this must be communicated to all participants allowing sufficient time before the closing date to ensure that no submissions may have already been received.

11.12.2 When undertaking the evaluation the Head of Service must ensure that:

- Confidentiality of Tenders, and the identify of Tenderers, is preserved at all times
- Information about one Tenderers response is not to be given to another Tenderer
- Tenders are evaluated and awarded in accordance with the Evaluation Criteria outlined in the tender documentation
- A thorough tender evaluation is undertaken by a minimum of two Officers
- Advice is sought from the relevant service on any areas of Selection and Award criteria that require specialist knowledge in order to evaluate effectively e.g. Financial Information, Equalities and Diversity, Health and Safety, Sustainability etc. This should be scheduled with the relevant Officer well in advance
- There is a formal record of how the evaluation process was conducted and the contract award recommendation has been reached. In particular details must be kept of the discussions and outcomes of any moderation meetings where officers evaluating the tender submissions have discussed and amended or averaged tenderers scores
- The tender evaluation process and scoring spreadsheet is independently checked before a Contract Award recommendation is made

- No negotiating or entering into dialogue with the tenderer is undertaken that could be construed as renegotiating terms.
- 11.12.3 The arithmetic content in Tenders must be checked. If arithmetical errors are found in the tender they should be notified to the Tenderer, who should be requested to confirm or withdraw their Tender, in writing.
- 11.12.4 Where appropriate, the Head of Service shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily, in particular:
- to be alert to the risk of collusion between tenderers and aware of indications of potentially anti-competitive behaviour and report any suspicious bidding activities to the Procurement team;
 - to be alert to the possibility of receiving an Abnormally Low Bid from one or more tenderers. If an Abnormally Low Bid is suspected the procedure outlined in section 11.14 below shall be followed.

11.13 Clarifications and Post-Tender Negotiation

- 11.13.1 Providing clarification on an Invitation to Tender in writing or by way of a meeting is permitted but must be done in consultation with the Legal team and/or procurement team. When clarifying information the Lead Officer must ensure that all potential Tenderers, not just the one requesting the information, also receive notification of the clarification unless it is deemed commercially sensitive to that tenderer. All clarifications should be communicated via the Council's e-tendering portal.
- 11.13.2 Post-Tender Negotiation means negotiations with any Tenderer after submission of a Tender and before the award of the contract with a view to obtaining adjustments in price, contract terms and content. Public Procurement rules only allow very limited negotiation on certain types of procurement route. It is not allowable on most Above Threshold and Local Tenders procedures.
- 11.13.3 Post-Tender Negotiation must only be conducted if approved by the Director of Corporate Resources and Head of Legal and Democratic Services who must be formally consulted on:
- why negotiation is required
 - the terms of the negotiation, and
 - about who the negotiation is to be with.
- 11.13.4 If Post-Tender Negotiations have been agreed with the Director of Corporate Resources and the Head of Legal and Democratic Services then such negotiations shall only be undertaken with the Tenderer who has previously been identified as submitting the most economically advantageous Tender. The Head of Service shall ensure that there are recorded minutes of all Post-Tender Negotiation meetings and that both parties agree actions in writing.
- 11.13.5 Where Post Tender negotiations result in a fundamental change to the specification, price or contract terms the contract must not be awarded but re-tendered.

11.14 Abnormally Low Bids

- 11.14.1 A bid may be regarded as being Abnormally Low if there is a significant difference in price between the bid and other bids received. In the event that the Head of Service believes that one or more of the bids received from Tenderers may be an *Abnormally Low Bid* they should consult with the Procurement team and Head of Legal and Democratic Services to review the bid(s) submitted and for support throughout the clarification process.
- 11.14.2 If it is still believed that the bid(s) may be an Abnormally Low Bid then the Head of Service should request in writing from the Tenderer an explanation of the bid, or the parts thereof, which contribute to the bid being Abnormally Low. When seeking an explanation the information requested may include:
- a) detailed breakdown of the costs associated with the method of construction proposed, the manufacturing process or the services provided
 - b) more information about the technical solutions proposed by the Tenderer and whether there are particular factors (e.g. innovative service model) which may give the Tenderer a competitive advantage;
 - c) whether the works, goods or services proposed are exclusive to the Tenderer
 - d) that the bid is compliant with provisions relating to environmental, social and labour laws, sub-contracting, etc. established by laws or collective agreements
 - e) whether the Tenderer may have obtained State Aid
- 11.14.3 Tenderers shall not be allowed to modify Abnormally Low Bids
- 11.14.4 In determining whether the bid(s) is an Abnormally Low Bid the Head of Service, Procurement team and Head of Legal and Democratic Services should take into account the evidence provided by the Tenderer in response to the written request and verify the bid, or parts of the bid, being considered abnormally low with the Tenderer.
- 11.14.5 If after reviewing the evidence provided by the Tenderer in response to 11.14.2 it still does not satisfactorily explain the low level of price submitted by the tenderer then the Head of Service in consultation with the Head of Legal and Democratic Service may reject the bid(s) as an Abnormally Low Bid and in such case shall **immediately** notify the Tenderer that the bid is being rejected. Abnormally Low Bids must be rejected before Contract Award.
- 11.14.6 Where a tender is rejected on the basis of being an Abnormally Low Bid because the tenderer has received State Aid then the Cabinet Office must be informed.

12. CONTRACT AWARD PROCEDURE

12.1 Acceptance of Tenders – Contract Award Recommendation

- 12.1.1 In the case of a tender following the restricted procedure where the Selection criteria have already been assessed using a Selection Questionnaire then the Head of Service should produce a Contract Award Recommendation report and seek approval in accordance with Section 12.2 below

12.1.2 In the case of tenders following either the Open procedure, in which the supplier has been allowed to submit a self-declaration stating that they meet the minimum criteria, then, once the tender evaluation process has been concluded and the Preferred Bidder(s) identified Heads of Service should:

- Request the appropriate documentary evidence in respect of the minimum Selection Criteria from the tenderer(s), and check to confirm this meets the Council's minimum requirements.
- If the documentary evidence confirms the tenderer meets the council's minimum requirement a formal Contract Award Recommendation report should be produced and approval sought as detailed in Contract Award Procedure in Section 12.2 below;
- If the documentary evidence does not establish that the tenderer can meet the council's minimum requirements further clarification should be sought from the tenderer. If the tenderer still cannot provide satisfactory evidence that they are able to meet the Council's minimum requirements then further dialogue with them should be suspended. The next best ranked tenderer should then be asked to provide their documentary evidence of meeting the Council's minimum requirements;

12.2 Acceptance of Tenders – Approval Route

12.2.1 Following completion of a comprehensive evaluation process of all tenders submitted, the contract approval process is delegated to;

12.2.2 The relevant Head of Service for tenders up to £100,000.

12.2.3 For tenders over the value of £100,000 and below £250,000 the relevant Cabinet Member approval via a Delegated Authority Report produced by the Head of Service. Once approved the decision must be published by Committee Services on the website for five days before the formal contract award can take place. As the full report will be exempt from Publication by the virtue that it contains confidential information about the tender process only the front signed page should be published. Officers should therefore ensure that the winning supplier is not named on the front page.

12.2.4 For all tenders above £250,000 review by Policy Development Advisory Group (PDAG) prior to issue of tender documentation (unless otherwise agreed by the Head of Legal and Democratic Service or Director of Resources) and Cabinet approval following evaluation, unless specific delegated approval has already been agreed by Cabinet. The Head of Service must ensure that the intention to award a contract appears on the Forward Plan for 28 days before the contract award approval can be made. The Head of Service is responsible for preparing the necessary Cabinet Reports.

12.2.5 In all instances the decision for contract award must be made on the basis that:

- This Procurement Code and toolkit has been fully complied with
- The most economically advantageous Tender is accepted based on the evaluation criteria advertised and contained in the tender documentation
- The evaluation process has been carried out satisfactorily.
- The Tender and all other costs associated with the procurement to which the Tender relates are within the approved budget
- Any necessary, written, approval has been obtained including member approval relating to matters of policy.

12.3 Notification to Tenderers – Above Threshold

12.3.1 Following approval of a contract award recommendation, in respect of any tender above threshold or following the use of a Framework Agreement for a value above threshold, the Lead Officer in consultation with the Head of Service must, notify all Tenderers of the outcome via the e-tendering portal and commence a mandatory 10-day standstill period. The Lead Officer must;

- Notify the successful Tenderer(s), of the decision and the intention to award the Contract following completion of the standstill period.
- Simultaneously notify all unsuccessful Tenderers, providing the following information:
 - a. The criteria for the award of the contract
 - b. The reasons for the decision, including the characteristics and relative advantages of the successful tender
 - c. The evaluation score of the Tenderer receiving the notice and the score(s), of the successful Tenderer(s)
 - d. The reasons (if any) why the Tenderer did not meet the technical specifications and / or the areas where the Tenderers submission was weaker than that of the successful Tenderer(s)
 - e. The name of the successful Tenderer(s)
 - f. A date the standstill period is expected to end
 - g. Details of how the ending of the standstill period might be affected (e.g. Tenderer requests further information regarding the Contract Award) and if so what contingencies will be made (e.g. the standstill period will be extended to allow further information to be provided)

12.3.2 The standstill period must run for a minimum of 10 days commencing the day immediately after the notice was sent to the Tenderer and concludes at midnight on the 10th day. If the expiry date of the standstill period falls on a weekend or public holiday then the expiry date shall be midnight on the next working day

12.3.3 Should a Tenderer request further information or a debrief during the standstill period the Head of Service should immediately consult with the Procurement team and Head of Legal and Democratic Services for advice. The Council may extend the standstill period for a further period until the Tenderer has received and considered the information.

12.3.4 If the Council receives notification from a Tenderer that it intends to challenge a Contract Award Decision then the Head of Legal and Democratic Services must be notified immediately and the Council must automatically refrain from entering into the contract. Failure to comply could result in the Courts cancelling the contract.

12.3.5 Upon satisfactory conclusion of the standstill period the Head of Service may advise the successful Tenderer(s) that the standstill period has passed and instruct the Head of Legal and Democratic Services to draw up a formal contract with the successful Tenderer(s).

12.3.6 Once the standstill period has concluded the Lead Officer must complete a [Regulation 84 Report](#) which contains information on the award of the contract, the successful and unsuccessful suppliers and the rationale used when calculating the estimated total contract value. They should then notify the Procurement team so that a Contract Award Notice can be placed in Find a Tender service within 30 days

of the Contract Award. A Contract Award Notice is also required for any contract concluded via the use of a 'mini-competition' under a Framework Agreement. All Contract Award notices should contain the actual contract value excluding V.A.T.

12.3.7 The Head of Service must ensure that details of the contract award and successful organisation are also published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 18)

12.4 Notification to Tenderers – Local Tenders

12.4.1 Local Tenders, i.e. those below the threshold, are not covered by the full requirements Public Contract Regulations. However, it is considered best practice to follow the same general principles of notifying unsuccessful Tenderers as detailed in section 12.3 and, if requested by the Tenderer, providing feedback on the outcome of the procurement exercise.

12.4.2 When feedback is requested by an unsuccessful Tenderer the Head of Service should provide a debrief, and explain the reasons why they were unsuccessful and the characteristics and relative advantage of the successful Tenderer, as appropriate. This should normally include:

- how the Award Criteria were applied
- where appropriate the prices or range of prices submitted, in either case not correlated to Tenderers' names.

12.4.3 No other information should be given without taking the formal advice of the Head of Legal and Democratic Services.

12.4.4 Once the informal standstill period has concluded the Lead Officer must notify the Procurement team so that a Contract Award Notice can be placed in the on the Contracts Finder website within 30 days of the Contract Award. A Contract Award Notice is also required for any contract concluded via the use of a 'direct award' or 'mini competition' under a Framework Agreement.

12.4.5 The Head of Service must ensure that details of the contract award and successful organisation are published in accordance with the requirements of the Transparency Code and the Council's Contracts Register (see section 20)

12.5 Contract Drafting and Finalisation - Formalities

12.5.1 The Head of Service shall ensure that the Head of Legal and Democratic Services is given instruction and provided all the necessary supporting documentation and information in order to draw up the draft (pre-procurement) and final contract. It should be noted that the draft contract needs to be issued with all of the tender documents and therefore adequate advance notice must be given.

12.5.2 All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the prior written consent of the Head of Legal and Democratic Services and the Director of Corporate Resources. A contract award letter is insufficient.

12.5.3 Every contract exceeding £50,000 in value not required or intended to be made under seal shall be signed on behalf of the Council by two officers of the Council being the Monitoring Officer or their appointed deputy and one of the following: the

Chief Executive, any Director or other officers authorised by the Chief Executive or under the Scheme of Delegation to Officers.

- 12.5.4 Every contract which is a lease finance or lease purchase agreement shall be signed by both the Monitoring Officer and Head of Finance or their designated deputy.

13. RECORD KEEPING

13.1 Heads of Service shall ensure that sufficient documentation is retained to justify decisions taken at all stages of the procurement process. As such the following documents must be retained in a secure and easily retrievable format;

- All information including internal communications, project meeting notes, regarding the preparation of the procurement documentation and undertaking of the process;
- A written record of any exemptions obtained under the Horsham Procurement Code and the reasons for them
- Invitations to quote/tender and quotations/tenders received
- Any *Contracting Decision* and the reasons for it
- The Award Criteria
- All evaluation information/reports
- Clarification and post-tender negotiation (to include detailed minutes of meetings)
- The contract documents
- The post-contract evaluation and monitoring documentation
- Written records of all communications with all Tenderers and with the successful Tenderer throughout the period of the contract

13.2. Documentation relating to a successful quotation must be retained for the duration of the contract period, or in the case of the supply of goods or provision of works a minimum of three years after supply/completion of the requirement. Documentation relating to unsuccessful quotations must be retained for a minimum of 12 months from the award of the contract, providing there is no dispute about the award.

13.3 Documentation relating to a successful tender must be kept for a minimum of three years after the final settlement/end of the contract. However, documents which relate to unsuccessful Tenderers may be disposed of after 12 months from the award of the contract, provided there is no dispute about the award.

14. CONTRACT MANAGEMENT

14.1 No contract shall commence unless and until the procurement exercise and contract documents have been completed in accordance with the Council's Procurement Code and Financial Regulations.

14.2 Heads of Service shall ensure that all contracts have an appropriate level of resource and skills assigned to the contract management based on an assessment of the contract value, service complexity, and level of risk or importance to the Council in accordance with the Council's Contract Management guidance.

14.3 During the life of the contract the Head of Service shall:

- Assign a Contract Manager with the skills, expertise and resource to effectively manage the contract;
- Ensure that the performance of the contract is appropriately monitored to ensure compliance with the specification and contract conditions;
- Ensure that where any Statutory Duty (e.g. Safeguarding Duty, Data Protection) is transferred to the Contractor that the Contractor complies with the Duty
- Discuss any proposed contract variations or extensions with Head of Legal and Democratic Services before they are carried out. See section 15 on contract variations.
- Ensure that a record is kept of all certificates and instructions issued under the contract;
- Agree any price fluctuation or indexation provisions, subject to appropriate supporting documentary evidence being provided by the Contractor;
- Immediately notify the Head of Legal and Democratic Services of any breach of contract;
- Undertake an annual supplier check to ensure checks are undertaken on mandatory requirements of the contract, for example, insurance levels, financial stability etc.

14.4. Further information on the importance and benefits of Contract Management can be found within the Contract Management Guidance on the intranet.

15. CONTRACT VARIATION

15.1 Following consultation and agreement by the Head of Legal and Democratic Services and the Director of Corporate Resources contracts may be modified without the need for a new procurement exercise if any of the following cases apply:

- a. There was clear and unambiguous provision for the contract modifications, irrespective of their monetary value, made in the initial tender documentation which stated the scope and nature of such possible modifications as well as the conditions under which these modifications may be used. Such modifications must not fundamentally alter the nature of the contract;
- b. To provide additional works, services or supplies by the original contractor that have become necessary but were not included in the initial tender provided that a change of a contractor cannot be made for economic or technical reasons (e.g. IPR in the software, compatibility with existing equipment, etc.) or would cause substantial duplication of cost so long as any increase in price does not exceed 50% of the value of the original contract. In such cases the Council must publish a Notice in Find a Tender service;
- c. Where all the following conditions are fulfilled:
 - The need for the modification could not genuinely have been foreseen by the Council;
 - The modification does not fundamentally alter the nature of the contract;
 - Any increase in price does not exceed 50% of the value of the original contract;
 - In such cases the Council must publish a Notice on Find a Tender
- d. Where a new contractor replaces the one to which the council awarded the contract due to company takeover, merger, acquisition, insolvency, etc. providing that this change does not entail substantial modification of the contract;

- e. The value of the modification is below the relevant threshold and less than 10% of the initial contract value (goods and services) or 15% of the initial contract value (works).
 - o Where several successive modifications are made the value shall be the net aggregated value of the successive modifications;
 - o Where the contract has an indexation clause then the inflated value shall be the one used as the basis of the calculation;
- 15.2 A new procurement exercise shall be required for any contract modification which:
 - Materially alters the contract from the one initially awarded;
 - Introduces conditions that if they had been part of the original procurement would have allowed other suppliers to participate;
 - Changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
 - Extends the scope of the contract considerably;
 - Introduces a new contractor to replace the initial contractor for any reason other than those listed in d) above;
 - Proposes a contract modification other than those provisions outlined in 15.1 above.
- 15.3 Once negotiations with the contractor(s) regarding the contract variation have concluded the Head of Service must provide the Head of Legal and Democratic Services with all the appropriate documentation and instructions to issue the contract variation notice in accordance with the provisions in the contract.
- 15.4 The Head of Service must forward the details of any significant contract modifications to the Director of Corporate Resources for recording on the Contracts Register in accordance with section 18. Details of the changes will also need to be published on Contracts Finder and Find a Tender.

16. CONTRACT EXTENSION

- 16.1 Any contract that expressly provides for extension may be extended in accordance with its terms provided that the Head of Service and Head of Legal and Democratic Services are satisfied that Best Value will be achieved and the extension is reasonable in all the relevant circumstances.
- 16.2 Where the contract terms do not expressly provide for extension legal advice should be sought from the Head of Legal and Democratic Services at the earliest opportunity. Contract extensions may be approved in line with Regulation 72(1) if the need for the modification has been brought about by circumstances a diligent contracting authority could not have foreseen, e.g. force majeure, national pandemic.
- 16.3 Approval for contract extension is delegated as per the Contract Award procedure as set out in section 12
- 16.4 Once granted the contractor must be notified in writing of the contract extension and the Head of Legal and Democratic Services provided with the appropriate instruction and supporting documentation to issue the contract extension.
- 16.5 Once concluded the Head of Service must forward the details of the contract extension to the Director of Corporate Resources for recording on the Contracts Register in accordance with section 18.

17. CONTRACT TERMINATION

- 17.1 Contracts may be terminated by the relevant Head of Service early by agreement prior to the expiry date or in accordance with the Termination Provisions set out in the contract. **Advice must be sought from the Head of Legal and Democratic Services before terminating any contract.**

18. TRANSPARENCY CODE AND CONTRACTS REGISTER

- 18.1 Immediately upon the completion of every contract of £5,000 in value or more:
- 18.1.1 The relevant Head of Service shall complete and submit the Contracts Register e-form with the required details of the contract for publication in the Council's Transparency Code information and inclusion in the Council's Contracts Register.
- 18.1.2 The Director of Corporate Resources shall have responsibility through the Procurement Team for maintaining the procurement information in the Transparency Code publication and the Contracts Register;
- 18.1.3 Upon receipt from the successful tenderer(s) the Head of Legal and Democratic Services shall send an electronic copy of any contract which has been completed to the relevant Head(s) of Service and the Director of Corporate Resources for inclusion in the Contracts Register through the Procurement Team.
- 18.2 The Contracts Register shall be available on the Council's website.

19. PREVENTION OF CORRUPTION AND BRIBERY

- 19.1 The Head of Service must ensure that officers comply with the Code of Conduct for Council Employees and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 19.2 High standards of conduct and integrity are obligatory. Corrupt behaviour shall lead to dismissal and is a criminal offence under the Bribery Act 2010.
- 19.3 Council employees shall not use any contract or other procurement arrangement entered into by the Council for their own personal use, benefit or gain other than with the prior written approval of the Director of Corporate Resources.
- 19.4 The following clause must be included, in every Council contract:

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

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

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

20. DECLARATION OF INTERESTS

20.1 In accordance with Member's Code of Conduct and Code of Conduct of Council Employees if it comes to the knowledge of a Member or an employee of the Council that a contract in which he or she has a financial or personal interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Director of Corporate Resources. The Director of Corporate Resources shall report such declarations to the appropriate Committee.

20.2 Such written notice is required, irrespective of whether the monetary interest is direct or indirect. An indirect financial interest is distinct from a direct financial interest in as much as it is not a contract to which the member or employee is directly a party.

20.3 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a financial interest for the purposes of the Horsham Procurement Code.

20.4 The Director of Corporate Resources shall maintain a record of all declarations of interests notified by Members and Officers.

20.5 The Director of Corporate Resources shall ensure that the attention of all Members is drawn to the appropriate provisions within the Council's Code of Conduct.

21. REVIEW AND AMENDMENTS OF THE HORSHAM PROCUREMENT CODE

21.1 The Procurement Code shall be reviewed and updated on an annual basis or more frequently if legislation or Case Law require amendments.

22. PROCUREMENT THRESHOLDS AND CONTRACT AWARD PROCEDURES - WORKS CONTRACTS

Total Value	Procurement Route	Submission of Quotes/Tenders	Contract Approval/Award	Method of Contract Completion	Transparency Code Obligations
Under £19,999.99	Evidence of value for money	Relevant Budget Holder	Relevant Budget Holder	Signature and / or purchase order raised	Publish details of all contracts over £5,000 in Council's Contracts Register via e-form
£20,000 - £99,999.99	Three written quotations	Quotations returned electronically to department and opened and reviewed by at least two officers or submitted via the Council's e-tendering platform and electronically opened once closing date and time has passed.	Head of Service approval	Signature	Publish details of all contracts in Council's Contracts Register
£100,000 - £1m	Open Invitation to tender by advertisement on the SE Shared Services Portal and Contracts Finder Or Closed Invitation to tender to a minimum of five suppliers using the Council's e-tendering portal. This route is subject to approval from the Director of Resources	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	Over £100,000 but below £250,000 relevant Cabinet Member approval via Delegated Authority Report* OR Over £250,000** PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of the Contract Award on SE Shared Services Portal and Contracts Finder. Publish details of all in Council's Contracts Register via e-form
£1m – Works Threshold (£5,372,609)^ £4,477,174 (exc VAT)	Invitation to tender by advertisement on the SE Shared Services Portal and Contracts Finder Additional media can be used.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of the Contract Award on SE Shared Services Portal and Contracts Finder. Publish details of all in Council's Contracts Register via e-form
Above Works Threshold (£5,372,609)^ £4,477,174 (exc VAT)	Invitation to Tender by advertisement on the SE Shared Services Portal, Contracts Finder and on Find a Tender Service Additional media can be used.	Tenders submitted via Council's secure e-tendering platform and electronically opened once closing date and time has passed.	PDAG prior to issue of tenders and Cabinet Approval following evaluation***	Sealing	Publish details of the Contract Award on SE Shared Services Portal and Contracts Finder and Find a Tender. Publish details of all contracts in Council's Contracts Register via e-form

* The Delegated Authority report should be completed using the Cabinet Member Decision template. Once signed, the front page should be sent to Committee Services for publication. Once published you should await five days before you formally award the contract. Please note that publication is public on the website and therefore you need to ensure that the name of the supplier being awarded the contract does not appear on the front page.

** All contracts with a value of over £250,000 must be included on the forward plan for 28 days before any contract award can be made. It is the preference that PDAG are consulted prior to the issue of tenders as this allows discussion.

*** You may wish to seek Cabinet approval prior to commencing the procurement process this approach assists in speeding up the contract award procedure, and can be useful to get buy-in up front. If this approach is taken you will need to seek Cabinet Approval to delegate the award of the contract to either the relevant Cabinet Member or Director. This is particularly useful on collaborative procurement projects.

^This value is inclusive of VAT- previous values were exclusive of VAT.-Please ensure that you take this into account when calculating contract value. Please refer to 3.2 and the Procurement Team for advice.