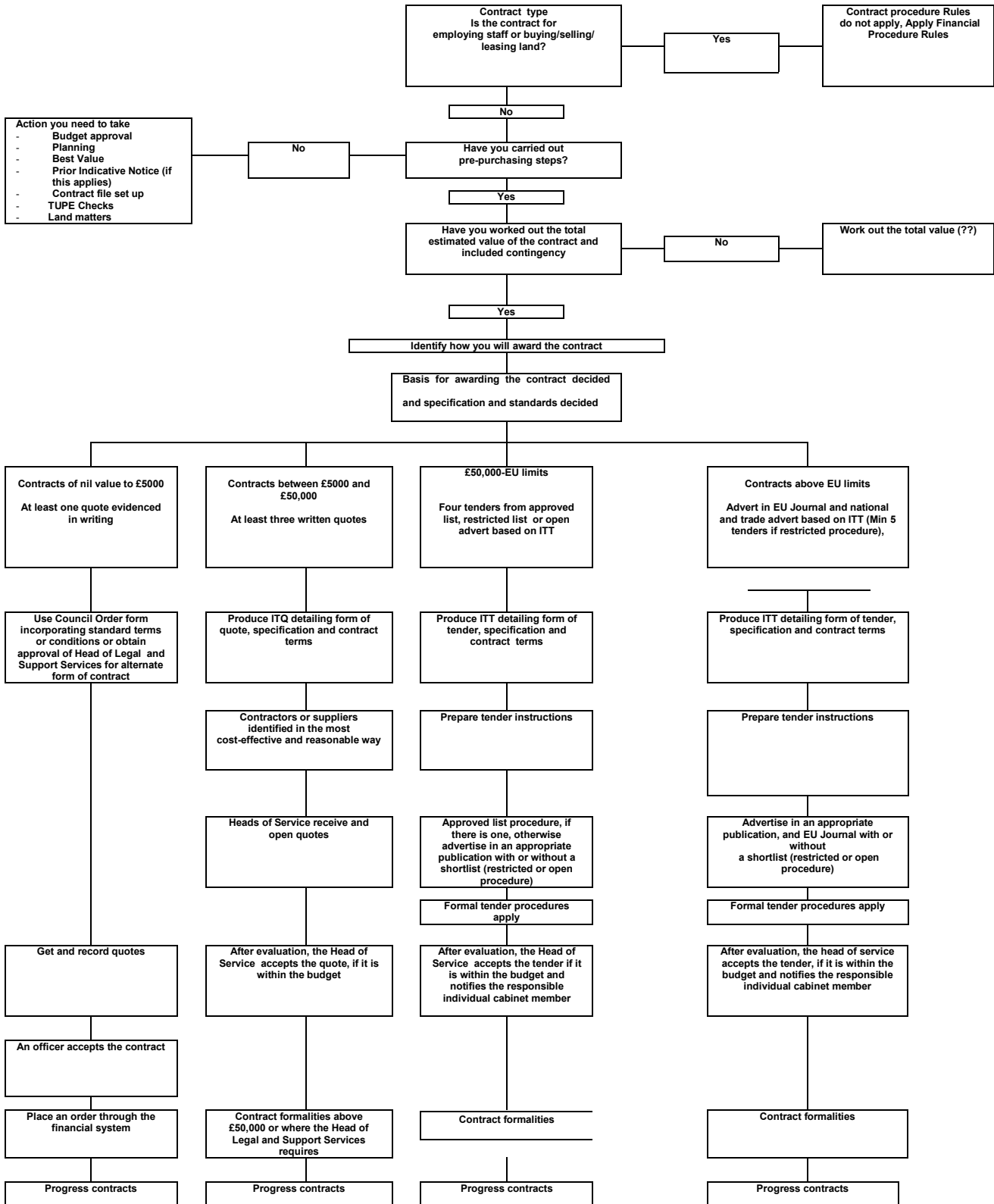


SECTION III - CONTRACT PROCEDURE RULES



This table only briefly explains Contract Procedure Rules. You should still read all these Contract Procedure Rules fully.

1. INTRODUCTION

- 1.1 The definitions used in these Contract Procedure Rules (CPRs) are set out in Part IV.
- 1.2 Every Contract made by the Council shall be conducted in accordance with these CPRs except:-
 - (a) where an exemption is made by the Executive or a Committee satisfied that special circumstances justify an exemption;
 - (b) in cases where the Council is acting on behalf of, or under arrangements with another body and it is a requirement that the rules of that body apply.
- 1.3 Any exemption made in accordance with paragraph 1.2(a) above shall be recorded in the minutes.
- 1.4 The financial limits and thresholds specified in the Schedule shall be reviewed every two years by the Executive.
- 1.5 Any Contract with a value exceeding £50,000 entered into on behalf of the Council must be signed by any two of the authorised Officers referred to in Paragraph 14.06 of Article 14 or made under the Common Seal of the Council and attested in accordance with paragraph 14.05 of Article 14.
- 1.6 Subject to Contract Procedure Rule 14.1 any contract with a value of £50,000 or less shall be signed by any one of the authorised Officers in Paragraph 14.06 of Article.14.
- 1.7 Heads of Service shall provide the Head of Legal and Support Services with any necessary information and access to all documents and records under their control as may be required to fulfil all the obligations and requirements of these CPRs.
- 1.8 The decision of the Chief Executive will be final in any matter concerning the interpretation of these CPRs.

2. GENERAL RESPONSIBILITIES OF HEADS OF SERVICE

- 2.1 In procuring works, goods and/or services Heads of Service shall always:-
 - (a) achieve Best Value for public money spent;
 - (b) show no undue favour to any Contractor, nor discriminate against Contractors from other EU states;
 - (c) conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
 - (d) do nothing that contravenes EU or domestic law;
 - (e) ensure that adequate Contract Files are kept for all Contracts upon which they are engaged;
 - (f) ensure that before entering into any Contract:-
 - (i) there is adequate approved budgetary provision;
 - (ii) in relation to capital schemes, the necessary Capital Start Authority has been obtained;
 - (iii) there is the appropriate authority.
 - (g) ensure that their staff comply strictly with Contract Procedure Rule 3
 - (h) keep a register of all contracts where the contract value is below £50,000
 - (i) Ensure that all Contracts where the contract value exceeds £50,000 are passed to the Head of Legal and Support Services for sealing and safekeeping.
 - (j) keep a record of all exemptions recorded under Contract Procedure Rule 39
- 2.2 For the purposes of these CPRs, the estimated value of a contract shall be the estimated total value net of VAT.

- 2.3 Contracts must not be artificially divided to keep them below any threshold which may apply.
- 2.4 Where a Contract spans more than one accounting period then for the purposes of these CPRs the aggregate value of the Contract shall be taken to be the Contract value.

3 OFFICER RESPONSIBILITIES

3.1 The Officer responsible for a purchase, disposal or submission of a tender must comply with these standing orders, Financial Regulations, Code of Conduct and with all UK and European Community binding legal requirements.

3.2 The Officer is responsible for ensuring that:

- i) the requisite authority under the Constitution is obtained to enter into a contract
- ii) A specification that will form the basis of the contract is prepared
- iii) An estimate of the whole life cost of a proposed contract, including maintenance and on-going costs is prepared
- iv) That a risk register is prepared in respect of contracts with an estimated value greater than £50,000
- v) That any proposed contractor has the technical capability to deliver the project
- vi) Any proposed contractor has the financial and resource capacity (taking into account contract value and risk) to perform the contract
- vii) These rules, the Financial Procedure Rules and any Codes of Practice are complied with
- viii) Any agents, consultants, and contractual partners acting on the Council's behalf follow a process which provides for equivalent competition to these rules.
- ix) That he takes all necessary legal, financial and professional advice

(c) The Officer shall maintain a contract file in respect of each procurement exercise for a contract with a value exceeding £5,000 which will include:

- a. The name of officers undertaking the procurement process
- b. The rationale for the procurement route taken
- c. A copy of the specification
- d. In relation to contracts with a value exceeding £50,000, the risk register
- e. a written record of any exemption from standing orders and the reason for it.
- f. Copies of all tenders or quotations
- g. A copy of the evaluation process and reasons for the decisions as to acceptance or rejection of every tender or quotation
- h. A copy of any debrief request and the response thereto
- i. The award letter
- j. The order form or copy of the final contract
- k. Copies of the contract review and management process including the details of the officer responsible for on-going contract management
- l. A copy of any extension to the contract in accordance with CPR

(d) The Officer shall offer a debrief to all tenderers whether successful or not, to assist them in preparing future bids.

4 STEPS PRIOR TO PROCUREMENT

4.1 Prior to procuring goods or services officers must

- (a) take into account the requirements arising from any Best Value review
- (b) ascertain whether a contractual arrangement is already in place or central purchasing arrangements exist or are being contemplated
- (c) appraise the need for the expenditure and its purpose
- (d) define the objectives of the purchase
- (e) assess the risks associated with the procurement and determine how to manage them

- (f) ascertain whether the service can be undertaken in-house from within the Council's own resources
- (g) consider what procurement method is most likely to achieve the purchasing objectives, including using a framework agreement, consortium, collaboration with other purchasers, partnering and long-term relationships
- (h) prepare a specification and consider any European or British Standards that may need to be spied
- (i) identify and obtain any approvals that may be required
- (j) estimate the value and record how that estimate was arrived at
- (k) determine how any tender or quotation will be evaluated
- (l) prepare communications upon how any tender or quotation will be evaluated to prospective tenderers
- (m) ascertain whether a "prior information notice" has been, or should be, published
- (n) identify whether a standard form of contract which has been approved by Legal Services for the proposed procurement exists, and should be specified when inviting quotations or tenders

5 CORPORATE PURCHASING ARRANGEMENTS

- 5.1 Where a recurring pattern of purchases for like works, supplies or services is identified, advice should be sought from the Corporate Procurement Officer upon establishing and adopting Central Purchasing Arrangements. Consideration should be given to:
- (a) Whether the works, supplies or services are or are capable of being delivered by the Council itself
 - (b) Whether a nationally or regionally negotiated contract exists which can be accessed (for example through the Office of Government Commerce or Centre of Excellence)
 - (c) Whether one or more Corporate Framework Contracts or arrangements will provide better value in terms of price, service, invoicing or other administration costs.
 - (d) Whether letting such a contract through a consortia of which the Council is a member will achieve procurement efficiencies
 - (e) Whether goods services or works would be better obtained through a Measured Term contract
 - (f) Whether efficiencies can be gained through the adoption of an e-procurement solution such as a Purchasing card
 - (g) How any consequent procurement exercise will be lead and managed
- 5.2 A Framework Contract to which more than one contractor is party must provide for competition between the contractors in respect of any Call Off above £50,000
- 5.3 Where aggregate annual spend in a given category of supply or service exceeds EU Procurement levels a Framework Contract must be tendered in accordance with EU Procurement Rules for a maximum duration of four years.
- 5.4 Any framework contract let by the Council in accordance with EU rules shall include the following text within the OJEU notice:
- "Tenderers should be aware that although the contracting authority for the purposes of this procurement is Scarborough Borough Council one or more other local authorities and/or public bodies may choose to access the concluded contract, without creating any obligation on behalf of any of them to do so".
- 5.5 Where central purchasing arrangements exist or are established there shall be a presumption in favour of using those arrangements. These include arrangements undertaken by the following Heads of Service:-
- (a) Head of Legal and Support Services for general materials, plant and vehicles
 - (b) Head of Legal and Support Services for office equipment, printing and stationery
 - (c) Head of Technical Services for Construction and Project Management Services;

- (d) Head of Service Transformation for computer equipment; and
- (e) Head of Tourism and Culture Services for catering stores.

Any departure from the foregoing arrangements must be agreed in writing with the central purchasing service concerned.

- 5.6 Unless the Council is obliged by a third party to offer work to competitive bids (for example where there is grant funding) goods, services or works should be obtained from in house services or approved central purchasing arrangements.

REQUIREMENT TO OBTAIN QUOTATIONS OR TENDERS

6 PRE-TENDER/QUOTATION ENQUIRIES

6.1 The Officer responsible for the purchase:-

- (a) may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential Contractor

6.2 In making enquiries:-

- (a) no information shall be disclosed to one Contractor which is not then disclosed to all those of which enquiries are made;
- (b) no Contractor shall be led to believe that the information they offer will necessarily lead to them being invited to tender or quote, or awarded the Contract;
- (c) no technical advice on the preparation of the Invitation to Tender or Quotation must be sought from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Contractors or distort competition
- (d) a written record including notes of any meetings held and persons and names of any individuals present shall be kept on the Contract File.

7. CONTRACT SPECIFICATIONS

7.1 Before entering into a contract with any firm, or arranging for works or services to be carried out by another Head of Service, the appropriate Head of Service must:

- (a) be satisfied that a Specification which will form the basis of the contract/arrangement has been prepared; and
- (b) have prepared and documented an estimate of the cost of the contract/arrangement, including where appropriate any maintenance costs

7.2 Contract specifications shall specify

- (a) the task required, their volume and frequency
- (b) the level of input, time and resources required or the outputs required
- (c) the facilities on-site and access to them
- (d) the standards of performance expected
- (e) the length of any contract and any other details not included elsewhere
- (f) quality of materials
- (g) relevant Council policies

7.3 Technical specifications shall be defined by reference to relevant European specifications or, where they do not exist, in the following order: to British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards.

7.4 Technical specifications should not refer to trade marks, nominated suppliers, patents, specific makes, sources or means of production unless the subject matter of the contract either:

- (a) justifies the reference or

(b) cannot otherwise be described by reference to technical specifications that are sufficiently precise and intelligible to all contractors. In such circumstances the specification must be qualified by the words “or equivalent”.

8. PROCEDURES FOR CONTRACTS WITH A VALUE UP TO £5,000

8.1 For Contracts with a value up to £5,000 the only requirement is that at least one quote shall be sought and evidenced in writing.

9. PROCEDURES FOR CONTRACTS WITH A VALUE BETWEEN £5,001 AND £50,000

9.1 For Contracts with a value between £5,001 to £50,000 at least three written quotations shall be requested upon an **Invitation to Quote**. The Invitation to Quote must:

- (a) be in a form approved by the Head of Legal and Support Services
- (b) specify the goods, services or works that are required, together with the terms and conditions of contract that will apply, and
- (c) state that the Council is not bound to accept any Quotation

9.2 All quotations shall be either:

- (a) addressed to the appropriate Head of Service or Corporate Procurement Officer in an unmarked, sealed envelope endorsed only with the word “Quotation” and the subject matter of the quotation; or
- (b) delivered to the appropriate Head of Service or Corporate Procurement Officer via an electronic procurement system which has been adopted by the Council

9.3 A quotation may be accepted by the appropriate Head of Service provided that where the most economically advantageous criteria is used a written note shall be placed on the Contract File giving the reason(s) for accepting the quotation.

9.4 Unless the Head of Legal and Support Services considers a formal contract document is necessary, orders for procuring goods and/or services the value of which is no greater than £50,000 shall be on the official form of order (official order) as approved by the Head of Legal and Support Services.

9.5 All official orders must refer to the Invitation to Quote and be issued in sufficient detail:

- (a) to identify the works, goods and/or services required,
 - (b) the price to be paid,
 - (c) the time within which the contract is to be performed
- and show the appropriate expenditure code.

9.6 Competitive prices may be sought and received electronically provided that hard copies of all electronically processed information and correspondence relating to the price are made and retained on the contract file.

9.7 Officers authorised to sign official orders shall not certify the receipt of any goods or services for which they have signed the order.

9.8 Any orders which are given orally must be confirmed by an official order on the same day, or as soon as possible thereafter.

9.9 Where goods and/or services are obtained under agreement from a Contractor throughout a year it shall be sufficient to invite quotations once in that year, however, consideration must be given to establishing a Framework or Term Contract.

10. PROCEDURES FOR CONTRACTS WITH A VALUE BETWEEN 50,001 AND EU PROCUREMENT LEVELS

10.1 Any Contract with a value between £50,001 and EU Procurement levels shall be procured upon an **Invitation to Tender** in accordance with the Approved List or Restricted Procedure unless the appropriate Head of Service in consultation with the Strategic Director of Corporate Services, has decided that tenders for a Contract are to be obtained by open competition on the basis that the approved list or restricted list procedure would be inappropriate for the particular Contract.

10.2 Approved List Procedure

10.2.1 The Approved List procedure shall be used where the appropriate Head of Service, in consultation with the Head of Legal and Support Services and the Head of Finance and Asset Management has determined that a list shall be kept of persons to be invited to tender for Contracts for the supply of goods and/or services of specified categories, values or amounts.

10.2.2 The list shall:-

- (a) be compiled and maintained by the Corporate Procurement Officer or in such other manner as the Cabinet may approve
- (b) contain the names of all Contractors who are approved for inclusion in Invitations to Tender under the Approved List Procedure ; and
- (c) indicate whether the Contractors whose names are included in it are approved for Contracts for all or only some of the specified values, amounts or categories.

10.2.3 At least four weeks before the list is first compiled public notice inviting applications for inclusion on the list shall be published via the Council's website and/or Electronic Contract Management System Thereafter the list may be compiled and maintained in such manner as Cabinet may approve.

10.2.4 Where an invitation to tender for a Contract is limited to Contractors whose names appear on the list, invitations to tender shall be sent to:-

- (i) not less than four Contractors selected in a manner that ensures open and fair competition amongst those approved for a Contract of the relevant category or value; or
- (i) where fewer than four Contractors are approved for a Contract of the relevant category and value, all those Contractors.

10.3 Restricted Procedure

10.3.1 The restricted procedure shall be used where the proposed Contract does not fall within one of the specified categories for the approved list procedure.

10.3.2 Where this procedure applies, the invitation to tender is to be limited to Contractors who reply to a public notice advertising the Contract.

10.3.3 Public notice shall be given in at least one local newspaper and, at the appropriate Head of Service's discretion, in other trade, regional or national media. The response time allowed should be at least fourteen days. [For EU contracts, notices must be placed in the OJEU at the same time and the response time must be in accord with EU Timescales]. The advertisement must include the following information:

- (a) what the contract involves (and if available the form of contract to be used)
- (b) an invite to people to register their interest
- (c) that when they register they must provide
 - (i) proof of their technical ability
 - (ii) their financial position

- (iii) their equalities policy
 - (iv) health and safety policy
 - (v) environmental policy, and
 - (vi) any other information that is identified as necessary
- (d) that a shortlist will be drawn up and only contractors or suppliers on the shortlist will be invited to tender: and
- (e) the timescales involved and the name and address of the Head of Service, so that they can register their interest and return the information.

10.3.4 After the expiration of the period specified in the public notice, the contractors who are proposed to be Invited to Tender shall be reported to the appropriate Cabinet Member for approval and Invitations To Tender for the Contract sent to not less than four Contractors (save that all Contractors who have provided the information required under rule 10.3.3(c) will be invited to tender where fewer than four respond).

[10.3.5 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales and the number of Contractors invited to tender in accordance with rule 10.3.4 is increased to five.]

10.4. Open Procedure without shortlisting

10.4.1 The open tendering procedure allows for all contractors who are interested in tendering for a contract to submit a tender. It shall apply where:-

- (a) a Head of Service in consultation with the Strategic Director of Corporate Services has decided that tenders for a Contract are to be obtained by open competition on the basis that other forms of tendering for the Contract are unlikely to give rise to adequate competition; or
- (b) the Contract and subsequent documentation is for the disposal of land.

10.4.2 Where this procedure applies at least ten days public notice shall be given in one or more local newspapers and, at the appropriate Director's discretion, in other regional or national media and appropriate trade journals.

10.4.3 The advertisement must include the following information:

- (a) what the contract involves
- (b) an invite to people to register their interest
- (c) that an Invitation to Tender and questionnaire are available when they register which they should complete in full and return to the Council to consider
- (d) the latest date and time by which they must return their completed tender, questionnaire and other documents
- (e) the name and address of the Head of Service so that they can register their interest and obtain the tender and questionnaire

10.4.4 An Invitation to Tender and questionnaire must be sent to everyone who shows an interest.

[10.4.5 If EU procurement legislation applies, any advertisements, timescales and procedures must be in accordance with the requisite EU timescales.]

CONTRACTS TO WHICH EU PROCUREMENT RULES APPLY

11. Thresholds

- 11.1 Advice should be sought from the Head of Legal and Support Services in respect of any procurement with an estimated value greater than EU Procurement thresholds upon whether EU Procurement Rules apply. The threshold values are reviewed on a regular basis, normally every two years. Table 1 identifies when EU Procurement Rules are likely to apply:

Table 1: EU Procurement Thresholds - Valid from January 2010

	All Procedures	Prior-information Notice
Supplies	£ 156,442	£607,935
Services	£ 156,442	£607,935
Works	£3,927,260	£3,927,260

- 11.2 Procurement exercises with an estimated contract value within 10% of Threshold levels where EU Procurement Rules apply should also be advertised in the OJEU to avoid OJEU advertising requirements being unintentionally breached.

11.3 Standards

If the European Committee for Standardisation (CEN) has issued a relevant standard, all the goods and materials used or supplied, and all the work done under the contract, must be in line with that standard.

11.4. The Euro

A provision should be included in any contractual documentation requiring the contractor to convert prices from sterling to Euro and to submit invoices for payment accordingly once we give the contractor notice to do this.

11.5 Number of tenderers

If the contract is expected to exceed EC limits, a minimum of five contractors or suppliers must be invited to tender save where the adopted procedure provides otherwise. (In cases where fewer than five contractors or suppliers apply and are shortlisted, all contractors or suppliers must be invited to tender.)

- 11.6 If during the course of a competitive tendering exercise, an officer becomes aware that the value of bids received exceeds the EU Thresholds, but bid invitations have not been extended through the OJEU notice procedure - as it was anticipated that the threshold would not be exceeded advice must be sought from the Head of Legal and Support Services upon how to proceed.

- 11.7 Where the Council has an aggregated requirement for specified goods or services with an estimated annual value at or greater than the figures provided in Table 1, a Prior Indicative Notice (PIN) must be placed in the Supplement to the Official Journal of the European Community (OJEU) once annually.

11.8 Buyer's Profile

The Corporate Procurement Officer shall publish and maintain a buyer's profile via the internet incorporating the following information:

- (a) a brief description of future and current tenders within the year 1 April to 31 March
- (b) the date the advert was dispatched to OJEU
- (c) the OJEU reference number
- (d) the closing date for notification of interest in relation to expressions of interest
- (e) the tender dispatch date
- (f) the closing date for tenders
- (g) the award date
- (h) the identity of the successful tenderer
- (i) the award notice reference number
- (j) the date of the award notice

11.9 EU Procedures:

All contracts with a value in excess of EC limits shall be let in accordance with a procurement method which is acceptable within EC law. The acceptable methods are:

- (a) the Restricted Procedure, (rule 10.3 above) ;
- (b) the Open Procedure, (rule 10.4 above);
- (c) the Negotiated Procedure, under which purchasing bodies may negotiate the terms of a contract with one or more suppliers of their choice. The Negotiated Procedure must never be used without specific written advice from the Head of Legal and Support Services confirming that he considers that the procedure applies. Advice upon the potential application of the Negotiated Procedure must be sought where:
 - (i) the open or restricted procedure has produced no tenders
 - (ii) the contract follows a design contest and the rules require it to be awarded to the successful contestant
 - (iii) there is extreme urgency and:
 - (a) the events that have led to extreme urgency were not foreseeable and were not attributable to the contracting authority,
 - (b) the time limits required for open and restricted procedures cannot be met, and
 - (c) the scope of proposed contract is necessary to respond to the immediate emergency.
 - (iv) an open or restricted procedure was discontinued because of irregular tenders.
- (d) Competitive Dialogue: subject to the agreement of the Head of Legal and Support Services the authority may use the Competitive Dialogue procedure to advertise its needs, requirements and Award Criteria rather than a specific contract, to enable the development of solutions for a final contract through dialogue:

The pre-tender stage:

- (i) determination of the form of contract to be tendered is not required prior to the final tender stage
- (ii) a candidate submitting a bid within the competition must be treated equally with, and be provided with the same information as, any other candidate;

- (iii) information provided by candidates within the competition is treated as confidential and must not be disclosed to third parties, save with the agreement of the candidate concerned;
- (iv) the evaluation team may enter into dialogue with a number of candidates in order to:
 - a. develop solutions upon which to invite tenders and
 - b. determine the Award Criteria to be applied

The preliminary tender stage:

- (v) a minimum of three candidates must be selected to participate in the preliminary tender stage unless less than three candidates meet the Award Criteria, in which case all qualifying candidates must be invited to participate;
- (vi) the evaluation team may enter into dialogue with those invited to submit a preliminary tender to:
 - a. clarify their preliminary tenders
 - b. ensure they meet the authority's requirements and
 - c. establish the principal terms for the proposed contract
- (vii) the evaluation team must evaluate the preliminary tenders against the pre-determined Award Criteria to determine which preliminary tender is the most economically advantageous,

The final tender stage:

- (viii) at the final tender stage best and final offers on the proposed contract must be invited from those tenderers who have submitted a preliminary tender and have not formally withdrawn from the process
- (ix) subsequent dialogue with the winning bidder will only be permissible if it does not impose any substantial new requirement, or have the effect of modifying substantial aspects of the tender,

11.4 Where the Restricted Procedure, Open Procedure or Competitive dialogue are used the Council is required to place a Contract Notice in the Official Journal of the European Community and the timescale for expressions of interest in response to such notices is prescribed.

Advertisement is subject to the following constraints:

- (a) Legal advice must be sought upon the applicable timescales
- (b) the accelerated procedure may only be used with the consent of the Head of Legal and Support Services

Table 2 sets out the ordinary timescales. The applicable timescales may be reduced further as indicated in Tables 3 and 4 where electronic systems are used to publish the contract notices and provided unrestricted electronic access to documentation:

Table 2: Advertisement in OJEU without use of electronic media

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	<i>EU Negotiated Procedure</i>
(i) to the closing date for receipt of registrations of interest from contract notice	-	37 days	15 days	37 days (if poss.)
(ii) to the closing date for receipt of tenders	52 days	40 days	10 days	21 days*
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	36 days	26 days	N/A	21 days*(i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 3: Notice of contract compiled and submitted electronically:

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EC Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days (if poss.)
(ii) to the closing date for receipt of tenders	45 days	35 days	10 days	14 days*
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	19 days	N/A	14 days*(i.e., same as above)
Minimum no. of days to allow following decision on contract	10 days	10 days	10 days	10 days

award before formalising contract				
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 4: Notice of contract compiled and submitted electronically and unrestricted electronic access to all contract documentation provided at tender receipt stage

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days
(ii) to the closing date for receipt of tenders	40 days	14 days	10 days	21 days*
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	5days	N/A	21 days*(i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

12. SUBMISSION OF TENDERS

12.1 All Hard Copy tenders shall be addressed to the Head of Legal and Support Services.

12.2 Subject to 12.3 where an electronic tendering system is available which meets the satisfaction of the Head of Legal and Support Services and the s151 officer Invitations To Tender may be transmitted by electronic means.

12.3 Tenders may be submitted by electronic means provided that:

- a) evidence that the transmission was successfully completed is obtained and recorded;
- b) each tender submitted electronically is deposited in a secure mailbox approved by the Head of Legal and Support Services before the return date, and;

c) electronic tenders are kept in a separate secure folder until the deadline is passed for receipt of tenders.

- 12.3 No Hard Copy tender may be considered unless it is contained in the approved form of envelope endorsed only with the word "Tender" and the subject to which it relates and addressed and delivered to the Head of Legal and Support Services. The envelope must not bear any mark or name indicating the name of the sender.
- 12.4 The date and time of receipt of every Hard Copy tender shall be indicated on the envelope by the Head of Legal and Support Services and must remain in the secure custody of the Head of Legal and Support Services until the time and date appointed for their opening.
- 12.5 Any tender received after the time specified for the receipt of tenders but before the opening of tenders may be opened and accepted provided that if such a tender is accepted, the fact that it was a late tender is reported to the Cabinet.
- 12.6 Any tender received after the opening of tenders has taken place, must be promptly returned to the Tenderer. The tender may be opened to ascertain the name of the Tenderer but no details of the tender may be disclosed.
- 12.7 No alteration of any tender shall be allowed after the closing date for the receipt of tenders except as allowed in accordance with post tender negotiation.

13 **OPENING AND REGISTRATION OF TENDERS**

- 13.1 All tenders for a Contract shall be opened at one time in the presence of a member of the Internal Audit team and the appropriate Head of Service.
- 13.2 The Head of Financial Services and Asset Management, (or his nominee as relevant) shall at the time tenders are opened record in a book kept for this purpose the following:-
- (a) the nature of the goods or services to be provided;
 - (b) the name of each Tenderer by or on whose behalf a tender was submitted;
 - (c) the date and time of receipt of each tender as recorded on the envelope;
 - (d) the amount of each tender;
 - (e) the date and time of the opening of the tender; and
 - (f) the names of all persons present at the opening of the tenders.
- 13.3 The tenders opened shall be signed and dated by Internal Audit and the Head of Service.

14. **EVALUATION OF QUOTATIONS OR TENDERS**

- 14.1 Quotations or Tenders may be evaluated on the basis of one of the following criteria.

- (a) the most economically advantageous quotation or tender where criteria other than price are important
- (b) the highest price (if we are receiving the payment)
- (c) the lowest price (if we are making the payment),

Contractors or suppliers must be advised in the Invitation to Quote or Tender which will be used:

If using criteria (a) all the criteria to be considered must be included in the Invitation to Quote or Tender. The inclusion of the criteria must be relevant, objectively justified and listed in order of importance eg:

- (i) technical excellence
- (ii) price
- (iii) quality of services, work materials or goods; and
- (iv) a commitment to continuous improvement.

- 14.2 An evaluation record must be maintained and only officers who are named on the evaluation record may take part in the evaluation process. At least two officers must evaluate the tenders.
- 14.3 The identified officers must decide how to evaluate tenders before they are invited and set out the evaluation method in the tender documents. The same standards must be used to evaluate all the tenders.
- 14.6 If it is necessary to discuss a particular tender with an individual contractor or supplier to make sure what they are offering is understood, the discussions must not add anything to the tender.
- 14.7 If there is a simple mistake or arithmetical error in a bid, contact with the relevant contractor or supplier can be made to obtain the contractor's or supplier's amendment in writing.
- 14.8 All detailed discussions about important or complicated points must be recorded. The officers taking part and the contractor or supplier must sign the record and it must be retained on file.
- 14.9 An evaluation report for the Head of Service should be prepared advising upon the outcome of the evaluation process and details of the tenders evaluated.
- 14.10 During the evaluation stage details about the number of tenders received, where those tenders came from or what is in them will remain confidential. However, financial, technical or legal advice can be sought to assist with the evaluation.
- 14.11 Before entering into a contract with any firm, the appropriate Head of Service must:
- (a) be satisfied about the technical capability of such firm; and
 - (b) ensure that all evaluation criteria have been determined in advance; and
 - (c) ensure that these Standing Orders have been complied with.

15 **BONDS AND PARENT COMPANY GUARANTEES**

- 15.1 Heads of Service must consult the Head of Finance and Asset Management:
- (a) about whether a Parent Company Guarantee is required when a Contractor is a subsidiary of a parent company, and:
 - (i) the Total Value of the Contract exceeds £50,000 or
 - (ii) award is based on evaluation of the parent company, or
 - (iii) there is some concern about the stability of the Contractor, and
 - (b) about whether a Bond is needed:
 - (i) where the Total Value of the Contract exceeds £140,000, or
 - (ii) where it is proposed to make staged or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Contractor.

16. **POST-TENDER NEGOTIATION**

- 16.1 Post-tender negotiation may take place where:-
- (a) the tenders received are in excess of the budget provision; or
 - (a) the appropriate Head of Service, after consultation with the Head of Legal and Support Services, considers, from an analysis of the tenders received, that additional financial or other benefits may be obtained for the Council through post-tender negotiation.
 - (c) A clause allowing for negotiations after tenders have been opened was included in the Invitation to Tender

16.2 Any post-tender negotiation may be undertaken with the Tenderer submitting the Preferred Bidder exclusively. However, where any such post-tender negotiation is proposed for other than the Tenderer submitting the preferred tender then the opportunity for such post-tender negotiation shall be extended to all those who have submitted tenders.

16.3 Where any post-tender negotiations are appropriate a written record shall be kept of all negotiations, including notes of all meetings and the names of the individuals present, and placed on the Contract File.

17. **CONTRACT AWARD**

17.1 A tender may be accepted by the appropriate Head of Service, provided that:

- (a) the Head of Service notifies award of the contract to:
 - (i) the Head of Legal and Support Services, and
 - (ii) in the case of a tender which falls above EU Procurement Levels the responsible Cabinet Member in the form provided at Appendix A;
- (b) confirmation of receipt of the form provided at Appendix A has been returned to the Head of Service by the Head of Legal and Support Services, and where required the responsible Cabinet Member in accordance with (a) above;
- (c) where the contract value exceeds EU Procurement Levels the contract is not awarded until the time period identified in rule 11.4 (table 2) has elapsed.
- (d) the identity of any Tenderer other than the Tenderer submitting the tender accepted shall not be disclosed to any other Tenderer.

17.2 The acceptance of a tender shall be notified in writing to the Tenderer submitting the successful tender by the appropriate Head of Service.

17.3 In any case where any acceptable tenders are equal in amount, the tender of a local Tenderer shall be accepted which shall be taken to mean any company, firm, partnership, or other business whose registered office, principal or other place of business is situated within the locality.

18. **STARTING THE CONTRACT**

18.1 Unless the Head of Legal and Support Services agrees, no Contractor or supplier will start a contract until they have met the following conditions:

- (a) there are completed formal contract documents in place that the Head of Legal and Support Services is satisfied with;
- (b) the contractor or supplier has provided proof that they are adequately insured
- (c) where it is relevant, the Head of Legal and Support Services has received a performance bond, parent company guarantee or other security;
- (d) if it is necessary under the contract, that the contractor or supplier has a health and safety plan that the Council's Health and Safety Services Manager has agreed and approved in writing
- (e) the Head of Legal and Support Services in conjunction with the Head of Human Resources is satisfied that relevant matters relating to TUPE have been settled; and
- (f) any other relevant matters (eg relating to the use of land) have been completed or settled to the satisfaction of the Head of Legal and Support Services.

19. **MUNICIPAL CHARGING OR TRADING**

- (a) Nothing within these CPRs restricts the ability of Heads of Service to charge for the provision of Goods or Services where a legal power exists enabling them so to do

(b) Where the Council establishes a trading company the rules formulated by that company will govern the contractual arrangements relating to the trading activities of that company.

20. EXEMPTIONS TO CONTRACT PROCEDURE RULES

20.1 Exemption from CPRs is only permitted where:

(a) European Union Procurement Rules prevent the use of an exemption, and

(b) one of the following applies:

- (i) the consent in writing to use one of the exemptions referred to under rule 20.2 has been obtained, or
- (ii) Cabinet agreement in accordance with rule 1.2 has been obtained, or
- (iii) in a case of urgency, the consent of the Cabinet Member with delegated powers has been obtained by a formal decision notice

20.2 Exemptions for which the consent in writing of the Head of Legal and Support Services can be given:-

- (a) purchases at public auction;
- (b) the procurement of proprietary or patented goods or materials or services which in the opinion of the appropriate Head of Service are obtainable only from one contractor, and where no reasonably satisfactory alternative is available;
- (c) the purchase of goods or materials, the execution of works or supply of services for which the Head of Service considers that no genuine competition can be obtained;
- (d) the purchase of a named product required to be compatible with an existing installation
- (e) the execution of work or supply of services of a specialised nature which in the opinion of the appropriate Head of Service are carried out by only one contractor and where no reasonably satisfactory alternative is available
- (f) the instruction of, advice from, or service provided by Counsel
- (g) the purchase of a work of art or museum specimen;
- (h) purchases, works and services required by the appropriate Head of Service so urgently as not to permit compliance with the requirements of competition;
- (j) procurements where the number of quotations or tenders received is below that required by these Contract Procedure Rules.

20.3 An exemption is not required to procure the purchase of goods or materials, the execution of works or supply of services, where a Framework Arrangement or Contract is let through or on behalf of a public body, consortium, association or similar body provided that tenders or quotations are invited and contracts placed in accordance with procedures which are equivalent to these Contract Procedure Rules and also comply with any national or EU legislation.

20.4 The Head of Legal Support Services may only grant an exemption in relation to a contract with a value which exceeds £50,000 if the consent of the responsible Cabinet Member, or in his absence the Cabinet member for Finance/Legal has been obtained.

20.5 In each case a note of the action taken and the reasons therefore must be recorded on the Contract File for audit purposes.

21. ELECTRONIC COMMERCE

21.1 Nothing in these Rules shall prevent:-

- (a) invitations to quote or tender being issued by use of the internet. A Head of Service (in consultation with the Head of Legal and Support Services) may publish invitation to tender notices on appropriate internet web sites in substitution for publication in newspapers or trade journals.

- (b) receipt of quotations or tenders by use of the internet provided the Head of Service and the Head of Legal and Support Services have agreed that suitable privacy and security mechanisms are in place for the receipt and opening of such submissions.

FORM OF CONTRACT

22. DOCUMENTATION- FORM OF CONTRACT

22.1 Every Contract shall be in writing and:-

- (a) where the Contract value is no greater than £50,000 the Contract shall be approved and signed in accordance with CPR 1.5 and 1.6 unless:-
- (i) the Contract is in a standard form previously approved by the Head of Legal and Support Services; or
 - (ii) is to be dealt with on an official order in accordance with CPR 9.4 in which case it may be signed by the appropriate Strategic Director or Head of Service; and
- (b) where the Contract value is £50,001 or more it shall be approved by the Head of Legal and Support Services and signed or sealed, as appropriate, in accordance with CPR 1.5 and 1.6

23. EXTENSIONS TO EXISTING CONTRACTS

- 23.1 No extension to a contract is permitted which would have the effect of taking the total value of a contract which was not let in accordance with EU Procurement regulations above EU thresholds.
- 23.2 If the original contract was let in accordance with EU procurement regulations, the contract can only be extended within the parameters identified in the original EU contract notice.
- 23.3 Subject to CPR 23.1 and 2 a Head of Service may, with the consent of the Head of Legal and Support Services, extend a contract subject to the extension being within the scope of the original scheme. All such decisions shall be maintained on the contract file and a copy sent to the Corporate Procurement Officer.
- 23.4 Extensions to capital project contracts that fall outside the scope of the original scheme require the approval of the Head of Finance and Asset Management
- 23.5 If the contract was awarded as a framework contract, the total contract period, including any extensions shall not exceed four years.

24. SIGNING AND SEALING

- 24.1 All Contracts presented for sealing or signing shall be accompanied by a statement of the Council's authority to enter the Contract or seal the document. The statement shall specify the appropriate resolution giving the authority or in the case of an authority delegated to an officer shall specify the precise delegated authority being exercised.

25. CONTRACT CONDITIONS

25.1 Every Contract for goods and/or services shall state:-

- (a) the goods or services to be provided;
- (b) the parties to the Contract, including any guarantor;
- (c) the price and any discounts, or the method by which prices and discounts are to be calculated, and the method and timing of payments;
- (d) the time within which the Contract is to be carried out;

(e) such other terms and conditions as may be agreed between the parties;

25.2 Unless the Head of Legal and Support Services considers it unnecessary or impractical the Contract shall also state:-

- (f) that the Contractor will not assign the Contract without written consent of the supervising officer/contract administrator;
- (g) that the Contractor will pay liquidated damages (where these can be assessed and ascertained) or other damages to the Council should the terms of the Contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable;
- (h) the contractor must provide evidence of adequate insurance to cover both Public and Employers' liability, appropriate indemnity provisions and any performance bond or parent company guarantee required;
- (i) that the Contractor shall not unlawfully discriminate within the meaning of the Race Relations Act 1976 or any comparable statutory provision relating to discrimination in employment, and shall ensure that all employees, agents and sub-contractors do not unlawfully discriminate, and shall comply with all relevant codes of practice issued by the Commission for Racial Equality or comparable body and, so far as practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice;
- (j) that the Contractor shall adopt safe methods of work and comply with all other requirements of Health and Safety at Work legislation in order to protect the health and safety of its personnel and to the extent applicable the personnel of the Council and all other persons;
- (k) that the Contractor shall comply with Data Protection legislation and indemnify the Council in respect of the use, disclosure or transfer of personal data by the Contractor, its employees, agents and Sub-Contractors;
- (l) that the Council may cancel the Contract and recover any loss if the Contractor, its employees, agents and Sub-Contractors offer any inducement or reward relating to the Contract (even if the Contractor does not know what has been done) or commit any offence under the Prevention from Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972;
- (m) where under any contract, one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the contract from the date when payment is due until the date when payment is received;
- (n) whenever, under the contract any sum of money is recoverable from or payable by the contractor, this sum may be deducted from any sum due or which at any time may become due to the contractor under this or any other contract with the Council
- (o) the contractor must not sub-contract the works or any part of the works, without the prior written consent of the appropriate Head of Service, no sub-letting by the contractor will relieve the contractor of its liability to the Council for the proper performance of the contract and the contractor remains responsible to the Council for the proper performance and observance by all sub-contractors of all the contractor's obligations, and
- (p) the principles of Best Value required and any other terms and conditions specified by the Head of Legal and Support Services (who has general powers to set standard and special contract conditions).

25.3 Any standard terms and conditions of contract submitted by contractors shall not be accepted without advice from the Head of Legal and Support Services.

SUB-CONTRACTORS

26. NOMINATED SUB-CONTRACTORS

26.1 These CPRs shall apply where a Sub-Contractor or supplier is to be nominated to a main Contractor.

27 **POST CONTRACT MONITORING AND EVALUATION**

- 27.1 During the life of the contract the Officer must monitor in respect of:
- (a) performance
 - (b) compliance with specification and contract
 - (c) cost
 - (d) any Best Value requirements
 - (e) user satisfaction and risk management
- 27.2 A contract must not be terminated, assigned, varied or novated without first obtaining advice from the Head of Legal and Support Services and any requisite authorisation.
- 27.3 Where the Total Value of the contract exceeds £140,000, the Officer must make a written report to the relevant Strategic Director evaluating the extent to which the purchasing need and the contract objectives were met by the contract. This should be undertaken when the contract is completed.

28. **DEFINITION AND INTERPRETATION**

- 28.1 In these CPRs the following definitions apply unless the context requires otherwise:-

CPR(s)	Contract Procedure Rules
Cabinet	includes the Leader and individual Cabinet Members if the Cabinet delegates the relevant function to them.
Call Off	goods, services or works purchased from time to time under a Framework Contract or Arrangement
Committee	any committee or sub-committee of the Council.
Chairman	a Chairman of a Committee or the Vice-Chairman of a Committee if the Chairman is absent or unavailable.
Contract	any agreement for the supply of goods, materials or services, the execution of works or the awarding of concessions.
Contract File	a record of all matters relating to a Contract.
Contractor	a supplier of goods, materials, works, services or concessions.
EU contract	a contract covered by the Public Supply, Works or Services Contracts Regulations.
Framework Contract	a general term for agreements with suppliers which sets out terms and conditions under which specific purchases ("call-offs") can be made throughout the term of the agreement. Such agreements can create an obligation to make call-offs (a framework agreement) or set out the terms and conditions for subsequent call-offs but place no obligations, in themselves, on the procurers to buy anything (a framework arrangement)
Goods and/or services	includes goods or materials to be supplied and/or works or services (including concessions) to be carried out or performed.
Hard Copy Tender	A tender document provided to the Council in paper form

Invitation to Quote	Invitation to quote documents in the form required by contract procedure rules
Invitation to Tender	Invitation to tender documents in the form required by contract procedure rules
Nominated Suppliers and	Those persons specified in a main contract for the discharge of any part of that contract
Preferred bidder	The tenderer submitting the tender that scored highest under the adopted criteria for evaluating tenders.
Sub-contractors Officer	The officer designated by the Head of Service to deal with the contract in question
OJEU	The Official Journal of the European Union.
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the council, they can require the parent company to do so instead
Tenderer	any person who is invited to submit a tender for the supply of goods, materials, works, services or concessions to the Council.
Total Value	<p>the whole of the value or estimated value [in money or equivalent value] for a single purchase or disposal, whether or not it comprises several lots or stages</p> <p>The total value shall be calculated as follows:</p> <p>(a) Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period</p> <p>(b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months</p> <p>(c) Where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) For feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(e) For nominated suppliers and sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub-contractor</p> <p>(f) Where an in-house service provider is involved, by taking into account redundancy and similar/associated costs</p>
Year	a year commencing on the 1 April and finishing on the following 31 March.

28.2 References to “lowest tender” or “lowest tenderer” means “highest tender” or “highest tenderer” where payment is to be received by the Council.

28.3 Where Contract values are specified by reference to a Band, the Contract values for each Band are those within the financial limits specified in Part 2 of the Schedule.

APPENDIX A

NOTIFICATION OF INTENTION TO AWARD A CONTRACT (CPR 17)

CONTRACT:

SERVICE RESPONSIBLE:

Nature of Contract:

Value of contract:	

DATE OF AUTHORISATION TO ENTER CONTRACT AND REPORT REFERENCE (WHERE APPLICABLE):

RECEIVED BY HEAD OF LEGAL AND SUPPORT SERVICES
DATE OF RECEIPT:

RECEIVED BY CABINET MEMBER (ITEMS WHICH HAVE A VALUE ABOVE EU PROCUREMENT LIMITS ONLY)
DATE OF RECEIPT:

ONCE THE ABOVE RECEIPTS HAVE BEEN OBTAINED, THE CONTRACT MAY BE AWARDED.

COMPLETED FORMS TO BE RETURNED TO LEGAL SERVICES