

AUDIT COMMITTEE

11 JULY 2013

CHANGING THE CONTRACT PROCEDURE RULES AND PROCESSES IN MEDWAY

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Summary

The purpose of this report is to provide an introduction and overview of changes proposed to reduce 'red tape' and encourage / support new and existing Suppliers to the Council.

The changes proposed would be implemented in two phases during the current financial year, the first phase of which is outlined within this report.

1. Budget and Policy Framework

- 1.1 Medway Council spends more than £230 million each year across a range of goods, services and works needed to serve our communities.
- 1.2 Medway has a local economy of £2.8 billion and therefore the public money that is spent with third parties represents just over 8% of the local economy.
- 1.3 The Contract Procedure Rules are a matter for Full Council to agree, as they form part of the Constitution. The Committee's terms of reference includes provision to consider any changes to the codes of practice on tenders and contracts. Therefore the Audit Committee is asked to recommend this report to full Council.

2. Background

- 2.1 Encouraging and supporting a diverse and competitive marketplace of suppliers (in particular SMEs) is key to the Council delivering Best Value and supporting local businesses and development where possible.
- 2.2 The procurement regulations (and associated processes etc) the Council has to follow can understandably appear overly complicated and become a potential bureaucratic burden for suppliers.
- 2.3 A phased series of changes are proposed that will help existing and new suppliers do business with the Council and reduce/remove unnecessary 'red tape', whilst still complying with the Council's duties under EU Regulations and UK Law.
- 2.4 The phased approach proposed will consist of the following: -

Phase 1 - Process & Procedures (May – July 13)

- Introduction of electronic tendering
- Review and revision of Council's Contract Procedure Rules

Phase 2 – Supplier Support & Visibility (July – September 13)

- Draft & publication of a 'How to do Business' Guide
- Supplier Event/Drop in Sessions
- Publication/accessibility of the Council's Procurement Forward Plan & Contract Register

- 2.5 The contents of the report below outlines to the Audit Committee proposed changes through Phase 1.

3. Options

- 3.1 There are two options in relation to the Councils procedure rules and processes: -
 - Option A - Continue to use the current procedures and processes
 - Option B - Revise the current procedures and processes
- 3.2 **Option A** - The Council's existing processes for the issuing, return and evaluation of Invitation to Quotes (ITQ's) and Invitation to Tenders (ITT's) are both costly and time consuming from the Suppliers perspective and that of the Officer(s) undertaking the procurement.
- 3.3 Whilst currently the Council's opportunities are published electronically, `thereafter the existing process is predominantly 'manual' in that it requires the Suppliers to register interest, complete pre-qualification questionnaires,

ITQ's and ITT's etc in hard copy (usually in duplicate), with Officers subsequently having to open, record and evaluate such documents manually.

- 3.4 Not only are the above processes inefficient and potentially prohibitive for some SME's, they require a significant and disproportionate amount of Officer time to ensure probity for the Council.
- 3.5 The current Contract Procedure Rules and Procurement Manual were written prior to the introduction of Category Management in Medway and as such are not entirely reflective of the current/future approach and delivery.
- 3.6 The transition has placed greater emphasise on Category Management leading the procurement process to ensure contracts are effective, legal and provide best value with Services being the 'delivery experts'.
- 3.7 Upon reviewing the Contract Procurement Rules and current Procurement Manual, both documents appear at present to be a hybrid of both procedures and guidance and as such may cause confusion and in some instances conflict.
- 3.8 Given the points highlighted in 3.2 – 3.7 above, Option A (to continue to use the current procedures and processes) is not recommended.
- 3.9 **Option B** – Implementing e tendering software to manage the full ITQ and ITT process will not only support the Governments overarching recommendations for electronic delivery of services and information (mandatory under the EU Regulations by 2016) but also provide numerous benefits for both Suppliers and the Council (outlined further in Section 4).
- 3.10 It is also essential that the Council's Contract Procedure Rules, associated guidance documents and templates are revised to ensure they remain fit for purpose, reflect proportionate controls and any changes in best practise or legislation.
- 3.11 The recommended option is Option B.

4. Advice and Analysis

- 4.1 **e Tendering System** - As part of the on-going collaboration work with the South East Seven (SE7) and other neighbouring authorities, the Category Management Team reviewed a number of collaborative opportunities - one area of which was regarding the Council's procurement technology and tools.
- 4.2 Following a review and discussions with the Group it is decided that Medway would adopt and implement the Pro Contract eTendering Suite/Software (in addition to utilising the Kent Business Portal for advertising future quote/tender opportunities).
- 4.3 This system (and the Business Portal) are currently being used by Kent County Council, Shepway District Council, Thanet District Council, Swale

Borough Council, Maidstone Borough Council and the Kent Fire & Rescue Service.

4.4 The e tendering system offers the following benefits: -

Suppliers Benefits: -

- Reduced costs associated with, printing, copying, postage, administration etc associated with the traditional process
- Automatically notifies Suppliers electronically of future ITQ/ITT opportunities for all participating authorities negating the need to continually monitor & search for future business opportunities across various council/authority websites etc
- No risk of postal delays/couriers etc disrupting submissions etc
- Ability to continually review/update documentation right up to deadline
- Free of charge – web based, only requires internet access

Council Benefits: -

- Amendments to ITQ/ITT information is quickly/easily transmitted to Suppliers
- Opportunity to respond quickly to any Suppliers questions and points of clarification
- Can notify Suppliers in a standardised manner, ensuring there is no bias to any one Supplier
- Responses from Suppliers remain secure and privileged until the closing date (providing greater probity) and are opened 'electronically'
- All communications are tracked and recorded in the system to create a clear legally binding audit trail

4.5 Once implemented, registered Suppliers have visibility of all participating authorities etc negating the need for Suppliers to register, search and express interest across numerous Council/local authority platforms.

4.6 In addition to advertising the Portal on the Council's website and the Supplier Event (26 July 2013), Category Management will write to all existing Suppliers to encourage registration on the Kent Business Portal during July.

4.7 Whilst Suppliers will have the ability to review/amend their details anytime on the system (to ensure they remain up to date etc), Category Management will contact Suppliers (at least annually) to remind them to review/amend.

4.8 The software is web-based and hosted on the Providers server and as such minimises any implementation issues/lead time etc. The software is

anticipated to be implemented by the end of June and rolled out to staff within the Category Management team (following training) throughout July.

- 4.9 **Council's Contract Procedure Rules** - Given the points highlighted in 3.5 – 3.7 above there is a need to ensure that the Council's rules and procedures are clearly articulated, giving definitive instructions whilst also providing practical guidance for applying the rules, that ultimately creates a 'toolkit' for the respective audiences.
- 4.10 The Contract Procedure Rules have been revised (draft copy attached at Appendix C) to reflect the key purposes set out below. Where the previous version contained advice, guidance etc, this information has been/transferred to a new Code of Practice Document and accompanying Guidance Notes.

Document	Key Purpose
Contract Procedure Rules	Set out the regulations that must be followed by Officers when procuring goods, services and works
Code of Practice	Provides practical advice and guidance on applying the Contract Procedure Rules
Guidance Notes	Highlight specific considerations relating to a range of procurement areas such as Specification Writing, EU Regulations, debriefing Suppliers etc
Templates	Provide established/agreed model documents for consistency of approach

- 4.11 The above segregation should provide clarity and ease of reference for Services undertaking any local procurement activity in addition to a recognised and consistent approach by the Category Management Team when they are leading the Service through a procurement process.
- 4.12 The clear segregation also allows additional Guidance Notes etc to be created and added as the Category Management function evolves without the need to constantly review the Contract Procurement Rules and Code of Practice (unless considered necessary).
- 4.13 For comparative purposes, a summary of amendments is set out in Appendix B.

- 4.14 **Revised Thresholds & Requirements** - The current thresholds, risk classification and requirements of the Council's Contract Procedure Rules are summarised in Table 1 below.

Table 1

Threshold	Risk	Requirement	Responsibility
0 - £1,000	Inconsequential	Minimum one quote (using Quick Quote form)	Service Lead
£1,000 - £15,000	Inconsequential	Minimum one quote (using ITQ document)	Service Lead
£15,000 - £100,000	Insignificant	Minimum three quotes (using ITQ document)	Category Management
£100,000 - £250,000	Low	ITT through the Gateway Process	Category Management
£250,000+	Medium	ITT through the Gateway Process	Category Management
Irrespective	High	ITT through the Gateway Process	Category Management

- 4.15 Under the provisions of the current Contract Procedure Rules, the Service Lead is required to complete and issue a 20 page Quick Quote form for all requirements under £1,000 or Invitation to Quote form (also 20 pages) for procurements between £1,000 & £15,000.
- 4.16 The Supplier is then required to submit the information requested in the prescribed manner set out in the forms, prior to an official purchase order being issued.
- 4.17 Whilst anecdotal, the requirement to issue and complete in such a prescriptive manner is considered onerous for Service Leads to construct, Suppliers to complete and more bureaucratic compared to other Council's processes for similar thresholds.
- 4.18 It is proposed that that the current thresholds, risk classification and requirements are amended to those summarised in Table 2 below.

Table 2

Threshold	Risk	Requirement	Responsibility
0 - £10,000	Low	Minimum one quote (Suppliers written quotation, email or reference to a catalogue acceptable)	Service Lead
£10,000 - £100,000		Minimum three quotations (Using revised ITQ document)	Category Management
£100,000+	Medium	ITT through the Gateway Process	Category Management
Irrespective	High	ITT through the Gateway Process	Category Management

- 4.19 The revised requirement in Table 2 (0 - £10,000) introduces the ability for the Service Lead to accept a Suppliers written quotation, email or make reference to a Suppliers published catalogue without the need to issue (and request the supplier to complete) the previous 'Quick Quote' Form.
- 4.20 In all instances, the use of the Council's Standard Terms & Conditions (and subsequent Purchase Order being raised) are applicable as before.
- 4.21 The above revised process affords the Service Lead greater flexibility for 0 - £10,000 procurements, whilst Category Management will provide additional scrutiny and increased competition by leading and managing all procurements over £10,000 (as opposed to over £15,000 previously).
- 4.22 The amended thresholds above are proposed to provide a mixed approach of local and centrally managed procurement, ensuring the benefits of local knowledge, needs and demand are combined with centrally established procedures and processes, escalated in proportion to value and risk.
- 4.23 Aligning the quotation threshold, and accepting Suppliers written quotations (as proposed) will also provide greater consistency in approach for Suppliers that currently supply goods, services or works across multiple authorities in Kent.
- 4.24 It is also proposed that the previous Low/Medium risk and associated thresholds (£100,000 - £250,000 & £250,000+) are amalgamated to a Medium Risk (£100,000+), as there is **no difference** in the procedure (or Gateway Process) that these respective levels are currently subjected to.
- 4.25 The revisions proposed above are considered to simplify the previous risk levels, responsibilities and processes for Service Leads whilst increasing

Category Management's influence across the Council's addressable expenditure.

- 4.26 It should be noted that **the existing Gateway Process remains applicable** for all Category B Procurement activity (£100,000 + or any procurement considered high risk).

5. Risk Management

- 5.1 The risks associated with the proposed changes to the Council's Contract Procedure Rules relate to the Suppliers awareness and subsequent communication. See the table below.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Reputational (lack of communication)	Suppliers awareness of changes in Council's tender process	i) Category Management to write to all existing suppliers to encourage registration on Kent Business Portal. ii) Supplier Event (26 July 13. iii) Creation of a 'How to do Business Guide' for Council Internet	C3

6. Consultation

- 6.1 The proposed threshold and requirement changes have been benchmarked with members of the SE7 Group and other district and borough Councils (Appendix A) and are considered more aligned and proportionate to those currently adopted.
- 6.2 The Procurement Board considered this report on 26 June 2013 and supported the recommendation as set out in section 8. The report will also be presented to the Cabinet on 9 July 2013 and the outcome will be reported to the Audit Committee.

7. Financial and Legal Implications

- 7.1 There are no direct financial implications arising from the report. There are opportunities for significant savings from a more effective provision regime, which underpins the ethos of category management
- 7.2 There are no direct legal implications relating to this report.

8. Recommendation

- 8.1 That Audit Committee recommend the revised Contract Procedure Rules attached at Appendix C to full Council for consideration on 25 July 2013,

Lead Officer Contact

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Background Papers

None

Appendix A

Authority	Accept Supplier Quotations	One Quotation (Up to)	Notes
Medway Council (SE7)	✓	£10K*	*Proposed
Kent County Council (SE7)	✓	£8K	
Surrey County Council (SE7)	✓	£10K	
Maidstone Borough Council	✓	£10K	
Brighton & Hove (SE7)	✓	£10K	
West Sussex County Council (SE7)	✓	£5K	
East Sussex County Council (SE7)	✓	£5K	
Hampshire County Council (SE7)	✓	-	
Swale Borough Council`	✓	£15K*	*Two quotations required
Shepway District Council	✓	£10K	
Dover District Council	✓	£10K	
Dartford Borough Council	✓	£10K	
Tonbridge & Malling Borough Council	✓	£5K	
Thanet District Council	✓	£10K	

Appendix B

Section/Para	Amendment	Additional Notes
1.1.2	Amended	
1.1.3	Amended	
1.1.4	Removed	Covered in 1.2 Primary Objectives – new draft
1.1.5	Removed	Covered in 1.1.3 – new draft
1.2.1	Moved	Covered in 1.3 & 1.3.4 – new draft
1.2.2	Removed	
1.2.3	Moved	1.3.3 – new draft
1.3.1	Moved	1.4.1 – new draft
1.4	Moved	1.5 – new draft
1.5	Moved/Amended	1.6 – new draft, titles/references updated
1.5.2	Moved	1.2 - new draft
1.5.2.3	Removed	
1.6	Moved	1.7 – new draft
1.7	Moved/Amended	1.3 – new draft
1.8	Amended	<p>Clarity provided to distinguish between exceptions (those exceptional circumstances where the Council's Contract Procedure Rules automatically shall not apply and exemptions, where such requests for the Council's Contract Procedure Rules not to apply have to be approved by the Monitoring Officer and retrospectively reported.</p> <p>Emergency threshold (natural disasters etc) revised from £15K to £10K in line with overall financial/tendering thresholds proposed</p>
Section 2	Amended	Section re-written to reflect the revised thresholds and process proposed
3.1	Moved	1.7 – new draft
3.2	Moved	1.7.4 – new draft
3.3.2	Removed	
3.3	Moved	1.7.3 – new draft
3.4	Moved/Amended	1.7.2 – new draft, renamed Collaborative Procurement
3.5	Moved/Amended	3.3 new draft, mandatory advertising requirements amended to include updated portals/sites etc
3.6	Moved	3.4 – new draft
3.7	Moved	3.1 – new draft
3.9	Removed	Guidance information moved to new Code of Practice Manual
3.10	Moved/Amended	3.2 – new draft, renamed Third party Pre-Qualification Services
3.11	Moved/amended	3.5 – new draft, guidance information moved to new Code of Practice Manual
3.12, 3.13, 3.14	Moved/amended	3.6, 3.7 – new draft, re-written to reflect adoption of e Tendering software
3.15	Moved/amended	3.8 new draft, re-written to reflect migration to Category Management approach and change in responsibilities
3.16	Moved/amended	3.9 new draft, re-written to reflect migration to Category

		Management approach and change in responsibilities
3.17	Moved/amended	3.10 – new draft, re-written to reflect migration to Category Management approach and change in responsibilities
3.18	Moved/amended	3.11 – new draft, guidance information moved to new Code of Practice Manual
3.19	Moved	3.14 – new draft
3.20	Removed	Not required to be incorporated into Contract Procedure Rules
3.21	Moved/amended	3.12 – new draft, re-written to reflect migration to Category Management approach and change in responsibilities
3.22	Moved	3.13 – new draft
4.1	Amended	Re-written to reflect migration to Category Management approach and change in responsibilities
4.2	Amended	Re-written to reflect the revised thresholds proposed
Section 9	Added	Added to reflect the Council's obligations/requirements of the Social Value Act 2012
10.1	Moved/amended	11.1 – new draft, amended to reflect changes in ISA & DBS

PART 7 – CONTRACT PROCEDURE RULES

SECTION 1 INTRODUCTION AND PURPOSE

1.1 INTRODUCTION

- 1.1.1 These Contract Procedure Rules are made under Section 135 of the Local Government Act 1972. They include provision for competition, and regulate the manner in which procurement and tendering take place within the Council.
- 1.1.2 These Contract Procedure Rules set out the regulations that must be followed by all Officers on each and every occasion that goods, services or works are procured on behalf of the Council.
- 1.1.3 These Contract Procedure Rules also protect the legal position of the Council in respect of compliance with EU and UK law (general law and in relation to the Procurement Regulations) and in its contractual dealings with external third party Suppliers and Contractors.

1.2 PRIMARY OBJECTIVES

- 1.2.1 These Contract Procedure rules have 5 primary objectives:
 - (1) To ensure that the Council obtains Value for Money and fulfils its duty of achieving *Best Value* as defined in Section 3 of the Local Government Act 1999. It is of primary importance that Officers, on behalf of the Council, engage in procurement activity with the intention of delivering Best Value services to the citizens of Medway, both at the point of contracting and through effective contract management, throughout the contract term.
 - (2) To ensure that the Council complies with English and European law in force in England that governs the procurement of goods, services and works.
 - (3) To establish procurement procedures which, when followed, should protect Members and Officers of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council relating to goods, services or works.
 - (4) To ensure that any risks associated with commencing procurement processes and subsequently entering into contracts are assessed as part of the procurement process and the Council's Procurement Gateway Process.
 - (5) To ensure that fairness and transparency remains at the forefront of all procurement activity undertaken by Officers and approved by Members on behalf of the Council.

1.3 SCOPE & APPLICATION

- 1.3.1 These Contract Procedure Rules apply to all procurement activity undertaken by the Council (inclusive of Partnering and Income Generation Contracts) unless any such procurement is expressly prescribed under these Rules, or subject to an *Exemption* (as specified in **Section 1.8**)
- 1.3.2 These Contract Procedure Rules shall apply irrespective of how the procurement is funded. Where any ambiguity exists in respect of such funding the decision of the Monitoring Officer and/or Chief Finance Officer shall be sought and that decision shall be final.
- 1.3.3 All contracts entered into by the Council are subject to these Contract Procedure Rules, the provisions contained within the Council's Financial Procedure Rules and in accordance with guidance from Category Management and Legal Services respectively.
- 1.3.4 These Contract Procedure Rules apply to all Officers involved in the issuing of Orders or the letting of Contracts for Supplies, (Goods), Services and Works necessary for the delivery of the Council's functions.
- 1.3.5 Any third party (e.g. a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these Contract Procedure Rules as if they (the consultant/third party) were Officers of the Council.

1.4 REVIEW & AMENDMENT

- 1.4.1 These Contract Procedure Rules shall be reviewed on a regular basis, not less than annually, by the Monitoring Officer who shall consult with the Procurement Board. The Monitoring Officer shall make minor changes to the Contract Procedures in accordance with Section 14.3 of Article 14 of the Council's Constitution. Any other amendments will be subject of approval by Council.

1.5 INTERPRETATION

- 1.5.1 The interpretation of these Contract Procedure Rules is solely a matter for the Council's Monitoring Officer and are not open to interpretation by any other Officer of the Council.
- 1.5.2 Where an Officer of the Council is unsure of the meaning and implications of these Contract Procedure Rules, guidance must be sought from Category Management, in consultation with and on behalf of the Council's Monitoring Officer and such guidance and direction shall prevail.
- 1.5.3 Where there is a conflict between these Contract Procedure Rules and the Council's Financial Procedure Rules, the former shall prevail, subject to guidance and clarification from the Council's Monitoring Officer in consultation with the Council's Chief Finance Officer.
- 1.5.4 Any failure to comply with these Contract Procedure Rules may result in disciplinary action being taken against an Officer and may be seen as gross misconduct.

1.6 PROCUREMENT GOVERNANCE STRUCTURE

1.6.1 The governance structure of procurement within the Council is as follows:

- The Cabinet – for decision making in respect of executive functions
- The Council – for all other decision-making
- The Procurement Board - The Procurement Board acts as a Cabinet Advisory Group to the Monitoring Officer and the Chief Finance Officer, in order to assist them in the procurement and contract decision-making process.

The Procurement Board consists of:

- The Deputy Leader (Portfolio Holder for Finance, the Council's Procurement Champion and Procurement Board Chair or such other portfolio holder as the Leader of the Council may substitute at his/her discretion).
- The Portfolio Holder for Adult Services (or such other portfolio holder as the Leader of the Council may substitute at his/her discretion) (Note: the Cabinet appoints Cabinet Members to the Procurement Board)
- The Monitoring Officer (Assistant Director, Legal and Corporate Services with overarching responsibility for Category Management and Legal Services).
- The Chief Finance Officer.
- Head(s) of Category Management.
- Other key representatives from each of the Council's respective Directorates
 - Category Management Team – Strategic team led by the Heads of Categories responsible for providing strategic support and quality assurance to the Council's Directorates as well as representing and acting on behalf of the Council's Monitoring Officer in all procurement and contract related activities, matters and issues.
 - Directorate Management Team – Led by each respective Director, with operational procurement and contract management responsibility delegated to Assistant Directors and / or Heads of Service in accordance with these Contract Procedure Rules.

1.7 GENERAL PRINCIPLES

1.7.1 Call Off from Existing Contracts

1.7.1.1 Where the Council's procurement requirement can be satisfied from an existing approved Contract then any order will be considered an Exception to these rules as long as the call-off arrangements defined within the individual contract are followed or where the original Contract can be varied to meet the requirement. Category Management must be consulted before invocation of any such variation.

1.7.1.2 In all instances goods, services or works should be obtained via appropriate, existing, approved arrangements. These include:

- (a) In-house services (for example printing and design, facilities management, etc.)
- (b) Established corporate contracts
- (c) An approved list of suppliers maintained by the Council or a formally approved organisation
- (d) Consortia of which the Council is a member
- (e) Approved nationally negotiated contracts (for example those arranged by the Government Procurement Service).

1.7.1.3 Before any contract is made, there must be:

- (a) The proper authority of the Council in accordance with the processes set out in the Constitution, the Procurement Gateway Process (as specified in **Section 2** of these Contract Procedure Rules) and / or Directorate scheme of delegation, as specified and approved by the appropriate Director of each respective Directorate.
- (b) Adequate budgetary provision for the procurement within existing budgets. All such expenditure must be committed in accordance with procedures set out and prescribed by the Chief Finance Officer.

Where ambiguity exists in respects to the availability of budgets, the decision of the Chief Finance Officer must first be obtained and that decision shall prevail in all instances and the procurement direction will be dictated accordingly.

1.7.2 Collaborative Procurement

1.7.2.1 Category Management, on behalf of the Council's Monitoring Officer shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council as part of the Procurement Gateway Process for Category A Procurements.

1.7.2.2 The Monitoring Officer, in consultation with the Procurement Board shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council as part of the Procurement Gateway Process for Category B Procurements.

1.7.2.3 All joint procurement arrangements shall be compliant with the legislation relating to public sector procurement and shall be open to participation by the Council.

1.7.2.4 Where the Council is entering into a contract as an agent for another public body or government department, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned.

1.7.3 Engagement of Consultants

1.7.3.1 Officers may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Officers requiring them do not have the resources or capability to meet the needs of the service.

1.7.3.2 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services, and lodge all such documents and records with the appropriate Officer at the end of the contract.

1.7.3.3 Officers shall ensure that any consultant working for the Council has appropriate indemnity insurance and shall liaise with the Insurance Team to verify the level required.

1.7.4 Frameworks

1.7.4.1 A framework agreement in the context of these Contract Procedure Rules is:

- Where the overall terms and conditions and pricing are agreed but the cost of each call-off will vary dependent upon the requirement via a mini-competition

OR

- Where the costs and terms have been expressed whereby the most economic provider is chosen.

1.7.4.2 Officers cannot automatically make use of a framework agreement; any proposed use must be appraised in accordance with the applicable Procurement Process.

1.7.4.3 Where Officers are proposing to use a framework agreement in relation to a Category A Procurement, guidance must be sought from Category Management before use. This is a mandatory requirement to ensure that the framework agreement is applicable to the Council, provides the best value procurement route and to ensure that Officers understand and adhere to the protocols set by the creator (Purchasing Body) of the framework agreement.

1.7.4.4 Where Officers are proposing to use a framework agreement in relation to Category B Procurements, the framework agreement must be appraised against other available procurement options as prescribed within the Procurement Gateway 1 Report.

1.7.4.5 When procuring from (calling-off) a Framework Agreement, Officers must adhere to the protocol set out under the existing Framework Agreement terms and must seek advice from Category Management if in any doubt.

1.7.4.6 The Council is not required to advertise any proposed call off (in excess of the EU Threshold for Supplies (Goods), Services or Works where the Framework being used was subject to an original OJEU advert.

1.7.4.7 The Invitation to Quote procedure set out at **Section 2.3** shall be used in preference to a formal Invitation to Tender where no other formal process is specified within the terms of that Framework.

1.8 EXCEPTIONS & EXEMPTIONS

1.8.1 Exceptions to Contract Procedure Rules

1.8.1.1 No exception to Contract Procedure Rules can be undertaken where the provision is above the EU tender threshold and subject to European or UK Legislation.

1.8.1.2 The requirements of the Council's Contract Procedure Rules **shall not apply** in the following exceptional circumstances :

- Where for technical or artistic reasons or reasons connected with the protection of exclusive rights the contract can only be awarded to one economic entity.
- Procurements where the procedure to be followed by the Council is the subject of express legislation.
- Where the Council has agreed a delegation to the Chief Executive and Directors giving them power to act on behalf of the Council in cases of urgency but only where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council (Constitution reference Chapter 3, Part 4 Employee Delegation Scheme). In addition to any reporting related to this delegation, any such expenditure in excess of **£10,000** must reported to Category Management within 1 week of the date of the contract award using the *Exemption Request Form*. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- Contracts for the acquisition and disposal of land or property that are covered within the remit of the Assistant Director, Housing and Corporate Services and within the Financial Limits as prescribed within part 5 of chapter 3 of the Constitution.
- Contracts for employment for staff, except where an agency is used to supply the staff.
- Works orders with utility infrastructure providers, e.g. Gas Mains.
- Where supplies are acquired from a closing down sale in circumstances permitted by the Regulations.
- Where the provision of services is reserved to the winner of a design contest as specified in the Regulations.
- The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Procedure Rules.

1.8.1.2 The Director of Children and Adults shall have authority to award without competition a contract where a placement is sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990.

- 1.8.1.3 A Director shall have authority to award without competition a contract where the particular needs of an individual (either an adult or a child) require a particular social care package, or where an individual has special educational needs which are only available from a particular provider in the opinion as appropriate of the Director of Children and Adults.
- 1.8.1.4 In relation to **Sections 1.8.1.2 and 1.8.1.3**, The Director of Children and Adults will through the appropriate scheme of delegation, keep a record of the reasons for the choice of provider, which will be maintained on the individual's case notes. In addition, a record of the annual cumulative expenditure with each provider will be maintained by the Director of Children and Adults and made available for audit purposes upon request.
- 1.8.1.5 The Monitoring Officer may engage a barrister or solicitor without competition. The appointment will be made on the basis of which barrister or solicitor is in the opinion of the Council's Monitoring Officer, best able to provide the necessary expertise and value for money. The Council's Monitoring Officer will maintain a departmental record of the amounts of expenditure with external barristers and will ensure that this information is made available for audit purposes upon request.
- 1.8.1.6 The Monitoring Officer may procure without competition, emergency accommodation for the homeless for individual service users that are not covered by a Council Framework Agreement or Contract.

1.8.2 Exemptions to Contract Procedure Rules

- 1.8.2.1 Any Officer requesting an exemption must complete an *Exemption Request Form*. This form must be approved and signed by the appropriate Director before submission to Category Management for the Monitoring Officer to consider.
- 1.8.2.2 The Council's Monitoring Officer will review the exemption request and will make a decision in consultation with the Procurement Board as to whether to accept or reject. This decision by the Monitoring Officer will be minuted and communicated for informational purposes to the appropriate Director as part of the *Procurement Board Process*.
- 1.8.2.3 All approved exemption requests will be submitted to the Full Council for information purposes.
- 1.8.2.4 Circumstances where time is lost through inadequate forward planning or a lack of internal resources existing to manage procurement processes will not automatically constitute the basis for an exemption under these Contract Procedure Rules.
- 1.8.2.5 The Monitoring Officer will have ultimate discretion to consider resources and time constraints in the overall context of risk of non-delivery when deciding upon whether to accept or reject an exemption request.
- 1.8.2.6 In the event that a valid reason for urgency exists, the Monitoring Officer will have ultimate discretion to consider an exemption outside of this formal decision-making mechanism. Any such occurrence shall be reported retrospectively to the Procurement Board by the appropriate Officer as per **Sections 1.8.2.1 – 1.8.2.2**.

1.9 DELEGATE AUTHORITY & OFFICER RESPONSIBILITIES

- 1.9.1 Any procurement carried out on behalf of the Council may only be undertaken by Officers with the appropriate delegated authority to carry out such tasks. This delegation must be included in the current scheme of delegation as prescribed within the Council's *Constitution* or as advised by the appropriate Director.
- 1.9.2 Each Director is responsible for all procurement activity within their respective Directorate and has the overall responsibility for ensuring Directorate compliance with these Contract Procedure Rules, Procurement Gateway Process, the Council's Procurement Strategy, Financial Regulations, and all UK and European Legislation.
- 1.9.2 Through the appropriate scheme of delegation, this authority may be passed down to Assistant Directors, Heads of Service and other appropriate Officers within each Directorate and Department. However, ultimate responsibility and accountability will remain with the appropriate Director in respects to Officer conformance with these Contract Procedure Rules unless the Constitution sets out otherwise.
- 1.9.3 Officers must ensure that agents, including consultants, acting on their behalf also comply with these Contract Procedure Rules as prescribed with **Section 1.7.3** of these Contract Procedure Rules,
- 1.9.5 The Officer responsible for managing any contract or procurement process must comply with the Employee Code of Conduct and Anti-Fraud and Corruption policies, and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 1.9.6 The Officer responsible for managing any contract or procurement process **must** establish if an existing Contract or Framework Agreement exists before seeking to let another Contract (See **Section 1.7**). This Contract or Framework Agreement **must** be considered accordingly as part of a robust options appraisal in line with the Procurement Gateway Process for Category A and Category B Procurements as prescribed in **Section 2.3** and **Section 2.4** of these Contract Procedure Rules. In appraising Framework Agreements and existing Contracts, the Officer **must** provide tangible and demonstratable evidence within the *Procurement Gateway 1 Report*, whether or not these arrangements provide Value for Money and whether or not the goods, services or works therein are "fit for purpose" for the particular requirement.
- 1.9.7 The Officer responsible for managing any contract or procurement Process **must** ensure that when any employee or contractor arrangement may be affected by any transfer arrangement, such as the Transfer of Undertaking Protection of Employment (TUPE), that advice is obtained from HR and/or Legal Services before proceeding with inviting tenders. Officers must consult Pensions and Payroll concerning all TUPE and pension issues before the advert for the contract opportunity is placed, as this will affect the financial value of the contract. Where guidance and confirmation as to the applicability of TUPE is not sought from HR and/or Legal Services, the procurement process will not be permitted to commence nor can be subjected to the Procurement Gateway Process in respects to Category A or Category B Procurements, as prescribed within **Section 2** of these Contract Procedure Rules.

- 1.9.8 The Monitoring Officer and the Chief Finance Officer, in consultation with the Portfolio Holder for Finance, shall both have the delegated authority to enter into contractual arrangements on behalf of the Council for all contracts involving the purchase of utilities (i.e. gas, water and/or electricity supply) on behalf of both the Council and schools. This delegation shall apply to both individual contracts let between the Council and the utility supplier, and where the Council enters into any Framework Agreement or Consortia Agreement.
- 1.9.9 Any such award agreed directly by the Council's Monitoring Officer and the Council's Chief Finance Officer or through delegation to Category Management, will be reported to the Procurement Board for informational and audit purposes. The Procurement Board will have the discretion to decide whether or not to report any such award(s) to the Cabinet for informational purposes.

SECTION 2 PROCUREMENT PROCESS

2.1 THRESHOLDS & RISK

- 2.1.1. The complexity of the procurement process (Category & Level) to be followed will vary in accordance with the value and risk of the requirement as set out below.

CATEGORY A PROCUREMENTS		
Level	Value	Risk
1	0 - £10K	Low
2	£10K - £100K	
CATEGORY B PROCUREMENTS (Subject to the Procurement Gateway Process)		
3	£100K+	Medium
4	Any project deemed 'High Risk' by Procurement Board	High

2.2 CALCULATING CONTRACT VALUE

- 2.2.1 In order to identify the appropriate Category and Level of procurement the Total Value should be calculated over the life of the contract.

- 2.2.2. The Total Value will be calculated as follows:

- (a) Where the contract is a capital or one-off purchase or for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;
- (b) Where the purchase involves recurrent transactions for the same type of items, by aggregating the value of those transactions over the contract period, including any anticipated extension periods;

- (c) Where the total contract value over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;
- (d) For Framework Agreements with no guaranteed commitment the contract value will be the estimated value of orders placed/commissions let under the Framework Agreement over the full duration of the contract term;
- (e) Where an in house service provider is involved, by taking into Account TUPE workforce matters, redundancy and similar/associated costs as guided by Legal Services, Human Resources, Pensions and Payroll and Category Management Teams;
- (f) Where a partnering arrangement is to be put in place, the total value of the likely partnership;
- (g) For income generation contracts the Total Value will be the estimated revenue stream payable to the Council over the period of the contract. Where the total revenue stream over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;

2.2.3 The Total Value must be calculated in pounds sterling exclusive of Value Added Tax.

2.2.4 Contracts must not be artificially under estimated or disaggregated to avoid the application of these Contract Procedure Rules or EU/UK Procurement Legislation.

2.3 CATEGORY A PROCUREMENT PROCESS

2.3.1 Level 1 Procurement (Low Risk) 0 - £10K

- The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity.
- A **minimum** of one written quotation must be obtained (Officers are encouraged however to seek further competitive quotations where possible).
- The quotation may take the form of a Suppliers email, letter or reference to a current/valid catalogue or by using the *Low Value Quotation* Form.
- Officers must keep such quotations on record for audit purposes and make reference to them on the corresponding Financial Purchase Order.

2.3.2 Level 2 Procurement (Low Risk) £10K - £100K

- The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity.
- Officers from the Service must work in partnership with Category Management to ensure a corporate approach and delivery of the procurement on behalf of the Council

- Officers must ensure that they liaise with their Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan before commencing a Level 2 Procurement.
- A **minimum** of three written quotations must be obtained by Category Management using the *Invitation to Quote* document.
- Category Management must keep such quotations on record for audit purposes and Officers must make reference to them on the corresponding Financial Purchase Order.

2.4 CATEGORY B PROCUREMENT PROCESS

2.4.1 Category B Procurements are considered either a medium or high risk rating and are subject to management through the Council's Procurement Gateway Process by Category Management, the Procurement Board and the Cabinet (where applicable).

2.4.2 The Procurement Gateway Process is a five-stage process as outlined below:

Gateway 1 – Project commencement/options appraisal – Category Management must (in partnership with Service Departments) complete and submit a *Gateway 1 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

Gateway 2 – Tender process (including document creation, advertisement, evaluation) – Category Management must (in partnership with Service Departments) complete all necessary procurement documentation and tendering formalities in accordance with **Section 3** of these Contract Procedure Rules.

Gateway 3 – Tender process review and contract award - Category Management must (in partnership with Service Departments) complete and submit a *Gateway 3 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

Gateway 4 – Procurement post project completion review - Category Management must (in partnership with Service Departments) complete and submit a *Gateway 4 Report* for review and approval to the Procurement Board dependant upon the risk parameters outlined in **Section 2.1.1** and in accordance with **Sections 2.4.4, 2.4.5** and **2.5**.

Gateway 5 – Procurement contract management report (prescribed by the Procurement Board and not automatically mandatory) – Category Management must (in partnership with Service Departments) complete and submit a *Gateway 5 Report* for review and approval to the Monitoring Officer, in consultation with the Procurement Board as and when prescribed.

(Note: In determining the level at which procurement decisions are taken regard will be had to requirements relating to key decisions as set out in Article 12 and the Leader and Cabinet rules in Chapter 4 of the Council's Constitution).

2.4.2 In addition to the above Category B Procurements are also subject to the requirement of the EU Procurement Regulations where over the relevant threshold for Supplies, (Goods), Services and Works.

2.4.4 Level 3 Procurement (Medium Risk) £100K+

- Officers must ensure that they liaise with their Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan before commencing a Level 3 Procurement.
- Category Management (in partnership with Service Departments) must complete and submit a *Gateway 1 Report* to the respective DMT for review.
- Relevant Director (DMT) must then either approve the report as Level 3 (Medium Risk) or recommend the report to be up-scaled to Level 4 (High Risk) for submission to the Procurement Board for a Gateway 1 review.
- The Authorised Officer will be required to attend the Procurement Board to present the Gateway 1 Report.
- The Monitoring Officer in consultation with the Procurement Board will review the Gateway 1 Report and either approve the risk rating or upscale the procurement risk and instruct the presenting Authorised Officer to submit the Gateway 1 report for a further review by the Cabinet.
- If the Monitoring Officer, in consultation with the Procurement Board approves the Level 3 (Medium Risk) decision, then the procurement process will be permitted to continue to Gateway 2.
- The Monitoring Officer, in consultation with the Procurement Board will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, 3, 4 & 5 (if so required) as per the parameters prescribed in **Section 2.4.1** of these Contract Procedure Rules.
- If the Monitoring Officer, in consultation with the Procurement Board upscales the risk rating, then the Gateway 1 decision making process will be decided upon by the Cabinet. The Cabinet will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, 3, 4 & 5 (if so required) as per the parameters prescribed in **Section 2.4.1** of these Contract Procedure Rules.
- Once the initial Gateway 1 and subsequent Gateway stages have been approved by the Monitoring Officer, in consultation with the Procurement Board and/or the Cabinet, the Authorised Officer must liaise with the Procurement Board Directorate Representative and update the procurement project on their respective Directorate Forward Procurement Plan.

2.4.5 Level 4 Procurement (Any project deemed High Risk by the Procurement Board)

2.4.6 Level 4 (High Risk) Procurement Process are prescribed by the Monitoring Officer, in consultation with the Procurement Board with recommendations for the decision-making associated with the initial Gateway 1 Report and subsequent Gateway 3, 4 & 5 Reports being made to the Cabinet.

2.5 UPSCALING CATEGORY A TO CATEGORY B PROCUREMENTS

2.5.1 Where deemed necessary for the achievement of best value, management of internal/external risk and adherence to EU/UK Procurement Legislation, the Council's Category Management Team, on behalf of the Council's Monitoring Officer can at any time upscale a Category A Procurement to a Category B Procurement.

2.5.2 Any such decision by the Council's Category Management Team to upgrade a procurement project will require Officers to comply with the Council's Procurement Gateway Process for Category B Procurements.

2.5.3 Any such decision to upgrade a procurement from a Category A to a Category B by Category Management on behalf of the Council's Monitoring Officer will be final and must be adhered to by Officers of the Council.

2.5.4 Officers through the Procurement Gateway Process for Category B Procurements will have the opportunity to present a case to the Procurement Board. This will provide Officers with an opportunity to review the decision to upgrade a procurement from Category A to Category B.

2.5.5 Any such review against the decision of the Council's Category Management Team by an Officer of the Council will be decided upon by the Monitoring Officer in consultation with the Procurement Board (except in the case of urgency when the Monitoring Officer will make the decision in consultation with the Chief Finance Officer).

2.5.6 The decision of the Council's Monitoring Officer to either uphold the decision made by the Council's Category Management Team or support any such review will be final and binding.

2.5.7 Any such decision will be project and situation specific and cannot be automatically relied upon or assumed by any Officer to apply across the board for reviewing future decisions made by Category Management.

SECTION 3

GENERAL TENDER PRINCIPLES

3.1 PRE-TENDER MARKET RESEARCH AND CONSULTATION

- 3.1.1 Officers may review the market for a proposed procurement through discussions with suppliers and other research but may not:
- (a) Base any specification on one Contractor's offering such as to distort competition;
 - (b) Make any indication or commitment to Contractors that their offer may be preferred by the Council;
 - (c) Suggest any procurement route, which is not consistent with these Rules;
 - (d) Enter into negotiations about price where a competitive procurement process has yet to take place.
- 3.1.2 Any pre-market research undertaken, including discussions with Contractors and others must be fully documented on file.
- 3.1.3 Any market research must then be proceeded by a compliant procurement process where there is a business case to proceed.

3.2 THIRD PARTY PRE-QUALIFICATION SERVICES

- 3.2.1 Pre-Qualification Services describes the assessment, by a third party organisation of potential suppliers' generic suitability to contract with a Contracting Authority across a range of requirements (effectively an outsourced pre-qualification process although not specific to any one contract requirement).
- 3.2.2 Pre-qualification results in the formal accreditation of those potential suppliers, which successfully complete the process.
- 3.2.3 Pre-qualification services can be commissioned for vetting of potential suppliers where internal resources are unable to undertake such assessments to assist in the expression of interest process subject to approval by Category Management.
- 3.2.3 Pre-qualification involves suppliers submitting information specified by the Contracting Authority to facilitate its assessment of suppliers' suitability to tender, below EU thresholds, for tenders relating to works capital projects.
- 3.2.4 These select lists are generally only available for services, works and/or supplies where its estimated value is below the relevant EU threshold value requiring compliance with the procurement Regulations.

3.3 ADVERTISING TENDER REQUIREMENTS

- 3.3.1 All requirements above £100K must be advertised on the Council's Website, the Kent Business Portal and in the OJEU (where above the EU tender thresholds for goods, services or works).
- 3.3.2 In addition to the above, Officers (in consultation with Category Management) may consider where appropriate additional advertisement in one of the following to increase awareness and competition: -
- A dedicated contracts publication
 - The local press;
 - A relevant trade journal;
 - Voluntary and Community Sector circulation list or website.

3.4 PRE-QUALIFICATION PROCESS

- 3.4.1 Non *EU Notices*, no matter how transacted, must specify a time limit of not less than 10 working days, within which interested parties must express their interest in Tendering.
- 3.4.2 The Council's *Pre-Qualification Questionnaire* must be used for all procurements in relation to goods; services or works related requirements (where pre-qualification is required) and must include high and low level evaluation criteria for selection including financial and technical criteria.
- 3.4.3 As part of the evaluation of the Pre-Qualification Questionnaire credit checking must be completed on all those Suppliers expressing an interest. Further financial analysis should be conducted in conjunction with Corporate Finance, dependent on the nature, value or risk of the contract to fully test the financial ability of the bidder. Full details of the nature of the financial analysis to be undertaken must be included in the Pre-Qualification's Questionnaire's evaluation criteria. A supplier's technical and financial ability to undertake the contract requirements is evaluated at this stage. This cannot be re-tested at the Invitation to Tender stage.
- 3.4.4 After the expiry of the advertised time limit, *Invitations to Tender* should be dispatched to the shortlist of interested parties who have satisfied the requirements of the Pre-Qualification's Questionnaire's evaluation criteria.

3.5 THE INVITATION TO TENDER

- 3.5.1 The Council's standard *Invitation to Tender* documentation must be used for all tender exercises involving the procurement of Supplies, (Goods), Services and Works in excess of £100K.
- 3.5.2 For those procurement exercises involving the procurement of Works and Works related requirements, the appropriate industry standard Invitation to Tender documentation can be used (e.g. JCT, ICE, NEC) as an alternative to the Council's *Invitation To Tender* document. Any amendments to the industry standard terms must be included in the tender pack and drawn to the attention of all bidders. Legal Services must be consulted on the correct form of contract.

- 3.5.3 The Chief Finance Officer (or such other officer as he shall designate) must be consulted on the financial and commercial aspects of the tender documents, including the evaluation process.
- 3.5.4 Post advertisement as per **Section 3.3** of these Contract Procedure Rules, subject to the requirements of the Public Contracts Regulations 2006 (as amended) (where applicable) at least 3 Contractors must be invited to Tender, unless there is overriding business or legal justification that this is not required and in these circumstances an Exemption must be sought.
- 3.5.5 The specification and evaluation criteria must take into account Social and Economic, Equality, Sustainability, Health and Safety and Value for Money considerations.
- 3.5.6 The risks associated with the contract must be assessed and documented. Appropriate actions should be taken to ensure that the Council's potential and actual exposure to risk and challenge is minimised.
- 3.5.7 A timetable setting out the key stages of the procurement should be set out in the appropriate section of the Council's standard Invitation to Tender documentation.
- 3.5.8 The Council's standard Invitation to Tender documentation should include a copy of the relevant *Standard Contract*.
- 3.5.9 The Legal Services Team must be instructed on the form of contract and any amendments. It is important for Officers to consider the form of contract to be used to ensure that it is fit for purpose and affords the Council the appropriate level of protection.
- 3.5.10 Where Officers considers that it is not fit for purpose they must liaise with the Legal Services Team with regards to any amendments required to make it fit for purpose.
- 3.5.11 The Invitation to Tender must explain how information provided in the Tender will be treated with regard to statutory requirements.
- 3.5.12 For below EU Threshold procurement projects, Tenderers must be given adequate time to respond, consistent with the level of complexity of the requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.
- 3.5.13 Tenderers must be required to hold their Tenders open for acceptance for a minimum of 90 calendar days from the date of opening.
- 3.5.14 Invitations to Tender must include a statement that the Council does not bind itself to accept the lowest Tender or any other Tender.
- 3.5.15 Every invitation to tender shall be completed electronically via the Council's Quotation/Tendering System.

3.6 RECEIPT & TENDER OPENING

- 3.6.1 Tenders shall be kept secure electronically and unopened until the time and date specified for their opening.
- 3.6.2 All tenders received by the time and date specified shall be opened within 5 working days of the closing date in the presence of the Officer from the Service or their nominee and a designated Officer from Category Management.
- 3.6.3 All tenders received shall be recorded on the *Tender Opening Log* and retained by Category Management. Where tenders are not returned, Officers should confirm the reason why a tenderer had decided not to submit a tender.
- 3.6.4 Criteria for the award of contracts shall have been disclosed within the tender invitation and these criteria shall be strictly observed by Officers designated to evaluate the tender.
- 3.6.5 No tender received after the time and date specified shall be considered unless agreed by the Councils Monitoring Officer either directly or via delegation to the Chief Finance Officer or Category Management.
- 3.6.6 An original version of the accepted Tender (in full) must be sent to the Legal Services Team to be sealed or signed, recorded and retained in the Council's Deeds Room for a minimum period of six years from the contract end, for signed contracts, and a minimum of twelve years from the contract end date for contracts made under seal.
- 3.6.6 The formal contract which will include the accepted Tender can be sealed or signed by Authorised Officers within Legal Services. The Authorised Officer must initial every page of a Bill of Quantities or each page of any Schedule to the Form of Tender prepared by the Tenderer.
- 3.6.7 A record of all tenders signed or sealed will be made and kept by the Legal Services.

3.7 ERRORS IN TENDERS

- 3.7.1 The Council can require final tenders, once received and opened, to be clarified, provided that this does not involve changes to the basic features of the tender or call for substantial variations to the tender which are likely to distort competition or have a discriminatory effect.
- 3.7.2 Where there is an obvious error or omission Category Management may permit a Tenderer to either correct or withdraw their submission. Any such corrections will be completed via the Council's electronic Quotation/Tendering System.
- 3.7.3 For Works contracts, errors are to be corrected in accordance with the relevant industry standard or best practice.

3.8 TENDER EVALUATION

- 3.8.1 All Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings as advertised in the Tender Notice, Pre Qualification Questionnaire and Invitation to Tender documentation as appropriate.
- 3.8.2 The Tender Evaluation Panel must include relevant representation from Category Management, the Service/Business and Finance as appropriate. Where the contract potentially could involve TUPE then HR must be advised at the earliest opportunity and included as part of the Evaluation Process. If a consultant leads on the team then a Head of Service or Assistant Director must sign off their findings.
- 3.8.3 The Chief Finance Officer or his representative must be consulted on the commercial evaluation of all Category B procurements.
- 3.8.4 The results of the Tender evaluation must be retained by Category Management.

3.9 NEGOTIATION

- 3.9.1 Officers may only carry out negotiations if:
 - (a) An Exemption of these rules has been granted;
 - (b) A single Tender;
 - (c) The Tender is above the EU Thresholds and is in accordance with the EU requirements for a Negotiated Tender or a Competitive Dialogue (and a Waiver of these Rules has been granted);
 - (d) They are post tender negotiations in accordance with the rules set out below.
- 3.9.2 Where a competitive tender exercise cannot be carried out in accordance with the Council's Contract Procedure Rules, a single or multiple negotiated tender exercise may only be sought if a Waiver of Contract Procedure Rules has been granted first. This only applies to a requirement below the OJEU threshold. This Negotiated Procedure must only be used in exceptional circumstances and must be approved in advance by the Council's Monitoring Officer prior to use as part of the Gateway 1 Process for Category B Procurements.
- 3.9.3 Where the procurement is conducted through either the *Open* or *Restricted Procedures* within the EU Regulations, no negotiations are permitted (including post tender negotiations), which may have the effect of distorting competition (for example fundamental changes to aspects of the contract, including prices changes and variations to the Council's requirements).
- 3.9.4 Where dialogue with tenderers is permitted under the Negotiated Procedure or Competitive Dialogue procedures within the EU Regulations, negotiations shall be conducted by a team of at least two Officers, at least one of who shall be from Category Management.
- 3.9.5 Written records must be made and retained by Category Management of all negotiations. If an Officer is in doubt on any negotiations, they should contact Category Management and Legal Services for guidance.

3.10 AWARD OF CONTRACTS

- 3.10.1 A contract may only be awarded by an Authorised Officer with the requisite delegated authority to award contracts in accordance with **Section 2** of these Contract Procedure Rules.
- 3.10.2 For contracts subject to the full scope of the EU Regulations, Category Management must inform as soon as possible any tenderer the intended award of contract using the Council's *Standstill Notice Letter*.
- 3.10.3 The Council must allow a minimum standstill of 10 calendar days between communicating the decision (*issue of the Standstill Notice Letter*) and contract conclusion.
- 3.10.4 The "Standstill" period must not commence until all internal approvals have been finalised in accordance with the Council's Constitution.
- 3.10.5 Whilst the mandatory standstill period does not generally apply to procurements below the EU thresholds or procurements otherwise outside the full scope of the EU Directives, the above process shall be applied for all Category B Procurements except where the Monitoring Officer agrees otherwise.
- 3.10.6 Where a contract exceeding the EU Threshold has been awarded, Category Management must publish a Contract Award Notice in OJEU no later than 48 days after the date of award of the contract.

3.11 DEBRIEFING

- 3.11.1 Any economic operator (i.e. Supplier, Contractor or Service Provider) that fails to progress past the Pre-Qualification Questionnaire stage of a tender process must be notified of their failure to be considered further and this notification should include the reasons for this.
- 3.11.2 All unsuccessful tenderers that submitted a tender response under a Category B Procurement should receive feedback in respect of their tender submission (and that of the successful tenderer) within the *Standstill Notice Letter* as described in **Section 3.10** above.
- 3.11.3 Providing unsuccessful tenderers the information above should in most instances remove the requirement for a further debrief meeting, as there is no further evaluation information to be provided. Where a further request is received in writing from an unsuccessful tenderer (and considered beneficial) a face-to-face debrief meeting may be held with appropriate representation from the Evaluation Panel.

3.12 CONTRACT EXTENSIONS

- 3.12.1 Any contract, which provides for (an) extension(s), may be extended in accordance with its terms subject to a Gateway 5 review at the Procurement Board.
- 3.12.2 Where any contract is extended, Category Management will update the Contract Register accordingly.

3.12.3 Where the terms of the contract do not expressly provide for an extension, an exemption is required and is subject to any necessary authorisation within the scheme of delegation. These should only be extended in exceptional circumstances and advice must be sought from Category Management and Legal Services.

3.12.4 The Director must be sure that such an extension would not breach EU/UK law in particular with regards to distorting competition. Any variation that is sufficiently material such as to require a renegotiation of the financial model or other core contract provisions relating to the pricing or charging arrangements or the scope of works or services provided may trigger a fresh requirement to put the contract out to competitive OJEU tender process. Any contract variations agreed in breach of an obligation to conduct a fresh OJEU process would be regarded as "illegal direct awards" under the Public Contracts Regulations 2006 (as amended), leaving them (where the value of the contract is in excess of the relevant EU threshold) vulnerable to be challenged and declared ineffective by the courts.

3.13 TERMINATION OF CONTRACT

3.13.1 Early termination of any contract may be carried out by the Authorised Officer in accordance with the terms of that contract. Advice must be sought from Category Management and Legal Services, in the first instance, prior to termination. Before a contract can be terminated, a Gateway 5 report must be submitted to the Procurement Board to make an informed decision

3.14 PROCUREMENT BY NON-COUNCIL OFFICERS

3.14.1 Where the Council uses non-Council Officers to act on its behalf in relation to any procurement, then the Officer responsible for the procurement shall ensure that the third parties carry out any procurement in accordance with these Contract Procedure Rules.

3.14.2 All non-Council Officers must sign an agreement not to use information gained during employment with the Council, to gain any commercial or pecuniary advantage in relationship to concurrent or future employment/engagement.

3.14.3 No non-Council Officer shall make any decision on whether to award a contract or whom a contract should be awarded to unless specifically empowered to do so in writing by an Officer or body authorised to confer that power.

3.14.4 The responsible Officer shall ensure that the non-Council Officer's performance is monitored.

3.14.5 Non-Council officers includes, but is not limited to:

- Consultants
- Main Contractors
- Sub-Contractors
- External Advisors

SECTION 4 CONTRACT AND OTHER FORMALITIES

4.1 CONTRACT DOCUMENTS

- 4.1.1 All Contracts must be in writing using the *Council's Standard Documents*..
- 4.1.2 Where the procurement is for a Total Value of up to £100K the use of a *Purchase Order* is an acceptable form of contract, which must make reference to the successful quotation and the Council's Terms & Conditions of Purchase.
- 4.1.3 Where the procurement is for a Total Value over £100K, a Formal Contract is to be drawn up by Legal Services. The Contract will incorporate the Conditions of Contract included in the Invitation To Tender documentation and any subsequent variations to these made and agreed during the Invitation to Tender procurement process.
- 4.1.4 Two copies of the contract will be sent to the successful tenderer to duly sign. After signing and returning both copies to the Council, they will both be signed on behalf of the Council. One copy will be retained by Legal Services and one copy will be returned to the successful tenderer for its retention.
- 4.1.5 Contract documents must be retained in accordance with the Corporate Retention Schedule or for a minimum period of six years from the contract end date and, if under seal, for a period of twelve years from the contract end date. Please refer to **Section 4.5** of these Contract Procedure Rules.
- 4.1.6 Category Management will record and retain all decisions, correspondence and documentation for audit purposes.

4.2 CONTRACT FORMALITIES

- 4.2.1. Contracts must be completed as follows:

TOTAL VALUE	METHOD OF COMPLETION	BY
Up to £100K	Signature Purchase Order/ITQ Document	Officer with appropriate authority to enter into a contract
£100K+	Signature on Standard Contract & sealed (where appropriate)	Legal Services

- 4.2.2. All contracts for the Supplies (Goods), Services and Works must be concluded in writing using the appropriate Standard Contract before the contract commences.

4.3 LETTERS OF INTENT

- 4.3.1 Letters of intent can only be issued by an Officer of the Council with prior approval of the Monitoring Officer or Head of Legal Services.
- 4.3.2 The letter must set out the key contract terms - price, duration, etc, and authorises the Contractor to carry out work up to a specified value before the formal agreement is signed.
- 4.3.3 In the case of Works contracts, a letter of intent in a form approved by The Monitoring Officer is acceptable in order to allow work to commence, although the issue of a formal contract must follow without delay.
- 4.3.4 Letters of intent are only binding on the Council and the contracting Party where the letter expressly states that their Tender has been accepted and the Council agrees to pay them the tender sum. The letter of intent should normally seek to incorporate the terms and conditions of the relevant Council standard contract or relevant industry standard contract (e.g. JCT, ICE, NEC) indicating the Council's intention to enter into a formal, written contract with the contracting party, to carry out the Works/Services and receive Supplies (Goods) described in the letter, such Works/Services and receipt of Supplies (Goods) to commence on a date specified or at any rate before the parties execute the formal, written contract, until then the contracting parties obligations to the Council shall be governed by the Invitation to Tender documentation.
- 4.3.5 The wording of the letter of intent should be reviewed by Legal Services prior to issue, to ensure the letter is fit for its intended purpose.
- 4.3.6 A letter of intent is not a substitute for a formal agreement but can be used as an interim measure until the formal agreement has been signed. The tendering procedure set out in **Section 2** of these Contract Procedure Rules shall apply.

4.4 SIGNATURE

- 4.4.1 The only person(s) authorised to formally sign a contract is the Monitoring Officer, Head of Legal Services or their representative within Legal Services and they must ensure that the person signing for the other contracting party has authority to bind it.
- 4.4.2 In the case of contracts for commissioning of care services, including educational placements and emergency accommodation for the homeless where the Total Value of the contract is not known, the Solicitor responsible for signing must have been granted authority to enter into commissioning contracts by the Monitoring Officer.

4.5 SEALING OF CONTRACTS

- 4.5.1 A contract must be sealed where:
 - (a) The Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
 - (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or

- (c) A Performance Bond is established on behalf of the Contractor(s) or their guarantors; or
- (d) It is required by parties to the contract; or
- (e) The total value of the Supplies (Goods), Services and Works exceeds £250K

4.5.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of Legal Services. Legal Services are responsible for the process of sealing contracts on behalf of the Council's Monitoring Officer.

4.6 BONDS, PARENT COMPANY GUARANTEES AND INSURANCE

4.6.1 For all Supplies (Goods), Services and Works contracts, over £250K a Parent Company Guarantee or Performance Bond shall be required unless agreed otherwise by the Council's Monitoring Officer in conjunction with the Council's Chief Finance Officer and as part of the Procurement Gateway Process for Category B Procurements. In all other cases consideration should be given to the need for security (a Parent Company Guarantee or a Bond) to be given for the proper performance of the contract by the contractor.

4.6.2 The Council must never give a bond.

4.6.3 For all Works and Services contracts, the appropriate Director or appointed Authorised Officer, must notify in writing the Council's insurance officer giving full details of the nature, duration and value of the Works and Services being undertaken on any particular project.

4.7 PREVENTION OF CORRUPTION

4.7.1 The Officer responsible for the contract must comply with the Council Employee Code of Conduct and the Council's Anti Fraud and Corruption Policy and must not invite or accept any gift or reward in respect of the award or performance of any contract. A breach of this requirement by Council officers is likely to result in disciplinary action and may be gross misconduct.

Officers must not enter into discussions with any tenderer or other interested third party during a procurement process, unless specifically permitted by the procurement process, Category Management or Legal Services.

4.7.2 All clarification received from bidders during a procurement process must be submitted electronically via the Council's electronic Quotation/Tendering System. The question and the response must then be sent to all bidders via the Council's electronic Quotation/Tendering System.

4.7.2 All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.

4.7.3 The Council participates in anti-fraud and corruption exercises with other public bodies. In order to do this data is exchanged with such organisations. The data exchange is likely to contain information on our contractors.

4.7.4 If an Officer becomes aware that any bidder is lobbying a Member or Officer of the Council then they must report this immediately to the Monitoring Officer.

4.8 DECLARATION OF INTERESTS

4.8.1. If it comes to the knowledge of a Member or an Officer of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Council's Monitoring Officer and record it on the register of interests.

SECTION 5 PERFORMANCE AND CONTRACT MANAGEMENT

- 5.1 All Category A and Category B Procurements must include a set of performance standards (where appropriate) that must be met throughout the contract. Any performance standards must be inserted into the terms and conditions of contract. Key performance indicators or similar benchmarks of quality should be used where available and appropriate.
- 5.2 All Category B Procurements (and Category A where of a complex nature) must have a designated Contract Manager whose name should be notified to the Contractor. Likewise, the Contractor must have a designated Contract Manager whose name is notified to the Council. These resources must be identified and agreed before the contract is awarded.
- 5.3 Regular contract monitoring meetings should be held with the Contractor and minutes of agreed actions taken. The frequency of the meetings to be dictated by the nature, value and associated risks of the contract.
- 5.4 Performance against contract standards must be monitored and recorded on a regular basis, proportionate to the nature, value and associated risks of the contract.
- 5.5 Where service improvements are enshrined in the contract these must be evidenced for the annual audit inspection and for any Gateway 5 review as prescribed by the Council's Procurement Board.

SECTION 6 RISK MANAGEMENT

- 6.1 A full risk assessment should be undertaken on all procurement options available to the Council. These should be documented and owners assigned once an option is selected.
- 6.2 A risk log should be created at the start of the procurement project and managed by the responsible Officer, in the case of High Value/Risk procurements. Risks should be reviewed regularly and appropriate actions taken to manage them. The Director should be kept aware of all risks and provided with a regular report on their status.
- 6.3 The Risk Management section should be consulted on all high value/risk procurement projects at the commencement of the project.

SECTION 7 ENVIRONMENT/SUSTAINABILITY

- 7.1 The Council is committed to making Medway Council a greener and more environmentally friendly place to live and work.
- 7.2 The Council is committed to working towards a 'greener' future, by:
- Taking practical action to reduce, as far as possible, the effect the Council's activities have on the environment.
 - Improving the quality of the local environment; and
 - Encouraging the people of Medway to live and work in ways that reduce the borough's effect on worldwide environmental problems, to improve the environment now and protect the future.
- 7.3 The Council's green procurement rules are based on the following principles:
- (a) Banning products that damage the environment when an alternative is available.
 - (b) Promoting products that damage the environment the least.
 - (c) Understanding that buying environmentally friendly goods and services is part of a process of continuous improvement.
 - (d) Considering costs such as energy and maintenance when we consider tenders.
 - (e) Engaging with suppliers who can actively contribute to the reduction in energy use as part of their Contract with the Council.
 - (f) That all Contractors and Suppliers can demonstrate commitment to carbon reduction in their operations (insofar as they relate to the particular commission)
 - (g) That all Contractors and Suppliers undertake to supply relevant data to the Council to enable the carbon impact to be monitored

SECTION 8 EQUALITIES

- 8.1 Before starting any procurement, Council Officers must make sure that they consider equality issues by liaising with Corporate Performance & Intelligence and completing a Diversity Impact Assessment. This is essential if the procurement outcome will be a service or product that affects the staff or residents of Medway Council. The Equalities Impact Assessment will inform the detail of the contract specification.
- 8.2 Contractors must adhere to current equalities legislation at all times whilst performing a contract on behalf of the Council.

SECTION 9 SOCIAL & ECONOMIC VALUE

- 9.1 The current EU Procurement Directives, and UK legislation, allows the Council to take social and economic considerations into account when procuring Supplies (Goods), Services or Works.
- 9.2 The Council is required under the Public Services (Social Value) Act 2012 to consider how the services it procures and commissions might improve the economic, social and environmental well-being of Medway.

- 9.3 For those tender opportunities/contracts where the Council intends to include such social requirements it will ensure that they are drafted in the Invitation to Tender documents, as part of the evaluation criteria and ultimately defined in ways that do not discriminate against any bidders across the UK/EU.

SECTION 10 WHISTLE BLOWING

- 10.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it encourages employees and others with serious concerns about any aspect of the Councils' work to come forward and voice those concerns.
- 10.2 The Councils *whistle blowing policy* encourages our employees to raise concerns in respect of any conduct of officers of the council that:
- May be unlawful.
 - That may be contrary to the council's policies.
 - That falls below established standards or practice or that may amount to improper conduct
 - The Councils *whistle blowing policy* is intended to encourage and enable staff to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside. The policy recognises that certain cases will have to proceed on a confidential basis and makes it clear that our staff can raise issues without fear of reprisals.
- 10.3 The council is anxious to ensure that the employees of its contractors are similarly encouraged and enabled to raise concerns in respect of any misconduct of officers of the council.
- 10.4 Contractors are also encouraged to introduce similar provisions to apply in the case of any similar misconduct of the Contractors staff when involved in work for the Council.
- 10.5 Any Member or Officer who believes there has been a breach of these Contract Procedure Rules should report the matter to the Monitoring Officer or use the Council's Whistle blowing Policy.

SECTION 11 CRIMINAL RECORDS BUREAU CHECKS

- 11.1 The Council requires all people who, through the delivery of services to The Council, come into contact with the elderly, disabled and children, to have up to date satisfactory Criminal Records Bureau reports prior to award of any contract. The Council should also require such Contractors' personnel to be registered with the Disclosure and Barring Service (DBS) if and when such registration becomes necessary.

APPENDIX A - GLOSSARY OF TERMS

Contract	A contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council. If in doubt whether a contract is approved or not contact the Category Management Team (see also Framework Agreement)
Approved Standard Terms	Includes industry standard terms and terms included within the Council's Standard Contracts
Officer/ Authorised Officer	A person with appropriate delegated authority to act on the Council's behalf within their respective Directorate.
Best Value	Under Best Value, each local authority has a duty to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness' as set out in the Local Government Act 1999. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Code of Conduct	The code regulating conduct of Officers contained within the Council's Constitution
Competitive Dialogue	A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capacity. Based on the solutions discussed, final tenders are sought from the short listed contractors This procedure is most appropriate for complex procurements where significant input is required from the market to inform the drafting of the specification.
Contract Register	A register held by Category Management containing details of all contracts entered into by the Council.
Procurement Board	A Cabinet Advisory Group chaired by the Deputy Leader of the Council or Member as appointed by the Leader of the Council, with representation from across the Council charged with the duty of developing and reviewing procurement and contractual issues. For the avoidance of doubt, the Procurement Board is a Cabinet Advisory Group and has no formal decision making powers.
Contractor	Any person or body of persons providing, or seeking to provide, Supplies (Goods), Services or Works to the Council.

Council's Procurement Strategy	Defines the overall approach to procurement related activity for the Council.
EU Negotiated Procedure	A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is a complex set of rules, and it is extremely difficult for contracting authorities to meet the requirements to allow the use of this procedure.
EU Notice	Notice posted in the Supplement to the Official Journal of the European Union (OJEU). Includes a Prior Indicative Notice (PIN), a Tender Notice or an Award Notice.
EU Open Procedure	A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e. there is no limit on the number of tenders received nor may the Council consider the suitability of interested tenderers prior to submission of Tenders.
EU Regulations	The EU public procurement directives implemented into UK legislation by virtue of the Public Contracts Regulations 2006 (amended).
EU Restricted Procedure	A procedure leading to the award of a contract whereby only persons selected by the Council may submit Tenders for the contract, duly advertised by notice, i.e. the contract is advertised, where prospective Tenderers are screened before being invited to tender ("selective tendering").
EU Threshold	The financial threshold at which EC public procurement directives must be applied if expected to be exceeded by the Total Value. Current EU thresholds are: <ul style="list-style-type: none"> • Works - £4,348,350 • Services - £173,934 • Supplies (Goods) - £173,934
Exemption	A formal request in writing made by a Director to exempt the proposed requirement from the Contract Procedure Rules in exceptional circumstances.
Financial Reference	A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required. This service is available through a credit reference agency such as Dunn and Bradstreet

Chief Finance Officer	The Chief Finance Officer or a senior officer representing the Chief Finance Officer designated by him to provide financial advice to the Council's Authorised Officers.
Financial Regulations/Finance Procedure Rules	The Financial Regulations contained within the Constitution
Framework Agreement	An agreement with suppliers whose purpose is to establish the terms governing contracts to be awarded during a given period, in particular with regard price and quality. It allows the Council to make specific purchases (call-offs) in accordance with the terms of that agreement.
Invitation To Quote	A formal written invitation to a minimum number of suppliers to provide written quotations for goods, services or works on the Council's standard terms for requirements between £10K and £100K
Invitation to Tender	A formal written invitation to a minimum number of suppliers to provide sealed bid offers for goods, services or works on the Council's standard terms for requirements over £100K
Officer	Council employee as defined in the Constitution
OJEU	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, the Council can require the parent company to do so instead or for the parent of the subsidiary company to pay the Council's reasonable costs/losses (including damages) for the Council having to procure a third party to meet the promises under the Contract with the Council.
Performance Bond	An insurance guarantee policy: If the Contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the supplier's failure.
Pre-qualification	A process to determine a shortlist of potential suppliers on the basis of general economic and technical criteria in accordance with the EU regulations on the use of the restricted procedure. The evaluation must be limited to that of the technical/financial ability of the bidder and must not include evaluation of tender related matters.

Official Purchase Order	An order placed through the Integra Finance System (Web Req)
Category Management	The Category Management Team is part of the Housing & Corporate Services Department and is responsible for supporting the Council in its Strategic Procurement activity on behalf of the Council's Monitoring Officer.
The Council	Medway Council.
Tenderers	Suppliers/contractors who have been invited to submit a tender to the Council.
Total Value	The whole of the value or estimated value (in money or equivalent value) over the contract term for a group of similar commodities or services, in accordance with Best Value: <ul style="list-style-type: none"> • whether or not it comprises several lots or stages across the Council as a whole • whether or not it is to be paid or received by the Council as a whole or separate departments within the Council
Value for Money	The optimum combination of through life cycle cost and quality (or fitness for purpose) to meet the user's requirement.
Written Quotation	Quotation provided by a supplier/contractor to the Council containing pricing information and delivery details for requirements