

# **SUFFOLK COUNTY COUNCIL**

## **PROCUREMENT RULES**

## TABLE OF CONTENTS

1. Introduction and Definitions.....	4
2. Scope .....	6
3. General Principles .....	6
4. Responsibilities.....	8
5. Identifying which Procurement Process to Use.....	12
6. Procurement Processes and Systems .....	14
7. Contract Formalities .....	16
8. Performance Bonds and Guarantees.....	16
9. Disposal of Goods .....	16
10. Contract Management.....	17
11. Variation to Contracts.....	18
12. Market Engagement .....	18
13. Working Collaboratively.....	19
14. Review and Update of these Rules.....	19
Appendix 1 - Agreed Line of Business Contracts Databases .....	20
Appendix 2 - Procurement Process Decision Tree.....	21
Appendix 3 - Applying VAT .....	22

### NOTICE TO EXTERNAL PARTIES

- These Rules shall not create or form a part of any contract or binding undertaking, express or implied, with any third party.
- In seeking Quotations or inviting Tenders the Council is not making an offer to enter into any contract for the supply of goods, services or works and does not bind itself to accept any offer it receives.

VERSION CONTROL			
Version Number	Date	Description	Author
V1.0	May 2011	Final – Approved by Full Council 26 <sup>th</sup> May 2011.	Richard Hall
V1.1	December 2011	New EU Advertising Thresholds	Ashley Sale
V1.2	February 2012	Correct paragraph numbering	Katrine O'Rourke
V1.3	June 2012	Reference to Public Services (Social Value) Act 2012 (see 3.2.4)	Ashley Sale
V1.4	December 2012	Replaced Director of Corporate Services with Director of Corporate Services Para 4.2.8 and Appendix 1 removed	Richard Hall
V1.5	January 2014	Revised EU thresholds from 01/01/2014	Richard Hall
V1.6	March 2015	Updated to reflect requirements of the revised EU procurement Rules 2014 and the Public Contracts Regulations 2015. They were approved by Full Council on 19 <sup>th</sup> March 2015.	Richard Hall
V1.7	March 2015	Correct formatting/numbering	Katrine O'Rourke

V1.8	March 2015	Updated Para 5.7 to include advertising on Contracts Finder of all awards over £25,000	Richard Hall
V1.9	Jan 2016	Updated EU Thresholds	Richard Hall
V2.0	Jan 2016	Updated paragraph numbering at para 8.1.1 & 8.1.2	Katrine O'Rourke
V2.1	Mar 2016	Updated para 12.1 to reference correct document	Katrine O'Rourke
V2.2	July 2017	Updated Director of Corporate Services responsibilities Para 4.2.10	Richard Hall
V2.3	Jan 2018	Updated EU Threshold Values from PPN 04/17	Richard Hall
V2.4	Mar 2018	Updated references to Director of Resource Management to Director of Corporate Services	Richard Hall
V2.5	October 2020	Updated references to Director of Corporate Services to Deputy Chief Executive, Head of Procurement to Head of Assets and Investment, reference to Equality and Diversity to Equalities and Inclusion, EU Threshold Values from PPN06/19/, to include reference to Social Value in addition to the Social Value themes, reference to Modern Slavery and Service Subsidy Agreements (Tendering)(England) Regulations 2002	Katrina Browning
V2.6	January 2021	Updated references to OJEU, Sub OJEU and EU Threshold, contract database recording, references to Contracts Finder thresholds, Decision Tree updated. Inclusion of above Threshold tenders to be advertised on Find A Tender, PCR15 Reg 32, Light Touch Regime, reserving below threshold procurements (PPN11/20), list of agreed line of business contract databases.	Katrina Browning
V2.7	March 2021	Removal of reserving below threshold procurements by geographical area (UK/Suffolk) whilst waiting on further advice from the Cabinet Office regarding the PPN 11/20 and the advice to Local Government.	Katrina Browning
V2.8	May 2021	1.7.15 - Light Touch Procurement Threshold - typo	Katrina Browning
V2.9	June 2022	<p>1.7.7 – DPIA definition added</p> <p>1.7.15 - definition in bold type, updated thresholds and need to calculate with VAT, 5.1/Table Thresholds to be calculated including VAT</p> <p>6.1.1 - add reference to goods and services</p> <p>7.2.1 - added regarding electronic signatures</p> <p>7.3.2 - amendment of “and” to “or”</p> <p>Page16 footnote – Reference to become amended to became</p> <p>3.3.4, 3.3.5, 4.4.20 - include reference to GDPR and the completion of DPIAs regarding the contract</p> <p>4.1.18 – Compliance with the Climate Change Commercial Ask</p> <p>4.1.19 - info to markets regarding contract terms or prices to be agreed in advance with procurement business partner</p> <p>Appendix 3 - Guidance regarding applying VAT</p>	Katrina Browning

## PROCUREMENT RULES

### 1. Introduction and Definitions

- 1.1. The Council needs to obtain best value and continuous improvement from all of its procurement activity, consistent with its policy objectives and priorities and procurement strategy.
- 1.2. The Council must undertake all procurement and commissioning activity in a responsible manner which is auditable, accountable and aims to secure effective and continuing market competition.
- 1.3. The Council must deal responsibly with the marketplace, acting in an open, honest and equitable manner applying objective criteria to procurement and decision-making activity.
- 1.4. The Council uses electronic procurement (e-Sourcing) to undertake its day to day Quotation and Tendering processes.
- 1.5. In undertaking procurement, the Council has to comply with a range of legal requirements that apply to public sector procurement activity.
- 1.6. These Procurement Rules are not intended to provide guidelines on the best way to purchase goods, services or works but set out the minimum requirements to be followed when undertaking a procurement process.
- 1.7. In these Rules, the following words and phrases have been used and shall have the meanings attributed to them as below.
  - 1.7.1 “Accredited Providers” means, providers of Social, and Other Specific Services, as defined in Schedule 3 of the Public Contracts Regulations 2015 and who are subject to external registration, inspection and rating;
  - 1.7.2 “CPV Code” means, the nomenclature established by the European Union and known as the ‘common procurement vocabulary’;
  - 1.7.3 “Consideration” means, something given in return for the goods, services or works which the law recognises as creating a binding contract, such as money etc.;
  - 1.7.4 “Contract Management Policy and Framework” means, the Council’s policy and guidance regarding the on-going management of contracts to secure continuous improvement and minimise contractual risk;
  - 1.7.5 “Contracts Finder” means, the government opportunities portal where all open competitive opportunities in excess of a minimum threshold Total Aggregate Value of £25,000 must be advertised and awards published;
  - 1.7.6 “Corporate Contract” means, a contract, framework agreement or other arrangement entered into by the Deputy Chief Executive on behalf of the Council to supply goods, services or works that are in common usage across the Council;
  - 1.7.7 “DPIA” means a Data Protection Impact Assessment;
  - 1.7.8 “e-Sourcing” means, the web-based electronic system used by the council to hold data on contracts and grant funding, undertake Quotations, Tenders and e-auctions and known as ‘Suffolk Sourcing’;

- 1.7.9 “Procurement Rules” means, the Public Contracts Regulations 2015 and the EU Directive 2014/4/EC, the EU Directive Repealing Directive 2004/18/EC and the EU Concessions Directive 2014/23/EU as applicable;
- 1.7.10 “Threshold” means the financial thresholds above which the Public Contracts Regulations 2015 define additional procurement rules shall apply.
- 1.7.11 “Financial Procedures” means, the rules set out in the Council’s Financial Regulations and Procedures which form part 4 of the Council’s Constitution as updated from time to time.
- 1.7.12 “In-House Entities” means, an entity satisfying the control rules laid down in Regulation 12 of the Public Contracts Regulations 2015.
- 1.7.13 “Key Decision” means, a decision made by full Council that involves expenditure in excess of £500,000 or involves more than one electoral division in the County of Suffolk.
- 1.7.14 “Life Cycle Cost” means, the total cost of acquisition, use and disposal over the life of the goods or works being procured.
- 1.7.15 “Light Touch Regime” means the procurement process for services listed in Schedule 3 and outlined in regulations 74, 75 and 76 of the Public Contracts Regulations 2015;
- 1.7.16 “Procurement Thresholds” applicable from 1<sup>st</sup> January 2022 should be calculated including VAT - Supplies & Services £213,477, Works £5,336,937, Light Touch Regime for Services All bodies £663,540, Small lots Supplies and services £70,778, Works £884,720. The threshold for the Concession Contracts Regulations - Concession contracts £5,336,93;**
- 1.7.17 “Responsible Officer” means, the officer undertaking a procurement exercise to purchase goods, services or works on behalf of the Council.
- 1.7.18 “Scheme of Resource Management” means, the Council’s Scheme of Resource Management as detailed in parts 4 and 5 of the Council’s Constitution.
- 1.7.19 “SME” means, a small to medium enterprise as defined by the EU under Recommendation 2003/361/EC, as being an organisation employing less than 250 people.
- 1.7.20 “Standstill Period” means, the period between provisional and final award of contract which is a minimum of ten (10) days.
- 1.7.21 “Total Aggregate Value” means, the total anticipated value of the contract over its lifetime, including any permitted extensions to contract or the total anticipated value of a series of similar or related contracts each of greater or less than 12 months’ duration.
- 1.7.22 “Trading Organisation” means, an organisation over which the Council has full control, there is no private sector capital interest and which provides 80% of its services to the Council.
- 1.7.23 “VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

## **2. Scope**

2.1. These Rules apply to;

- 2.1.1 All contracts made (including all orders placed) by, or on behalf of the Council where the Council is commissioning goods, services or works, including where the Council is acting on behalf of other public contracting authorities or, where permitted, divested functions of the Council;
- 2.1.2 All contracts made by the Council when acting as lead procuring authority for a public sector procuring consortium or partnership;
- 2.1.3 All contracts made by, or on behalf of the Council for the disposal by commercial sale of goods;
- 2.1.4 All officers of the Council; and
- 2.1.5 Any agents, consultants and contractual partners acting on the Council's behalf.

2.2. These Rules do not apply to:

- 2.2.1 The making of grant payments which are covered under Part 4 (Financial Regulations) of the Council's Constitution;
- 2.2.2 Contracts of Employment;
- 2.2.3 Contracts for the purchase or rental of land, buildings or other immovable property;<sup>1</sup>
- 2.2.4 Contracts for the appointment of Counsel or other experts by the Head of Legal Services;
- 2.2.5 Contracts for the provision of snow clearing services;
- 2.2.6 Procurement necessitated by unforeseen emergencies involving immediate risk to life and/or property or serious disruption to Council services including emergencies or disruption under the Civil Contingencies Act;
- 2.2.7 Existing supply arrangements with In-House Entities;
- 2.2.8 The need for "Trading Organisations" of the Council to obtain prices from suppliers in order to prepare and submit a Tender to the Council or to another body, or undertake work required by the Council; and
- 2.2.9 Situations where these Rules are superseded by the Local Management of Schools scheme.

## **3. General Principles**

3.1. All purchasing and disposal activities must:

- 3.1.1 Achieve best value for public money spent or received and conducted within the legal powers of the Council;

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<sup>1</sup> Public Contracts Regulations 2015 Regulation 10(1) (a)

- 3.1.2 Support the Council's aims, policy objectives and strategic direction;
  - 3.1.3 Ensure contracts are awarded in accordance with any of the Council's specific requirements for the management of Health and Safety, Risk Management, Modern Slavery, Business Continuity and Equalities and Inclusion;
  - 3.1.4 Consider the environmental impact and deliver outcomes which are sustainable environmentally and / or in socio-economic terms, efficient and reduce cost where appropriate;
  - 3.1.5 Ensure every procurement process is fair and transparent;
  - 3.1.6 Ensure the highest standards of probity including adherence to the Council's Code of Conduct for Local Government Employees and rules for the prevention of corruption as detailed in Part 4 of the Council's constitution;
  - 3.1.7 Comply with all applicable legal requirements including, but not limited to, Public Contracts Regulations 2015;
  - 3.1.8 Be conducted electronically via the Council's e-Sourcing system or other line of business system with suitable electronic Tendering capability; and,
  - 3.1.9 Be accurately recorded with a clear audit trail of actions and decisions.
- 3.2. All invitations to quote or Tender issued by the Council shall:
- 3.2.1 Include appropriate terms and conditions of contract;
  - 3.2.2 Clearly specify, in a non-discriminatory way, using output or outcome based specifications, the goods, services or works to be provided and the time limit (if any) for delivery;
  - 3.2.3 Provide a clear statement regarding the criteria and process to be used for assessment of bids with each criteria having an appropriate weight assigned to it;
  - 3.2.4 Be evaluated, on the basis of the most economically advantageous Tender (including, where relevant Life Cycle Cost) with regard to price, quality, service and environmental sustainability and Socio Economic factors<sup>2</sup>;
  - 3.2.5 By exception and only with the prior approval of the Deputy Chief Executive be evaluated on the basis of lowest cost only; and
  - 3.2.6 Provide any supplementary information required by suppliers to enable them to submit clear and concise bids, structured to be easily assessed.
- 3.3. All contracts or purchase orders issued by the Council shall:
- 3.3.1 Be evidenced in writing;
  - 3.3.2 Refer to a contract reference number and / or contain a purchase order number generated by an electronic purchase ordering system;
  - 3.3.3 Contain a non-discriminatory outcome or output based specification, and appropriate schedules;

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<sup>2</sup> Public Services (Social Value) Act 2012

- 3.3.4 where Personal Data is processed in connection with the contract, contain a Data Processing Schedule following completion and approval of a DPIA;
- 3.3.5 For Contracts over £10,000 include relevant conditions of contract and references in the conditions of contract to:
- a. the goods, services or works to be delivered;
  - b. the time limit for delivery;
  - c. the level of quality expected;
  - d. appropriate and proportionate levels and forms of insurance;
  - e. arrangements for managing performance;
  - f. a requirement for the supplier to comply with all relevant statutory requirements in respect of Health and Safety: GPDR and Equalities;
  - g. Unless otherwise provided for in the contract; a requirement for payment to the supplier of all undisputed invoices within 30 days and for the same to be required of the supplier to any sub-contractors.
- 3.3.6 Provide that the Council may terminate the contract and recover its losses in the event of a breach by the supplier, its employees or anyone acting on its behalf of any statutory obligations in respect of The Bribery and Corruption Act 2010 (or any amendment or subsequent re-enactment thereof), in the event that the supplier should otherwise have been disqualified in accordance with the Public Contracts Regulations 2015.

## **4. Responsibilities**

### 4.1. Chief Officers and Heads of Service shall:

- 4.1.1 Be responsible for procurement undertaken within their own Directorate;
- 4.1.2 Nominate Responsible Officers to undertake specific procurement processes;
- 4.1.3 Ensure that the Responsible Officer(s) delegated to undertake procurement activity are adequately skilled to undertake a Quotation or Tender exercise in line with these Rules, and e-Sourcing processes;
- 4.1.4 Ensure that any Quotation or Tender undertaken actively supports commissioning and business plans and the Councils policies and objectives, including but not limited to: Health and Safety, Risk Management, Modern Slavery, Business Continuity and Equalities and Inclusion;
- 4.1.5 Ensure that any procurement undertaken takes into account, such Social Value environmental, social and economic factors as may be relevant to and / or achieved through the requirement being Tendered;
- 4.1.6 Ensure that a full documentary record is maintained of any Quotation or Tender process, decisions taken and any related correspondence, in accordance with the requirements in these Rules;
- 4.1.7 Ensure that where relevant, financial evaluation of bids shall take into account the whole Life Cycle Cost of the procured goods, services, or works;
- 4.1.8 Consider the impact of procurement on SME's and/or VCSE providers;
- 4.1.9 Ensure, when appointing 'self-employed' consultants or interims, that the engaging manager has first completed, and retained a file copy of the outcome from, an 'Employment Status Indicator' test as required by Her Majesty's Revenue and



Customs ('HMRC') and, subject to the outcome of that test, comply in full with these Rules;

- 4.1.10 Refer to the Deputy Chief Executive any request to restrict competition to mutual/social enterprises where permitted by the Public Contracts Regulations 2015, or these Rules;
- 4.1.11 Refer any request to vary a contract to the Deputy Chief Executive where permitted by the Public Contracts Regulations 2015, or these Rules;
- 4.1.12 Seek Cabinet approval for any actions or decisions that do not comply with these Rules after having first consulted with the Deputy Chief Executive and the relevant Portfolio Holder;
- 4.1.13 Consult with the relevant Portfolio Holder at the appropriate stage of a procurement process where:
  - a. An innovative approach is proposed – within the principles of these Rules, but which is significantly different to current practice;
  - b. A proposed procurement process is likely to have a significant impact on the Council's workforce; and
  - c. A proposed contract will significantly exceed the approved budget or time for completion or is incurring significant risks not initially identified.
- 4.1.14 In the cases of 4.1.13, 'b' and 'c' report the situation to Cabinet;
- 4.1.15 Ensure that in any procurement process involving the transfer of staff, all applicable statutory obligations<sup>3</sup> are complied with;
- 4.1.16 Ensure that Responsible Officers, comply with these Procurement Rules; and
- 4.1.17 Ensure that all procurement and delegated decision making / signing off is within approved budgetary limits and Scheme of Delegation.

#### 4.2. The Deputy Chief Executive shall:

- 4.2.1 Maintain these Procurement Rules in accordance with the requirements of the Council's Constitution and Discharge of Functions;
- 4.2.2 Oversee use of the Council's e-Sourcing system, procurement cards and P2P ordering system;
- 4.2.3 Maintain a list of all contracts and grant funding agreements on the Council's contracts database;
- 4.2.4 Maintain the corporate savings record;
- 4.2.5 Provide professional advice to the Council on all matters relating to public procurement, procurement strategy and practice, contract management and market engagement;
- 4.2.6 Where permitted by these Rules and in consultation with the Head of Legal Services, agree variations to contracts in compliance with the requirements of the Public

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<sup>3</sup> Transfer of Undertakings (Protection of Employment) Regulations 2006 and supplementary guidance on the transfer of public sector staff.

Contracts Regulations 2015 Regulation 72 and where the change would not constitute a 'new contract' requiring a re-procurement;

- 4.2.7 Where permitted by the requirements of the Public Contracts Regulations 2015 and following guidance in Procurement Policy Notices, shall in consultation with the Head of Legal Services, agree procedures to direct award contracts in compliance with Public Contracts Regulations 2015 regulation 32;
  - 4.2.8 Provide training and guidance when required on the application and use of these Rules, electronic procurement, purchase ordering, use of procurement cards, the management of contracts, developing procurement strategy and practice;
  - 4.2.9 Undertake all Tenders for contracts over the Procurement Threshold except where it has been agreed with the respective Chief Officer or Head of Service that an individual above Threshold Tender may be run by a Responsible Officer from another Directorate with the necessary experience and with support from the Head of Assets & Investment;
  - 4.2.10 Following the submission of a business case evidencing value for money agree that a below Threshold tender or quotation is reserved for Small and Medium sized Enterprises (SME's) and or Voluntary, Community and Social Enterprises (VCSEs). Competitions reserved for either SME's or VCSE's should clearly outline in the contract notice and in the tender/quotation documentation that it is reserved.
  - 4.2.11 Following submission of an evidenced business case, by the requesting Director or Head of Service, be able to permit derogation from compliance with the requirement to undertake a competitive quotation or below Threshold competitive tender, where not otherwise provided for in the Public Contracts Regulations (2015). In making such decision the Deputy Chief Executive may consult with the Head of Legal Services or any other Officer as deemed appropriate.
  - 4.2.12 Following submission of an evidenced business case, by the requesting Director or Head of Service, be able to permit derogation from compliance with the requirement to undertake an above Threshold competitive tender in these rules, where permitted by the Public Contracts Regulations 2015. In making such decision the Deputy Chief Executive may consult with the Head of Legal Services or any other Officer as deemed appropriate.
  - 4.2.13 Determine whether terms and conditions, other than the Councils 'General Conditions of Contract' may be used for a Quotation or Tender process or whether a Performance Bond or Guarantee should be used; and,
  - 4.2.14 May delegate authority to the Head of Assets & Investment to undertake any one, or all of the actions attributed to the Deputy Chief Executive in these Rules.
- 4.3. The Head of Legal Services / Solicitor to the Council (as applicable) shall:
- 4.3.1 Provide specific advice and guidance on matters relating to public procurement, commercial and contractual law and matters relating to the Transfer of Undertakings (Protection of Employment) Regulations;
  - 4.3.2 Provide specific support as required in contractual disputes;
  - 4.3.3 Seal all relevant contracts in accordance with these Rules; and
  - 4.3.4 Advise Chief Officers and Heads of Service on "Key Decisions".

#### 4.4. Responsible Officers shall:

- 4.4.1 Prior to conducting a procurement exercise; check to see whether the goods, services or works required are available from a Corporate Contract. If so an external purchase order shall be placed using P2P or other legacy system approved by the Deputy Chief Executive;
- 4.4.2 Comply with these Rules and the processes laid down within the Council's e-Sourcing system;
- 4.4.3 Comply with the Council's Code of Conduct for Employee's and Whistleblowing Procedure;
- 4.4.4 Disclose in writing to their Chief Officer or Head of Service, any relationship or personal interest in a supplier, proposed or actual contract which could reasonably be considered to represent a conflict of interest;
- 4.4.5 Seek appropriate advice and guidance from the Deputy Chief Executive and / or the Head of Legal Services;
- 4.4.6 Comply with all statutory provisions relating to public procurement and the subject matter of the contract;
- 4.4.7 Ensure that any Quotation or Tender undertaken actively supports commissioning and business plans and the Councils policies and objectives, including but not limited to: Health and Safety, Risk Management, Modern Slavery, Business Continuity and Equalities and Inclusion;
- 4.4.8 Ensure that any Quotation or Tender undertaken takes into account, such Social Value environmental, social and economic factors as may be relevant to and / or achieved through the requirement being Tendered;
- 4.4.9 Conduct all Tender processes in an open and transparent manner and evaluate all offers received fairly, in accordance with published criteria, weightings and methodology;
- 4.4.10 Ensure all Quotations and Tenders are properly planned and allow sufficient time where appropriate for market engagement, advertising, Tender issue and receipt (including the need to have all Tender documents available at point of advert), analysis of bids and a Standstill Period prior to formal award;
- 4.4.11 Ensure all Quotations and Tenders in excess of £25,000 are advertised on Contracts Finder and, wherever possible, conducted through Suffolk Sourcing;
- 4.4.12 Maintain a full record and audit trail of any procurement activity and decisions taken at each stage of the procurement process, including but not limited to: the choice of procurement process; the division of contracts into lots (or if not, the reasons for not doing so); evaluation; negotiation or dialogue and contract award and all internal and external correspondence. Such records shall be available for the duration of the contract or a minimum period of three (3) years from the date of the award of the contract, or such longer period as may be specified by the 'SuffolkFilePlan' ;
- 4.4.13 Shall, where required by the Public Contracts Regulations 2015 Regulation 84, produce a report or contract notice in the form prescribed;

- 4.4.14 For all completed Tenders in excess of £25,000 but below the Threshold, publish a Contract Award Notice on Contracts Finder, containing the information prescribed in Regulation 108 of the Public Contracts Regulations 2015;
- 4.4.15 Ensure that unsuccessful suppliers following a Quotation or Tender exercise are properly de-briefed in accordance with the requirements of the Public Contracts Regulations 2015;
- 4.4.16 Ensure that details of all contracts with a value greater than £5,000 and all grants, are recorded on Suffolk Sourcing or an agreed line of business database as listed at Appendix 1 for publication under the Data Transparency Rules;
- 4.4.17 Ensure that advice and guidance is available to support service areas to undertake the day to day contract management of contracts, in accordance with these Rules and the Contract Management Minimum Standards (Basic Ask);
- 4.4.18 Ensure that advice and guidance to support contract managers and commissioners to use the Climate Change Commercial Ask with their markets and contractors is followed;
- 4.4.19 Ensure that any letters or correspondence issued to markets regarding contract terms and pricing should be agreed with their procurement business partner prior to issuing;
- 4.4.20 If personal data is being processed under contract, review the contract's Data Protection Impact Assessment (DPIA) and Data Processing Schedule (DPS) to ensure that it is up to date prior to contract commencement. If the contractor is processing personal data under contract, ensure the instructions in the DPS for end of contract data management are followed and notify [data.protection@suffolk.gov.uk](mailto:data.protection@suffolk.gov.uk) that the DPIA has been 'retired'; and
- 4.4.21 Ensure that all savings achieved through the procurement are properly calculated and recorded using the processes laid down and as amended from time to time by the Deputy Chief Executive.

## 5. Identifying which Procurement Process to Use

5.1. Where no existing Corporate Contract is in place, the Total Aggregate Value shall be used to determine which procurement process will be undertaken by reference to the following table the flow chart in Appendix 2 and the current VAT rates as detailed in Appendix 3.

Total Aggregate Value Goods and Services	Total Aggregate Value Works	Process to be Used
<£25,000	<£25,000	External Purchase Order may be placed on the basis of a written Single Quotation. The Chief Officer or Head of Service must be satisfied that the price to be paid represents value for money. The Responsible Officer must consider whether better value for money will be achieved by opening the opportunity to wider competition using a Quotation process.

>£25,000 to £50,000	>£25,000 to £150,000	Quotation Process to be used including a minimum of three (preferably five) suitably qualified suppliers (including, where possible, one or more local SME's) on the Council's General Conditions of Contract or other suitable terms and conditions of contract for goods, services or works agreed in accordance with these Rules. The requirement must, be advertised in 'Contracts Finder'.
>£50,000 to Threshold	>£150,000 to Threshold	Below Threshold Open Tender Process to be used with appropriate minimum standards for participation and, the use of Lots. The requirement must, be advertised in 'Contracts Finder'. Thresholds to be calculated including VAT.
> Threshold	> Threshold	Full Above Threshold Tender Process. The requirement must, be advertised in 'Find A Tender'. Thresholds to be calculated including VAT.

- 5.2. No requirement shall be deliberately sub-divided or its Total Aggregate Value understated to avoid these financial thresholds.
- 5.3. Irrespective of the Total Aggregate Value, the Responsible Officer shall determine whether the potential contract is likely to be of interest to a supplier located in another country.;
- 5.4. Where a Single Quotation process is permitted by these Rules, the Responsible Officer shall determine whether better value can be obtained by opening up the opportunity to wider competition through use of a Quotation process;
- 5.5. Where a Quotation or Open Tender process is indicated by these Rules and where the Total Aggregate Value is greater than £25,000 but below the Threshold, it shall be advertised as a minimum on Contracts Finder;
- 5.6. The Responsible Officer shall record the decisions taken in respect of paragraphs 5.3 to 5.5 inclusive and retain the record - for audit purposes - with the file relating to the respective procurement exercise;
- 5.7. For all Competitive Quotations or Tenders above £25,000 (except for further competitions run against an existing Framework Agreement) but below the Threshold, identify in the contract award notice to be published on Contracts Finder, the information required in Regulation's 108 and 112 of the Public Contracts Regulations 2015, including but not limited to: the name of the contractor, the date of final award, the value of the contract and whether the contractor is an SME or Voluntary / not for profit organisation;
- 5.8. Unless otherwise agreed in advance with the relevant Chief Officer or Head of Service; all above Threshold procurement shall be undertaken by the Deputy Chief Executive; and
- 5.9. 'Social and Other Specific Services' shall be subject to the procurement rules laid down in chapter three, section seven of the Public Contracts Regulations 2015 and shall be managed in accordance with the principles of 'Transparency', 'non-discrimination', 'Equal Treatment' and 'Proportionality'.
- 5.10. In exceptional circumstances public passenger transport services contracts below £150,000 where best value can be evidenced may be direct awarded in accordance with the Service Subsidy Agreements (Tendering)(England) Regulations 2002.

- 5.11. For below threshold quotation/tenders to be reserved for bids from SMEs and or VCSEs subject to the conditions permitted by the Procurement Policy Notice 11/20, a business case evidencing value for money should first be submitted to the Deputy Chief Executive for agreement.

## **6. Procurement Processes and Systems**

6.1. The Council shall use any of the following procurement processes:

- 6.1.1 A Single Quotation (Total Aggregate Value of less than £25,000) involving one supplier based on the Councils General Conditions of Contract or, where approved by the Deputy Chief Executive, other suitable form of contract for goods, services or works;
- 6.1.2 A Quotation (Total Aggregate Value between £25,000 and £50,000 for Goods and Services and between (£25,000 and £150,000 Works) on the Councils General Conditions of Contract or, where approved by the Deputy Chief Executive other suitable form of contract for goods, services or works and involving a minimum of three (preferably five) suitably qualified suppliers including at least one or more local SME's or VCS providers.
- 6.1.3 The establishment of a Framework Agreement in accordance with Regulation 33 of the Public Contracts Regulations 2015;
- 6.1.4 A Further Competition (sometimes known as a "Mini-Competition") run under the terms of an existing Framework Agreement;
- 6.1.5 An Open Tender (Total Aggregate Value above £50,000 for Goods and Services or above £150,000 for Works), where all suppliers responding to the advertisement shall be invited to bid in accordance with Regulation 27 of the Public Contracts Regulations 2015 except that in the case of an Open Tender below the Threshold, the minimum timescale for expression of interest may be shorter but still of sufficient duration to ensure that no potential supplier is disadvantaged;
- 6.1.6 An Above Threshold Restricted Tender (Total Aggregate value greater than the relevant Threshold) in accordance with Regulations 28, 58, 59, 60 and 61 of the Public Contracts Regulations 2015, where all suppliers responding to the advertisement shall be invited to complete a Selection Questionnaire to be assessed for short listing against economic and financial standing and technical and professional ability. Only short listed suppliers will be invited to bid;
- 6.1.7 A Light Touch Regime tender (Total Aggregate value greater than the Threshold) in accordance with Regulations 74, 75 and 76 and for the services listed in Schedule 3 of the Public Contracts Regulations 2015. The tender procedure should allow reasonable and proportionate time and time-limits;
- 6.1.8 A Competitive Dialogue (Normally where Total Aggregate Value is over the relevant Threshold) in accordance with Regulation 30 of the Public Contracts Regulations 2015, where the Council shall enter into negotiation over proposed solutions;
- 6.1.9 A Competitive Procedure with Negotiation (Normally where the Total Aggregate Value is over the relevant Threshold) in accordance with Regulation 29 of the Public Contracts Regulations 2015;
- 6.1.10 A Dynamic Purchasing System (Normally where Total Aggregate Value is over the relevant Threshold) in accordance with Regulation 34 of the Public Contracts Regulations 2015;

- 6.1.11 Include suppliers on a list of 'Accredited Providers' where such suppliers provide Social and other Specific Services as defined in Schedule 3 to the Public Contracts Regulations 2015 and are subject to external inspection and/or rating;
  - 6.1.12 Enter into an Innovation Partnership (Normally where Total Aggregate Value is over the relevant Threshold) in accordance with Regulation 31 of the Public Contracts Regulations 2015, with a provider to develop a new product or service;
  - 6.1.13 Use of an electronic catalogue established as a result of a public procurement exercise in accordance with Regulation 36 of the Public Contracts Regulations 2015; and
  - 6.1.14 A Negotiated Procedure without prior publication where permitted by Regulation 32 of the Public Contracts Regulations 2015.
  - 6.1.15 May reserve below threshold procurements for SMEs and or for VCSEs subject to the conditions permitted by the Procurement Policy Notice 11/20.
- 6.2. The Council uses an electronic, web based, e-Sourcing system for its Quotation and Tendering processes including Electronic Auctions (e-Auctions) and, to establish Dynamic Purchasing Systems.
- 6.3. Where Quotations or Tenders are not received through the Council's e-Sourcing platform; they shall be kept secure and unopened until the specified date and time for opening after which they shall be opened by two officers who have that responsibility under the scheme of delegation.<sup>4</sup>
- 6.4. A record of all Tenders or Quotations received shall be maintained showing the date they were opened and the two officers involved.
- 6.5. Tenders or Quotations received after the date and time set for opening, or which do not comply with the instructions in the Invitation to Quote or Tender, shall be rejected without further consideration and returned to the supplier with an explanation for the rejection unless and only in exceptional circumstances their acceptance has been agreed, by the Deputy Chief Executive.
- 6.6. The Council shall assess the award of contracts using a pre-published model, and methodology, criteria and weightings and may include, where appropriate, life cycle costing. The criteria used for the assessment shall be relevant to the subject matter of the contract and consistent with Council's policies.
- 6.7. As part of its assessment, the Council may make use of an e-Auction, in which case reference to this requirement shall be included in the contract notice and evaluation methodology.
- 6.8. In awarding contracts, the Council shall take into account the need to abide by a minimum ten (10) day standstill period (to end at midnight on a working day) between provisional award and final conclusion of contract and, where required to place a Contract Award Notice in Find a Tender within 30 days of final award.
- 6.9. The Council uses electronic purchase orders raised using its P2P ordering system, or where approved by the Deputy Chief Executive, another line of business system with ordering functionality.

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<sup>4</sup> The requirement to undertake all procurement by electronic means became mandatory for public procuring authorities from October 2018.

- 6.10. The Council may use Procurement Cards as a means of paying for goods or services where existing methods can be shown to be uneconomic or result in unreasonable delay in receipt of goods or payment of suppliers.

## **7. Contract Formalities**

- 7.1. All contracts over £10,000 shall be formally concluded in writing and shall include the following documents:

- 7.1.1 The contract terms and conditions;
- 7.1.2 The Specification;
- 7.1.3 Monitoring arrangements including Key Performance Indicators (KPI's) where appropriate; and
- 7.1.4 Any additional Schedules.

- 7.2. Contracts may be concluded by signature by an officer approved to do so under the Scheme of Delegation or under the common seal of the Council. In the case of the former, the Responsible Officer shall ensure that the person signing for the supplier has the delegated authority to bind the organisation to the contract.

7.2.1 Electronic signatures may be used by either party. Where the signature block requires the witnessing of a signature, the witness may also sign using an electronic signature.

- 7.3. Unless otherwise agreed by the Head of Legal Services, a contract must be sealed as a deed by the Council and executed as a deed by the other party where:

- 7.3.1 The Council wishes to enforce the terms of the contract for more than six (6) years after its end, for example in property or construction contracts; or
- 7.3.2 There is any doubt that valid Consideration is being given; or
- 7.3.3 The value of the contract is greater than £500,000.

## **8. Performance Bonds and Guarantees**

- 8.1. The Responsible Officer shall consult the Deputy Chief Executive on whether a Performance Bond or Parent Company Guarantee is required in the following circumstances:

- 8.1.1. Where the Total Aggregate Value is greater than £500,000 and where it is proposed that stage or advance payments are made and there is concern about the stability of the supplier; a Performance Bond may be considered.
- 8.1.2. Where the Total Aggregate Value exceeds £250,000 and the award has been based on the evaluation of a parent company and there is some concern over the stability of the Tendering supplier; a Parent Company Guarantee may be considered.

- 8.2. The Responsible Officer must seek approval from the Deputy Chief Executive before using any Performance Bond or Parent Company Guarantee.

## **9. Disposal of Goods**



- 9.1. Chief Officers and Heads of Service shall decide on the fairest and most appropriate method of disposal to achieve the best overall value for money for the Council. The decision may take into account the Council's wider policy objectives.
- 9.2. Chief Officers and Heads of Service shall ensure that any requirements relating to the security of data or health and safety are complied with fully before offering any goods for disposal.
- 9.3. The following methods of disposal may be considered:
- 9.3.1. Public Auction;
  - 9.3.2. Inviting sealed bids following an advertisement;
  - 9.3.3. Use of a Corporate Contract for disposal;
  - 9.3.4. Offer for sale at a fixed price;
  - 9.3.5. Donation to the voluntary or community sector; or
  - 9.3.6. Any other process for disposal approved from time to time by the Head of Assets & Investment
- 9.4. Income from the sale of capital assets shall be used in accordance with Financial Procedures.

## **10. Contract Management**

- 10.1. Chief Officers and Heads of Service shall ensure arrangements are put in place for the effective management of all contracts, consistent with the Council's Contract Management Policy and Framework and the Contract Management Minimum Standards (Basic Ask).
- 10.2. Contracts shall be managed in respect of:
- 10.2.1 Performance against relevant outcomes / Key Performance Indicators' (KPI's) in respect of;
  - 10.2.2 Health and Safety;
  - 10.2.3 Risk Management and Business Continuity;
  - 10.2.4 Equalities and Inclusion;
  - 10.2.5 Environmental outcomes;
  - 10.2.6 Delivery of Social Value outcomes.
  - 10.2.7 Compliance with the contract terms and specification and external registration requirements;
  - 10.2.8 Value for money and quality improvements;
  - 10.2.9 User satisfaction; and
  - 10.2.10 Supplier financial stability.
- 10.3. Contracts shall be managed to establish and develop mutually advantageous contractual relationships between the Council and suppliers and to ensure that end of contract transfer arrangements are conducted without detriment to continuity of supply or service.

- 10.4. Provider performance including performance against KPI's and any deductions made for poor performance up to and including premature termination, shall be recorded in sufficient detail to ensure a working record of performance is available throughout the contract term.

## **11. Variation to Contracts**

### 11.1. Contract Extensions

- 11.1.1 Contracts may be extended where permitted by, and in accordance with, the terms of the original contract. Prior to extending a contract the Responsible Officer shall establish and record whether such extension offers continuing value for money using current market benchmarks.

### 11.2. Variations to existing contracts

- 11.2.1 Before granting any variation to contract, the Responsible Officer shall consider whether the proposed variation is lawful under the Public Contracts Regulations 2015 and in accordance with the original terms of the contract by consulting with the Deputy Chief Executive, who will consult with whoever necessary, including the Cabinet Member if appropriate before the variation may take place;
- 11.2.2 Variations to contract which, by their nature, are Key Decisions are subject to the approval of Cabinet or Full Council as directed by the Head of Legal Services.
- 11.2.3 No additional goods, services or works will be permitted where the value of the variation exceeds 50% of the Total Aggregate Value for goods, services or works and/or would fundamentally alter the nature of the original contract in terms of scope or, timescales for performance.
- 11.2.4 For contracts in excess of the Threshold value, the Responsible Officer shall publish a notice in Find A Tender where additional works are requested as in Para 11.2.3 and/or where a minor variation to contract has the effect of increasing the Total Aggregate Value by 10% for goods and services or 15% for works;
- 11.2.5 The Responsible Officer should ensure that any changes to budgets, as a consequence of contract variation, are dealt with in accordance with the procedures laid down in the Financial Procedures in part 4 of the Councils constitution.

## **12. Market Engagement**

- 12.1. The Council uses the principles of the document 'Commissioning in Suffolk' in developing its commissioning intentions and procurement strategy.
- 12.2. The Council recognises the benefit of engaging with the supplier market in a two-way flow of information regarding its future procurement intentions where these are likely to involve significant changes to current supply arrangements or service delivery or are likely to require new and innovative methods from the supply market.
- 12.3. Where it is considered beneficial to undertake a market engagement, Chief Officers and Heads of Service may, in consultation with the Deputy Chief Executive, engage with the supplier market to inform future services and contract intentions.
- 12.4. Care shall be taken to advise suppliers involved in market engagement exercises that their involvement in the exercise should not be taken as an indication of future business and to ensure that no supplier or suppliers gain an unfair competitive advantage through their involvement in market shaping activities; in particular advice will not be sought on the

preparation of a Quotation or Tender from any supplier who may have a subsequent commercial interest in them.

12.5. Where suppliers are asked to contribute to the development of service specifications or specifications for goods or works, care shall be taken to ensure that:

12.5.1 Copyright or Intellectual Property owned by suppliers is protected; and

12.5.2 The final specification is generic and does not have the effect of distorting or otherwise influencing the market.

### **13. Working Collaboratively**

13.1. The Deputy Chief Executive shall make available, as Corporate Contracts; arrangements entered into by other public contracting authorities, which the Council is entitled to use.

13.2. The Deputy Chief Executive shall, where excess capacity exists, be able to offer professional procurement support and advice to other public contracting authorities.

13.3. The Deputy Chief Executive shall engage with other public contracting authorities to enter into joint or collaborative contracts or frameworks to be Tendered, either by the Council itself, or another public contracting authority.

13.4. The Council shall only use such agreements where they:

13.4.1 Have been awarded in full compliance with the rules surrounding public procurement and that the Council is legally entitled to use the agreement;

13.4.2 Are not subject to or under threat of a formal legal challenge either in whole or in part;

13.4.3 Demonstrate best value for the Council;

13.4.4 Are consistent with the Council's aims and objectives; and

13.4.5 Promote best practice.

13.5. Chief Officers and Heads of Service shall consult the Deputy Chief Executive before using any framework or collaborative contract not currently held on the list of Corporate Contracts.

### **14. Review and Update of these Rules**

14.1. These Rules shall be reviewed and updated as may be required to ensure they remain consistent with the Council's legal obligations as a public procuring authority and are in line with the priorities, corporate objectives and procurement strategy.

## **Appendix 1 – Agreed Line Of Business Contracts Databases**

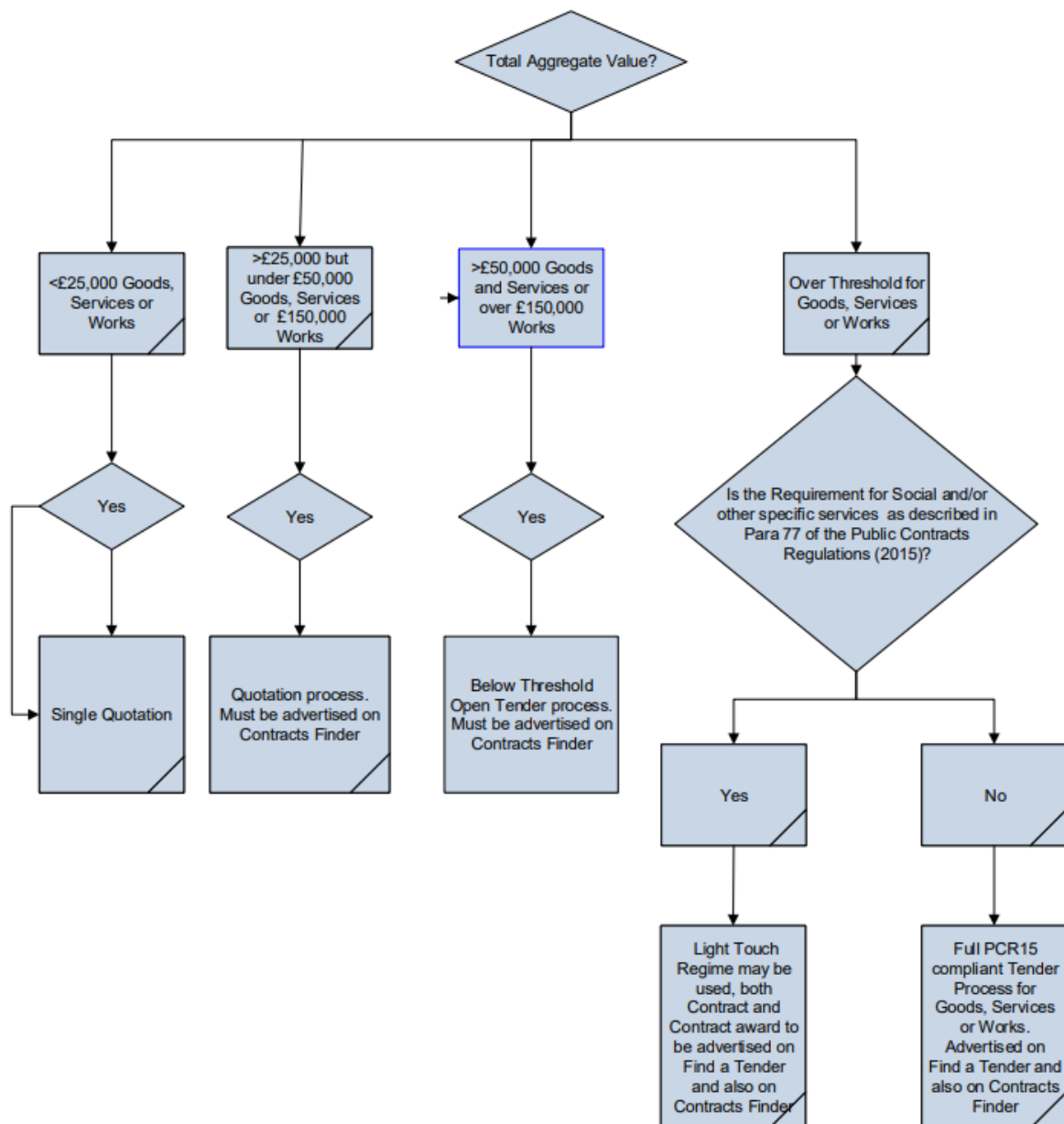
All contracts with a value greater than £5000 and all grants, are recorded on Suffolk Sourcing or an agreed line of business database for publication under the Data Transparency Rules.

Line of business databases agreed to be used:-

- Liquidlogic - ContrOCC (ACS)
- Adam (Passenger Transport) from 1<sup>st</sup> October 2021

## Appendix 2 – Procurement Process Decision Tree

### Identifying the correct procurement process



## Appendix 3 – Applying VAT

The following guidance regarding VAT is for supplies in the UK only. Most supplies of goods, services or works would be **Standard Rated (20%)** other than those listed below.

The following categories of supply are taxable at the reduced rate (5%):

- Children's Car Seats
- Contraceptive products
- Domestic Fuel and Power (metered small volumes of electricity/gas) – unlikely to apply to Council premises
- Installation of grant funded energy saving/insulation products
- Smoking cessation products
- Women's Sanitary products

The following categories **would not have VAT on**, being either exempt from VAT or zero rated:

- Advertising supplied to charities (this includes academies but EXCLUDES local authorities and government organisations)
- Banking Services including money lending and money exchange.
- Books/Newspapers/Leaflets/Maps (not including postcard, stationery, or posters)
- Care, Health/Medical, or Welfare supplies made by charities or state regulated bodies, which are directly concerned with the care or treatment of identifiable individuals.
- Children's Clothing (up to 14 years of age)
- Education or training but only where it is provided by Local Authorities, State regulated institutions (i.e. registered Schools, Colleges, Universities), and educational Charities, or provided by a self employed tutor acting independently of an employer.
- Food (this EXCLUDES catering/hot take away food, confectionary, ice cream, and all beverages except milk)
- Insurance
- Mains water or sewerage services (supplied separately to a lease)
- Medical Equipment sold to a medical/care charity
- Products designed or adapted for use by disabled persons (only when sold to a disabled person or a charity)
- Passenger Transport in a vehicle designed for 10 or more passengers
- Youth Clubs

The Letting/Leasing/Renting of rooms, buildings, land may be either exempt from VAT or taxable at the option of the vendor/landlord, so it would be best to calculate as though VAT is applicable.

For direct procurements where the Council is the end customer then these ones from the list above wouldn't apply:

- Advertising supplied to charities (this includes academies but EXCLUDES local authorities and government organisations)
- Medical Equipment sold to a medical/care charity
- Products designed or adapted for use by disabled persons (only when sold to a disabled person or a charity)

For further information regarding VAT please contact –  
David Saunders Senior Accountant, Corporate Finance

## DOCUMENT CONTROL

### Changes History

Issue No	Date	Amended By	Summary of Changes
2.9		Katrina Browning	As detailed in version control table

### Authorisation (Responsible Owner)

Role	Name	Approval Date
Senior Procurement Business Partner	Katrina Browning	5 <sup>th</sup> July 2022

### Approval (Accountable Owner)

Role	Name	Approval Date
Head of Assets & Investment	Matt West	5 <sup>th</sup> July 2022

### Reviewers (Consulted)

Role & Review Responsibilities	Name	Approval Date
Lawyer	Jeremy Mayhew-Millard	5 <sup>th</sup> July 2022
Senior Auditor	Sarah Watkins	29 <sup>th</sup> June 2022
Senior Procurement Business Partners	Gillian Glanville, Martin Jennings and Sue Catt	30 <sup>th</sup> June 2022

### Distribution List - Once authorised (Informed)

Name	Organisation
Procurement Team	County Council
All Staff (MySCC)	County Council
Contract Managers and Budget Holders (within Contract Management Bulletin)	County Council

### Review Period

Date Policy to be Reviewed	By whom
1 <sup>st</sup> December 2023	Katrina Browning