

Report to: STAR Joint Committee
Date: 20th July 2016
Report for: Discussion and Decision
Report of: Director of Procurement

Report Title

Revision to the harmonised Contract Procedure Rules (CPRs) for each STAR Council

Summary

The purpose of this report is to set out proposed amendments to the harmonised CPRs currently adopted into each Council Constitution and the request agreement to these revisions

Recommendations

The recommendation of this report is that the Joint Committee approves the revised CPRs provided at Appendix 2 and recommends that the revised CPRs are incorporated into the relevant Constitution of each Council

Contact person for access to background papers and further information:

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Background

Financial Impact:	None
Legal Impact:	Amendments to the Contract Procedure Rules will need to be formally adopted by each Council in accordance with its procedures for amendment of its Constitution
Human Resources Impact:	None
Asset Management Impact:	None
E-Government Impact:	None
Risk Management Impact:	None
Health and Safety Impact:	None

Consultation

No public consultation required

Reasons for Recommendation(s)

1. Background

- 1.1 The harmonised CPRs were adopted into the Constitution of each Council in 2015 and the Joint Committee requested a review of the CPRs in 2016. The project to adopt harmonised rules was a substantial and significant piece of work completed by the CPR working group which consisted of Legal and Finance Offices from each of the three Councils. .
- 1.2 Response to the CPRs as adopted in 2015 has been overwhelmingly positive and reflects the rigour with which the initial review was undertaken. It was always planned to have an overview after the initial year of operation. STAR Procurement has canvassed opinion from key users and has collated feedback from customer surveys to inform the proposed revisions.
- 1.3 STAR Legal, in conjunction with STAR Procurement, has reviewed all suggested amendments and condensed these into a series of proposals that are provided in Appendix 1 and has then made the required amendment to the text of the CPRs and this amended text with tracked changes is provided in Appendix 2
- 1.4 In some instances we have proposed that the CPRs are amended, in others and in order to ensure that the CPRs are "future proof" we propose to add

further guidance to the Procurement Handbook. We have also amended the Procurement Policy referenced in the original document to the Procurement Handbook where all supporting information is contained for users.

- 1.5 The Joint Committee is empowered to consider the CPRs under which the participating Councils will operate. Subject to agreement by the Joint Committee, each Council will separately consider the proposed amendments and decide whether to alter its Constitution to incorporate the revised Rules. Until each Council has adopted the revised Rules, STAR will operate on the existing harmonised rules (Appendix 1 lists the proposed changes via tracked changes).

2. Key Proposed CPR Amendments

- 2.1 **Authority to procure.** This amendment will reinforce the requirement for officers to ensure that they have the authority to procure from the outset, as the procurement process commences with submission of a Procurement Initiation Document (PID) and STAR Procurement acts on this PID
- 2.2 **Framework Agreements.** The CPRs are unclear as to whether an exemption report is required when calling off goods services or works from a framework contract. The original intention was that call off from a properly procured framework would fall within the Rules and therefore not require the completion of an exemption form. The proposed amendment removes the ambiguity.
- 2.3 The PID will confirm that the requisite authority to undertake the procurement exercise, and authority is provided to enter into the resultant Framework Agreement.
- 2.4 **Exemptions.** Exemptions are currently dealt with in two sections of CPRs. Section 5 which sets out "Contracts which do not require full competition" and section 10 "Exemptions and Modifications". There was a clear rationale for setting out the document in this way however feedback from users is that it is confusing and time consuming to have to review both rules and they would find it easier to navigate the rules if all clauses relating to Exemptions were included in the Exemptions and Modification section of the document.
- 2.5 **Procurement Values.** Users felt that additional guidance regarding the manner in which the overall procurement value shall be calculated would be useful. This should ensure that there are no potential issues such as

disaggregation of spend to avoid certain tender processes and incorrect use of the sub-£5,000 / one quote process. The amendment reinforces the procedure for calculating total estimated contract value to ensure the correct procurement procedures are then followed.

- 2.6 **Procurement Thresholds.** When setting the procurement thresholds for open tender it was agreed by the STAR Board and Joint Committee that CPRs represented the minimum requirement (i.e. selected number of bidders) however, where ever possible the intention is to encourage officers to move to full open competition. Splitting the value thresholds into spend bands allows for reference to the Procurement Handbook which will have guidance / information promoting the use of open competition where possible. Similarly allows for guidance regarding the procurement procedure which should be used.
- 2.7 **Procurement Initiation Document.** It has been determined that a single PID document is required for all procurement activities, removing the need to differentiate between a PID for a Request for Quotation and a PID for a full Tender process
- 2.8 **Modifications.** Further updating has been provided to reflect the Public Contracts Regulations in respect of modifications of existing contracts and the amendment will ensure parity between the CPRs and the Regulations. Additionally, the amendments will ensure that contracts with inbuilt extension periods will not simply be extended without due regard for best value
- 2.9 **Dynamic Purchasing Systems and Concession Contracts.** Proposed update to include specific guidance for use of DPS and introduces rules for Concession Contracts following introduction of specific Regulations arising from a new separate EU Directive on Concession Contracts
- 2.10 **STAR Brand.** CPRs currently reference the previous "STaR" brand and have been updated with the new brand accordingly.

3. Next Steps

- 3.1 Pending agreement and adoption of the proposed revisions (and any amendment thereto), the proposed amendment will need to be incorporated into The Constitution of each Council.
- 3.2 STAR Procurement will undertake a programme of updating the Procurement Handbook to provide guidance as necessary.

4. Recommendations

- 4.1 It is recommended that the Joint Committee approves the revised CPRs provided at Appendix 2 and recommends that the revised CPRs are incorporated into the relevant Constitution of each Council

Report Appendices

1. Proposed amendments
2. Proposed wording of revision to the Contract Procedure Rules

Appendix 1: Proposed amendments

PROPOSED AMENDMENT	RATIONALE	ACTION	PROPOSED AMENDMENT	CPRs OR HANDBOOK
Rule 3.2.2 Responsibilities	Additional wording around agents and consultants, etc.		Rule 3.2.2	CPRs
New Rule 5 With regards to tracing the origins of authority to begin procurement. Under the current CPRs it states that procurement activity can begin once the PID has been initiated so is at this point that confirmation is required that the correct authority to commence procurement has been received	Rule 5.1.1 Authority to procure As drafted, deals with the delegated authority of officers under the scheme of delegation – which allows the officers to instruct STAR or undertake the procurement exercise	Additional provision which indicates that STAR may request demonstration of authority / decision linked to the source of the authorisation	Rules 5.1 and 5.1.1	CPRs CPRs
Remove the requirement for an exemption form to be completed for call-off from a framework agreement	Agreed by all parties	To be reviewed and Frameworks removed from exemption process	OLD Rules 5.1 & 5.1.1 deleted New Rule 5.3.1 amended	CPRs CPRs
Rule 6.5 Value Table 1 after 6.5.4 Remove choice for band 5	Additional clarity around calculation of contract value Users have requested further clarity around which option is chosen. Further, this allows for reference to the Procurement Handbook to encourage ASOs to move to fully open competitive procedure rather than the minimum requirement of a limited number of quotes set out by CPRs. Similarly provides for further guidance regarding the choice of procurement procedure.	Add in link to further guidance around choices of procedure	Intro inserted New Rules 5.5.1 & 5.5.2 TABLE 1 Additional Column added to Table 1 to allow for further clarification around choice of activities New Rule 5.5.6 – Reference to Procurement Handbook	CPRs CPRs Handbook

PROPOSED AMENDMENT	RATIONALE	ACTION	PROPOSED AMENDMENT	CPRs OR HANDBOOK
Reference to PID Remove reference to separate "quote" and "tender" PIDs and just state "PID"	Agreed that the reference to a Tender PID and a Quote PID is not needed in Rule 5.1.1	Reference to separate documents be removed to leave one PID document	Removed	CPRs
Roles between Rule 7 and Rule 8 aren't clear	Agreed that the roles need to be more defined to add clarity	STAR Procurement to highlight roles and identify owner of tasks STAR Legal to subsequently review and amend the rules	Minor amendment made to Rule 7.2.3	CPRs
Modifications New Rule 9.3.1	Definition of Modification Modification grounds are update to reflect of all grounds determined by the Regulations CPRs silent on Contracts with built-in extension provisions	Means any variation to a Contract, including an extension Sections to be amended Need to link to a trigger for review to avoid automatic extension	Amended to include FW/DPS Regulations inserted verbatim – To be consistent with Modification document which is used. Additional guidance to be included in the Procurement Handbook New Rule 9.3.6 added. Options appraisal to be included and linked to additional guidance to be included in the Procurement Handbook	CPRs Handbook Handbook

PROPOSED AMENDMENT	RATIONALE	ACTION	PROPOSED AMENDMENT	CPRs OR HANDBOOK
Exemptions: Old Rule 10 - New Rule 9	<p>Feedback from users that having Exemptions covered in Rules 5 and 10 is confusing</p> <p>Provided additional contract type where contracts do not apply i.e Qualifying Contracts between entities within the public sector and specify that guidance should be sought if in doubt</p>	<p>Propose re-position rule 5 to New Rule 9 so that users can reference the Exemptions section of CPRs in their entirety</p> <p>Propose insert detail</p>	<p>Old Rule 5 deleted and included at the List at New Rule 9.1.3</p> <p>New rule</p>	<p>CPRs</p> <p>CPRs</p>

SUGGESTED ADDITIONAL PROVISIONS				
DPS	Currently CPRs do not mention Dynamic Purchasing Systems	Incorporate in similar way to Framework Agreements (use and contract value)	Definition of DPS Added. Call Off Contract Definition amended. CPR Rule 6.3 amended Guidance to be incorporated into the Procurement Handbook	CPRs Handbook
Concession Contracts	To be referenced throughout CPRs		Definition of Concessions amended to link to further guidance in the Procurement Handbook	Handbook
Schools	CPRs don't address the application of the CPRs to Schools		Rule 1.5 Amended to include additional wording to clarify application of CPRs to Schools	CPRs
OTHER AMENDMENTS				
Number Referencing			Number referencing amended to reflect the removal of rules	CPRs
STaR Brand amended to revised STAR Brand				CPRs

Appendix 2: Proposed wording of revision to the Contract Procedure Rules

CPRs including local rules listed under Schedule One

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1. Introduction

- 1.1 Stockport Council, Trafford Council and Rochdale Council have agreed, through an Inter Authority Agreement (“IAA”) to facilitate the joint delivery of Procurement Functions with a view to the attainment of a more economical, efficient and effective discharge of its Procurement Functions via a shared procurement service to be identified as “[STaRSTAR](#)”. Each of the [STaRSTAR](#) members have agreed to establish and participate in a joint committee (the “Joint Committee”) and have agreed to delegate their Executive and Non-Executive functions relating to the operation of [STaRSTAR](#) to the Joint Committee. Other authorities may, from time to time, join the IAA.
- 1.2 These Rules are standing orders made pursuant to Section 135 of the Local Government Act 1972. Compliance with the Rules and observance of European and domestic law from which they emanate (in particular the principles relating to non-discrimination, equal treatment and transparency) is mandatory for all Officers and Members. The Rules ensure that procurement activity is undertaken in a legally compliant, transparent, fair and competitive manner.
- 1.3 Decisions relating to procurement are among the most important decisions that can be made by the Council its Members and Officers because the money involved is public money and the Council is concerned to ensure that high quality Goods, Services and the execution of Works are procured. Efficient use of resources in order to achieve Best Value is therefore an imperative.
- 1.4 These Rules shall apply to all procurement activity where the Council is to procure any Goods, Services or the execution of Works, or enters into a Concessions Contract as either a contracting authority or commissioner of such, regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets for example).
- 1.5 For the avoidance of doubt, these Rules shall apply to Framework Agreements, [DPS and to any arrangement made by, or on behalf of the Council \(including Schools\) for the carrying out of Works or for the supply of Goods or Services.](#)
- 1.6 Where relevant, the Council shall have regard to the Public Services (Social Value) Act 2012 (“the Act”). This requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well-being of the Council’s relevant area, how it might secure any such improvement and to consider the need to consult. The Council and Officers should refer to the Procurement [Handbook Policy](#) for further guidance.

Comment [DA1]: Deletion agreed

1.7 The Joint Committee shall monitor compliance with the Rules and undertake an annual review of the Rules. The Joint Committee may present recommendations for amendments to the Rules to the Council from time to time and any such amendments shall be subject to the Council's own ratification procedures. Any failure to comply with any of the provisions of these Rules must be reported immediately to the SRO for Legal. Failure by any Officer or Member to comply with the provisions of these Rules may lead to disciplinary action being taken against them.

1.8 These Rules must be read in conjunction with the Council's Constitution and in particular the Financial Procedure Rules/Regulations, ~~the Procurement Policy~~, [Procurement Handbook](#), any relevant guidance documents endorsed by the Council and the Council's local Rules as identified in section 1.9 below.

1.9 A number of local Rules can be found in the attached [Schedule 1](#) and which form part of these Rules.

Further Information

Further advice can be sought from [STaRSTAR](#):

General Enquiries - email: procurement@starSTAR-procurement.gov.uk

tel: 0161 9121616

Legal Enquiries - email: starSTARlegal@trafford.gov.uk

tel: 0161 9124229

2. Interpretations and Definitions

- 2.1 In the event of any conflict between EU law, English law and these Rules and Council Policy, the requirements of EU law shall prevail over English law and the requirements of English law shall prevail over these Rules and Council Policy.
- 2.2 Any reference to legislation, primary or secondary, shall include any amendments/replacements made from time to time.
- 2.3 All figures specified in these Rules are exclusive of VAT.
- 2.4 In the event of any doubt as to the interpretation of these Rules, or as to proper procedure to be followed, advice should be sought from [STaRSTAR](#) in the first instance.
- 2.5 In these Rules the words and phrases below have the following meanings:

“APO”	means Authorised Procurement Officer and is the relevant STaRSTAR Officer who is responsible for the Goods, Services, execution of Works or Concessions Contract for which the Specification relates.
“ASO”	means Authorised Service Officer and is any Officer, within a directorate of the Council, who has delegated authority to undertake Procurement Functions.
“Best Value”	has the same meaning as that defined in the Local Government Act 1999 as amended from time to time.
“Bidder”	means any Economic Operator that submits a Quote.
“Call-off”	means an order made/call-off Contract entered into under a Framework Agreement <u>or</u> DPS and are subject to the application of Rule 5.1 .
“CM”	means the Category Manager or similar role with equivalent experience and seniority within STaRSTAR

“Concessions”

means the granting of a right (exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment. [Further guidance on Concession Contracts can be found in the Procurement Policy Handbook.](#)

“Contract”

means a legally binding agreement between the Council and the Contractor for the procurement by the Council of all Goods, Services, the execution of Works and which incorporates the terms and conditions under which the Goods, Services, execution of Works and Concessions will be provided.

“Contractor”

shall mean the Bidder or Tenderer who the Council enters into a Contract with following the submission of a Quote or Tender and who is appointed by the Council to provide the Goods, Services, execution of Works or Concessions Contract. They may also be referred to as ‘suppliers’, ‘providers’ or ‘service providers’ within certain Council departments.

“Contracts Finder”

means the web-based portal provided for the purposes of Part 4 of the Regulations by or on behalf of the Cabinet Office.

[“DPS”](#)

Means **Dynamic Purchasing System** which is an electronic system procured using the restricted procedure for the purchase of commonly used goods services or works which are generally available on the market and objectively defined to which all bidders who meet the requirements of the selection criteria must be admitted during the entire period of the validity of the system.

“Economic Operator”	means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of Works and/or a work, the supply of Goods or the provision of Services on the market
“EIR”	means the Environmental Information Regulations 2004
“Electronic Purchasing System”	means purchases made online or via a telephone system
“EU Procurement Directives”	means the Public Contracts Directive 2014/24/EU, the Concessions Directive 2014/23/EU and other relevant Directives in force from time to time
“Exemption”	means the release of the obligation to comply with these Rules
“Financial Procedure Rules/Regulations”	means the written code of procedures forming part of the Council’s constitution which provide a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems.
“FOIA”	means the Freedom of Information Act 2000
“Framework Agreement”	means an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
“Goods”	means an inherently useful tangible item required by the Council, from time to time.
“Invitation to Tender”	means an invitation issued by the Council to Tenderers to submit a Tender or a quote for the provision of Goods, Services, the execution of Works or a Concessions Contract in accordance with the Specification or request for those Goods, Services, execution of Works or Concessions Contract.

“Key Decision”	has the same meaning as set out in the Council’s constitution
“Modification”	means any variation to a Contract, DPS or Framework Agreement , including an extension.
“Modification Form”	means the form supplied by STaRSTAR for the purpose of recording the authorisation of a Modification.
“Officer”	means any employee of the Council which shall include any person engaged by the Council to act as an agent or consultant on its behalf
“OJEU”	means the Official Journal of the European Union
“PID”	means a Procurement Initiation Document providing details of the procurement activity and the authority to commence it as required in accordance with Rule 6.1 .
“Post Tender Report”	means a summary of the outcomes delivered by the procurement activity
“PQQ”	means “pre-procurement questionnaire” and is the document used by the Council to screen potential Tenderers in accordance with the Regulations.
“Procurement Functions”	means the Delegated Functions as defined by the IAA
“Procurement Handbook”	means the document which STAR Procurement may issue after having obtained the consent of the SRO Legal of each authority from time to time to set out the procedure to achieve the Council’s procurement objectives
“Procurement Policy”	means the document which the Council may issue from time to time to set out how it will achieve its procurement objectives
“Purchasing Cards”	means charge cards which work in a similar way to credit cards and can be used by and ASO to purchase Goods and/or Services.
“Quote”	means a formal offer submitted by a Bidder to supply Goods, Services, execute Works or operate a Concessions Contract at a defined price
“Regulations”	means the Public Contracts Regulations 2006 SI2006/5, as amended or replaced from time to time,

	which implement the EU public procurement directives.
“Regulations Threshold”	means the financial threshold identified by the EU Procurement Directives, as amended from time to time, and where applicable, requires the procurement activity to be subject to the Regulations.
“Rules”	means these Contract Procedure Rules
“Scheme of Delegation”	means the scheme identified within the Council’s constitution which delegates powers and duties of the Council to Officers under Section 101 of the Local Government Act 1972 and all other powers enabling such delegation necessary for the discharge of the Council’s functions.
“SCM”	means the Senior Category Manager or similar role with equivalent experience and seniority within STaRSTAR
“Services”	means the time, effort and expertise required by the Council, from time to time, and supplied by a Contractor.
“Specification”	means the outputs, outcomes and the scope and nature of Goods, Services, execution of Works or Concessions Contract required by the Council from a procurement activity.
“SRO”	means “Senior Responsible Officer” and is the Officer delegated in the Council’s Scheme of Delegation for the relevant service with the responsibility for the award of the Contract.
“SRO for Legal”	means the “Senior Responsible Officer for Legal” and is the most senior Officer delegated in the Council’s Scheme of Delegation for Legal Services or in default of such delegation, the Council’s Monitoring Officer.
“SRO for Finance”	means the “Senior Responsible Officer for Finance” and is the most senior Officer delegated in the Council’s Scheme of Delegation for the Finance Services or in default of such delegation, the Officer appointed by the Council pursuant to s151 of the Local Government Act 1972.
“ STaRSTAR Legal Officer”	means a member of the legal team jointly funded by all participating Council’s in accordance with the IAA,

“[STaRSTAR](#)”

whose role is to provide legal support to [STaRSTAR](#).

means the shared procurement service hosted by Trafford Borough Council on behalf of Trafford Borough Council, Rochdale Metropolitan Borough Council and Stockport Metropolitan Borough Council and other public authorities as determined from time to time whose function and remit is described in these Rules, the IAA and the Councils’ constitutions

“[STaRSTAR](#) Councils”

means those local authorities who have resolved to delegated their Procurement Functions to the [STaRSTAR](#) Joint Committee.

“Tender”

means a formal offer submitted by a Tenderer to the Council at a stated price in response to a Specification to supply Goods, Services, execute Works or operate a Concessions Contract.

“Tenderer”

means any Economic Operator that submits a Tender.

“The Chest”

means the Council’s eProcurement system.

“TUPE”

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time together with any EU Directives including but not limited to the Acquired Rights Directive 2001/23/EC, as amended from time to time.

“Value for Money”

means the optimum combination of whole-life costs, price, quality and benefits to meet the Council’s requirement. Such a term equates to the EU procurement requirement of most economically advantageous offer as well as the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time.

“Works”

means the provision of physical activity which is directed toward the production or accomplishment of something by the Contractor, from time to time.

“Writing”

the requirement that any document should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted by electronic means, in legible form, and capable of being used for subsequent reference.

3. Basic Principles and Responsibilities

3.1 Basic Principles

3.1.1 All procurement activity must comply with all of the following principles of European Union (EU) Law:

- a. free movement of Goods and Services;
- b. non-discrimination;
- c. openness/transparency;
- d. equal treatment for all; and
- e. proportionality

3.1.2 All procurement activity must be compliant with the latest EU laws, national legislation, the Council Constitution and the local policies in [Schedule 1](#), and have regard to:

- a. **The need to achieve accountability** through effective mechanisms which enable Officers and Members of the Council to maintain the highest standards of integrity and honesty and to enable them to discharge their responsibility on issues of procurement risk and expenditure of public money;
- b. **The need to provide consistent procurement policy to suppliers and achieve competitive supply;**
- c. **The need to meet commercial, regulatory and Corporate Priorities of the Council;**
- d. **The need to achieve efficiencies** by administering procurement processes which are cost effective;
- e. **The need to ensure Value for Money**
- f. **The need to ensure fair-dealing** by ensuring that suppliers are treated fairly and without unfair discrimination, including protection of commercial confidentiality where compatible with the Council's obligations under FOIA and EIR;
- g. **The need to maintain integrity** by excluding corruption or collusion with suppliers or others from procurement processes;
- h. **The need to ensure informed decision-making** based on accurate information;
- i. **The need to ensure legality** in the administration of procurement processes and award of contracts;
- j. **The need to promote responsiveness** by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement processes;

- k. **The need to provide transparency** by ensuring that there is openness and clarity on the Council's procurement policy and its delivery.
- l. **The need to create and retain an audit trail in relation to each procurement activity**

3.2 The Responsibilities of Officers and Members

- 3.2.1 Officers and Members involved in procurement activity must comply with these Rules, the Council's Financial Procedure Rules/Regulations, the Council's Employees Code of Conduct/Members Code of Conduct. They must also have due regard to any guidance provided by [STaRSTAR](#).
- 3.2.2 [Officers must ensure that any agents, consultants and contractual partners acting on their behalf, also comply with these Rules.](#)

4. Contracts to which these Rules do not apply

- 4.1 [Where there is any doubt regarding the application of these Rules, Officers must seek guidance from STAR.](#)
- 4.2 These Rules **do not** apply to the following:
 - a. employment contracts for Officers engaged on a PAYE basis;
 - b. Contracts relating solely to the disposal or acquisition of securities;
 - c. Contracts for the acquisition of an interest in land and property;
 - d. Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal, or potential legal proceedings by the SRO for Legal Services;
 - e. [qualifying Contracts between entities within the public sector.](#)

5. ~~Contracts which do not require full competition~~

~~5. Contracts which do not require full competition~~

- ~~5. The following circumstances may be exempt from the requirement of Rule 7 (Quotes) and Rule 8 (Tenders). The ASO must complete an Exemption Form in accordance with Rule 10.2 where any of these circumstances are applicable.~~

5. Call-Off Contracts

- 5. ~~Call-off Contracts where a suitable Framework Agreement has been identified in accordance with Rule 6.3.~~

5. **No competitive market**

5. Where any of the following circumstances apply and subject to Rule 5.2.2:

5. Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the ASO, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or

5. The ASO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of Works; or

5. The ASO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or

5. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or

5. Goods or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or

5. Any other exceptional circumstances.

5. Further guidance can be provided by STaR and an ASO must seek advice where there is any doubt.

5. The ASO, in conjunction with STaR and a STaR Legal Officer, shall ensure that the Contract terms and conditions are appropriate taking into account all relevant factors (such as benefit and risk to the Council) and ensure that the Contract complies with [Rule 9](#).

5. **Exemptions as prescribed by legislation**

5. Certain other arrangements contained in European or domestic legislation may permit an exemption from the requirement for competition.

5. **Pre-Procurement Process**

5.1 **Authority to carry out procurement activity**

5.1.1 [The ASO must ensure that all necessary decisions have been made and that the correct authorisation to procure has been properly obtained prior to the initiation of any procurement activity.](#) Any procurement activity carried out on behalf of the Council must be carried out by an ASO with the appropriate delegated authority as set out in the Scheme of Delegation. [The ASO may be required to provide evidence of any decisions made, any reports concerning and all authorisations granted in respect of the relevant procurement activity.](#) The ASO must submit ~~either a Quote or Tender~~ [a PID](#) to

STaR prior to starting the relevant procurement activity. By submitting the PID the ASO confirms that they have the authority to carry out the procurement activity.

5.2 Appraisal of the procurement activity

5.2.1 The ASO, together with the APO, must conduct an options appraisal of the route to market and consider the following:

- a. Value for Money;
- b. The need for the expenditure and its priority;
- c. The objectives of the purchase;
- d. Whether it is a Key Decision
- e. Any risks associated with the purchase and how to manage them;
- f. The market;
- g. TUPE and pensions;
- h. Which procurement method is most likely to achieve the purchasing objectives;
- i. Existing and compliant Framework Agreements, [DPS](#) or other arrangements; and
- j. The economic, social and environmental wellbeing of the borough and the benefit which the procurement process can bring to the community and have regard to the duty to secure continuous improvement in accordance with Best Value.

5.2.2 Where award for a Contract for services may result in employees of the Council or its Contractor transferring to a new employer, the advice of the SRO for Human Resources and the SRO for Legal must be obtained before the commencement of the procurement activity to ensure compliance with TUPE, and other related legislation, and to assess the implications in respect of pension arrangements.

5.2.3 The APO must ensure that an appropriate Specification or request for a Quote commensurate to the scope of the Goods, Services, execution of Works or Concessions Contract required is written prior to the commencement of any procurement activity. Advice from [STaRSTAR](#) must be sought where it is proposed that a Specification or request for a Quote is not used.

5.2.4 For procurement under the Regulations Thresholds, the use of PQQs is no longer permitted by the Regulations. However, the Regulations do permit the use of suitability assessment questions where they are relevant to the subject matter of the procurement and are proportionate. Further guidance on suitability assessment questions may be sought from [STaRSTAR](#) but in any event, advice must be sought from [STaRSTAR](#) where it is proposed that such questions are to be used.

5.3 **Framework Agreements [and DPS](#)**

5.3.1 Where, following an options appraisal as required by [Rule 56.2](#), a suitable Framework Agreement [or DPS](#) is identified, [the requirements of Rule 6 \(Quotes\) and Rule 7 \(Tenders\) will not be applicable and](#) the ASO must ensure that:

- a. Any Call-off Contract is entered into in accordance with the terms of the relevant Framework Agreement [or DPS](#); and
- b. Where applicable, a mini-competition (the tender process required by the Framework Agreement) is held in accordance with rules of the Framework Agreement [or DPS](#).

5.3.2 For the avoidance of doubt, a Framework Agreement [or DPS](#) is considered suitable where it has either been entered into by:

- a. the Council in compliance with these Rules; or
- b. another local authority, a local authority purchasing consortium or central government where the Framework Agreement [or DPS](#) has been tendered and awarded in accordance with EU public procurement legislation, and the Council is identified as a contracting authority.

5.3.3 Where a Framework Agreement [or DPS](#) has been set up following an EU Tender, there must be full compliance with EU rules when awarding Call-off Contracts under it.

5.4 **Pre-Procurement Market Research and Consultation**

5.4.1 The ASO and APO responsible for the procurement activity:

- a. may consult potential Bidders or Tenderers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, prior to a request for a Quote or an Invitation to Tender provided this does not prejudice any potential Bidders or Tenderers; and
- b. must not seek or accept technical advice on the preparation of a request for a Quote or an Invitation to Tender from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential Bidders and Tenderers or distort competition.

Advice must be sought from [STaRSTAR](#) in all instances.

5.5 Estimating the Total Value of a Contract, ~~or~~ Framework Agreement or DPS

5.5.1 Officers must calculate the total value of the Contract, DPS or Framework Agreement in order to determine which procurement activities should be commenced in accordance with these Rules. The procurement activity that must be followed is prescribed in Table 1 below.

5.5.2 The Council must not split Contracts, DPS or Framework Agreements ~~Contracts or Framework Agreements in order~~ to avoid public procurement rules or calculate the value of the Contract, DPS or Framework Agreement ~~Contracts~~ in such a way as to deliberately avoid exceeding the Regulation Thresholds or any threshold identified in these Rules. Therefore, unless otherwise agreed by the SRO Legal all Contracts, DPS or Framework Agreements ~~Contracts~~ should be dealt with according to their total value and all Officers must calculate the total value (excluding VAT) of any Contract. The value of a Contract, DPS or Framework Agreement ~~Contract~~ should be calculated as follows and applies to the aggregate value of the Contract, DPS or Framework Agreement ~~Contract~~:

Yearly contract value X Contract Period in years (including any option to extend) = Total value.

5.5.3 The value of a Framework Agreement and DPS means the maximum estimated amount payable by the users of the Framework Agreement or DPS for the Goods, Services or execution of Works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the Framework Agreement or DPS.

5.5.4 Framework Agreements must not be for more than four years (including options to extend) unless otherwise authorised by the SRO for Legal.

5.5.5 The value of the Contract, DPS or Framework Agreement ~~Contract or Framework Agreement~~ will determine which procurement activity to follow in accordance with Table 1 below subject to Rules 56.5.6 and 56.5.7:

Table 1: Procurement ActivitiesGoods, Services and Concessions

<u>Value Band</u>	Value	Procurement Activity	Minimum Requirement for advertising the opportunity
<u>A</u>	£0 - £4,999.99	Minimum one Quote in accordance with Rule 76 - Quotes	N/A*
<u>B</u>	£5,000 - £49,999.99	Minimum three Quotes in accordance with Rule 76 - Quotes	N/A*
		In accordance with Rule 87 – Tenders	The Chest (and Contracts Finder over £25k)
<u>C</u>	£50,000 and up to the Regulation Thresholds	In accordance with Rule 87 - Tenders	The Chest and Contracts Finder
<u>D</u>	Above the Regulation Thresholds	Most appropriate procedure permitted by the Regulations	OJEU Notice and Contracts Finder

Works and Public Works Concessions

<u>A</u>	Value	Procurement Activity	Minimum Requirement for advertising the opportunity
<u>B</u>	£0 - £4,999.99	Minimum one Quote in accordance with Rule 76 - Quotes	N/A*
	£5,000 - £74,999.99	Minimum three Quotes in accordance with Rule 76 - Quotes	N/A*

C	£75,000 - £249,999.99	Minimum six Quotes in accordance with Rule 76 – Quotes	N/A*
		In accordance with Rule 87 – Tenders	The Chest and Contracts Finder
D	£250,000 up to the Regulation Thresholds	In accordance with Rule 87 - Tenders	The Chest and Contracts Finder
E	Above the Regulation Thresholds	Most appropriate procedure permitted by the Regulations	OJEU notice and Contracts Finder

***WHERE ANY OPPORTUNITY OVER £25K IS OPENLY ADVERTISED, IT MUST BE PLACED ON CONTRACTS FINDER**

5.5.6 [Where the Contract value falls within Value B or D for Goods, Services and Concession Contracts or Value Band C or E D for Works and Public Works Concession Contracts, the ASO shall determine which procurement activities should be undertaken by reference to the Procurement Handbook.](#)

5.5.7 Where the value of the Contract is above the Regulation Thresholds, the ASO and the APO will determine which procurement activity to follow in accordance with the Regulations.

5.5.8 Irrespective of the value in Rule [56.5.54](#) Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF-GN-1-004) as amended from time to time.

5.5.9 The ASO and APO shall ensure that, where proposed Contracts or Framework Agreements, irrespective of their value, might be of interest to potential Economic Operators located in other member states of the European Union, a sufficiently accessible advertisement is published.

5.6 Standards and Award Criteria

5.6.1 Before inviting Quotes or Tenders, the ASO, with support from the APO, must ascertain any relevant British, European or international standards which apply to the subject matter of the Contract. The ASO must include those standards or equivalent where they are necessary to describe the required quality. In any instances of uncertainty, [STaRSTAR](#) can be consulted if it is proposed to use standards other than European standards.

5.6.2 The ASO must define award criteria that is appropriate to the procurement activity and designed to secure an outcome giving Value for Money for the Council. The basic award criteria shall include one of the following:

- a. Most economically advantageous tender (“MEAT”) - where considerations other than price also apply;
- b. Lowest price - where payment is to be made by the Council;
- c. Highest price - if payment is to be received.

If MEAT is the chosen award criteria, advice must be obtained from [STaRSTAR](#) to ensure that it is compatible with the EU Directives and the Regulations.

5.6.3 The ASO must seek advice from [STaRSTAR](#) to ensure any award criteria are compliant with relevant legislation and best practice.

6. Quotes

6.1 Requests for Quotes

6.1.1 All Quotes, including those in mini-competitions under Framework Agreements, must be confirmed in writing before a decision to award can be made and all Quotes must be stored on The Chest.

6.1.2 When requesting a Quote, an appropriate description of the Goods, Services, execution of Works or Concessions (commensurate with the value of the Contract) setting out the Council’s requirements in sufficient detail must be provided to prospective Bidders to enable the submission of competitive Quotes.

6.1.3 The request for a Quote shall also make reference to or include the following as a minimum:

- a. the terms and conditions of Contract that will apply; and
- b. notification that Quotes are submitted to the Council on the basis that they are compiled at the Bidder’s expense; and

- c. a description of the award criteria as appropriate and in accordance with [Rule 56.6](#); and
- d. the date and time by which a Quote is to be submitted by; and
- e. that the Council is not bound to accept any Quotes submitted.

6.1.4 The proposed form of Contract must comply with [Rule 89](#) and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from a [STaRSTAR](#) Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.

6.1.5 Where requests for a Quote are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

6.2 Submission and Receipt of Quotes

6.2.1 Bidders must be given a reasonable period in which to prepare and submit a proper Quote, consistent with the complexity of the Contract requirement.

6.2.2 In the event that an abnormally low Quote is received, the ASO must take advice from [STaRSTAR](#) on how to proceed.

6.2.3 Any Quote (including all associated documents) submitted after the specified date and time for submission of Quotes shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.

6.2.4 If fewer than the minimum number of Quotes is received as stipulated in Table 1 in [Rule 65.5](#), then advice must be sought from the Director of Procurement ([STaRSTAR](#)) as to whether to proceed. Any decision must be recorded in writing and stored on The Chest.

6.3 Amendments to Quotes

6.3.1 The Council may accept amendments to Quotes, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quote (and associated documents) is correct and which should be considered as part of the procurement activity.

6.3.2 A Quote may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the Director of Procurement ([STaRSTAR](#)).

6.4 Evaluation of Quotes

6.4.1 All compliant Quotes, including those in mini-competitions under Framework Agreements, must be checked by the ASO to ensure they are arithmetically correct. The ASO may seek advice from [STaRSTAR](#) if there is any doubt. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm or withdraw their Quote. Alternatively, if the rates in the Quote prevail over the overall price, an amended Quote may be requested to accord with the rates given by the Tenderer.

6.4.2 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to [STaRSTAR](#) that the Contract can be awarded in accordance with [Rule 76.5](#) by updating the PID.

6.4.3 Officers must ensure transparency and fairness during the evaluation process.

6.5 Contract Award – through a Quotation Process

6.5.1 The Contract will be awarded in accordance with the award criteria used.

6.5.2 Where the Quote is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the SRO for Finance, may accept the Quote ensuring compliance with the Financial Procedure Rules/Regulations.

6.5.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.

6.5.4 All award decisions must be recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.

6.5.5 Once the decision has been made and the approval given to award the Contract, the ASO must send a Contract award letter to the winning Bidder(s).

6.5.6 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 98.2](#) unless [Rule 89-2.5](#) applies.

- 6.5.7 [STaRSTAR](#) will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

7. Tenders

7.1 Invitations to Tender

- 7.1.1 All Tender opportunities must be placed on The Chest and, where appropriate, Contracts Finder in accordance with Table 1 at [Rule 65.5](#).

- 7.1.2 The Invitation to Tender, shall include the following where appropriate:

- a. A form upon which the Tenderer can provide details of its bid (“Form of Tender”);
- b. A reference to the Council’s ability to award in whole, in part or not at all;
- c. A Specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers;
- d. the terms and conditions of Contract that will apply;
- e. A requirement for Tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- f. A requirement for Tenderers to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
- g. Notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer’s expense;
- h. A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weightings as considered appropriate and in accordance with [Rule 65.6](#). The evaluation criteria must be clear, concise and unambiguous and must be approved by the APO in consultation with the ASO. The evaluation criteria cannot be amended once published in the Invitation to Tender;
- i. The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
- j. Whether the Council is of the view that TUPE will be applicable in relation to the procurement activities;
- k. Whether additional arrangements will be required in relation to pension provision;
- l. Provisions relating to the Council’s termination rights in the event that corruption is discovered;
- m. The relevance and application of any parent company guarantees and/or bonds;
- n. That the Council is not bound to accept Tenders; and
- o. Any matters required by local polices in [Schedule 1](#).

7.1.3 The proposed form of Contract must comply with [Rule 98](#) and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from the [STaRSTAR](#) Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.

7.1.4 All Tenderers invited to Tender must be issued with the same information at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

7.1.5 All communications relating to Tenders must be recorded on The Chest.

7.2 Pre and Post Tender Clarification Procedures

7.2.1 Providing pre-Tender clarification to potential or actual Tenderers, or seeking clarification of a Tender, is permitted subject to Rule [87.2.3](#).

7.2.2 Post-tender clarification may be undertaken with Tenderers only where it is essential in order to be completely clear about any fundamental aspect of the Tender submission before the completion of the Tender evaluation process and subject to Rule [87.2.3](#).

7.2.3 All pre- and post- tender communication must be conducted either in writing or in a meeting recorded by the ASO or APO. All correspondence or meetings must be documented and retained on The Chest. Where a meeting is required, there must always be more than one Officer present.

7.2.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

7.2.5 Unless otherwise permitted by the Regulations, in no circumstances are post-award negotiations permitted.

7.3 Submission and Receipt of Tenders

7.3.1 Tenderers must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the Regulations.

7.3.2 Any Tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.

7.3.3 All Tenders received, including those in mini-competitions under Framework Agreements, must remain unopened until the specified closing date and time has passed.

7.3.4 If less than the minimum number of Tenders is received as stipulated in Table 1 in [Rule 65.5](#), then advice must be sought from the Director of Procurement ([STaRSTAR](#)) on how to proceed. Any decision must be recorded in writing and stored on The Chest.

7.4 Verifying and Opening Tenders

7.4.1 Tenders are to be verified by an APO who is independent of the procurement activity to which the Tender relates.

7.4.2 Once verified, Tenders are to be opened in accordance with the following Table 2:

Table 2

Value of Contract	Officers required to be present:	Expected Duration
£0 - £49,999.99	APO	Within 2 working days of the deadline for submission
£50,000 and above	CM or SCM	Within 2 working days of the deadline for submission

7.5 Amendments to Tenders

7.5.1 The Council may accept amendments to Tender submissions, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions.

7.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the Director of Procurement ([STaRSTAR](#)).

7.6 Evaluation of Tenders

- 7.6.1 If a PQQ or an expression of interest prior to PQQ was used, all those Tenderers must be given feedback at the relevant stage.
- 7.6.2 In the event that an abnormally low Tender is received, the ASO must take advice from [STaRSTAR](#) on how to proceed.
- 7.6.3 All compliant Tenders, including those in mini-competitions under Framework Agreements, must be checked by the ASO and the APO to ensure they are arithmetically correct. If arithmetical errors are found they should be notified to the Tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender prevail over the overall price, an amended Tender price may be requested to accord with the rates given by the Tenderer.
- 7.6.4 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to [STaRSTAR](#) that the Contract can be awarded by updating the PID.
- 7.6.5 Officers must ensure transparency and fairness during the evaluation process.

7.7 Contract Award – through a Tender process

- 7.7.1 The winning Tender shall be awarded the Contract in accordance with the award criteria used.
- 7.7.2 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the SRO for Finance, may accept the Tender ensuring compliance with the Financial Procedure Rules/Regulations.
- 7.7.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.
- 7.7.4 All award decisions must be recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.

- 7.7.5 A Contract which has a contract value above the Regulation Thresholds, can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.
- 7.7.6 Once the decision to award a Contract is made, each Tenderer must be notified by either the ASO or the APO in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(s) and this should be done via The Chest. The letters must include a description of the relative advantages of the successful Tenderer.
- 7.7.7 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 98.2](#) unless Rule [98.2.5](#) applies.
- 7.7.8 A [STaRSTAR](#) Legal Officer will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.
- 7.7.9 The APO must publish a contract award notice in the OJEU and on the Council's website no later than 48 days after the date of award of the Contract where a Contract value exceeds the Regulation Threshold and has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations relating to Contract award.
- 7.7.10 Contract award letters, feedback to Tenderers and the contract Terms and Conditions, including any incidental documentation must be approved by the APO prior to sending where the value of the Contract is over the Regulation Thresholds.
- 7.8 Enquiries about the Tender process**
- 7.8.1 The confidentiality of Tenders and the identity of Tenderers must be preserved at all times insofar as this is compatible with the Councils' obligations under FOIA and EIR.
- 7.8.2 If the Council receives a request for information under the FOIA as a result of the de-briefing process, the request must be referred to both the Director of Procurement ([STaRSTAR](#)) and the relevant

Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.

- 7.8.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Director of Procurement ([STaRSTAR](#)) who will advise on how to respond and notify the SRO for Legal.

8. Contract Provisions and Contract Formalities

8.1 Contract Provisions

- 8.1.1 All Contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from [STaRSTAR](#) as to the appropriate form of Contract to be used and where possible, be on the Council's standard terms and conditions.

- 8.1.2 All Contracts, irrespective of value, shall, where appropriate, clearly specify as a minimum:
- a. What is to be supplied (i.e. the Works, materials, services, matters or things to be furnished, had or done)
 - b. The provisions for payment (i.e. the price to be paid and when)
 - c. The time, or times, within which the contract is to be performed
 - d. The provisions for the Council to terminate the Contract and break clauses.
 - e. The provision for collateral warranties from sub-contractors.

- 8.1.3 [STaRSTAR](#) can provide advice on Contract specific terms and conditions.

8.2 Contract Formalities

- 8.2.1 Once a decision to award has been made in accordance with Rule [76.5.3](#) or [87.7.3](#), the Contract must either be signed by the Officer authorised to award the Contract under the Council's Scheme of Delegation, or signed by the SRO for Legal, or sealed in accordance with Rule 9.3.2.

- 8.2.2 Where the Contract is to be in writing, the ASO or APO must arrange for the Contract including all schedules and appendices to be signed by all parties. This can be done in two ways:

- a) Sending bound hard copies of the Contract to the winning Bidder(s) or Tenderer(s) for signing; or
- b) Sending electronic copies of the Contract to the winning Bidder(s) or Tenderer(s) for printing, binding and signing.

- 8.2.3 Before arranging for the Contract to be signed or sealed on behalf of the Council, the ASO must check that the returned signed Contract has not been amended or altered by the winning Bidder(s) or Tenderer(s) without prior written agreement by the Council.
- 8.2.4 Rules [98.2.1](#) to [98.2.3](#) do not apply to purchases made through an Electronic Purchasing System (EPS).
- 8.2.5 All Contracts which are to be formally completed in writing must be completed before the Goods are supplied, or the Service, execution of Works or Concessions Contract begins, except in exceptional circumstances, and then only with the prior approval from the SRO for Legal.
- 8.2.6 A purchase order must be raised in the appropriate eProcurement system for all goods, services and works requirements to be acquired through an EPS and for all Contracts. The purchase order must attach the terms and conditions of Contract between the Council and the Contractor.
- 8.2.7 The ASO must ensure that the person signing on behalf of the Contractor has requisite legal authority to bind the Contractor. Where there is any doubt, the ASO must seek advice from the [STaRSTAR](#) Legal Officer.

8.3 **Contracts under Seal**

- 8.3.1 A Contract must be sealed where:
- The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
 - The price to be paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
 - There is any doubt about the authority of the person signing for the other contracting party; or
 - The Contract value is £250,000 or above.
- 8.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

8.4 **Transfer of Contracts**

- 8.4.1 No Contract should be transferred from one Contractor to another without first consulting [STaRSTAR](#). Contracts can only be transferred if approved in accordance with the table below:

Value of Contract/Quote	Decision Maker
All values	SRO for Finance and SRO for Legal or their nominees in accordance with the Council's Scheme of Delegation and consultation in with the Director of Procurement (STaRSTAR)

9. Exemptions and Modifications

9.1 Exemptions

9.1.1 In limited circumstances, it may be necessary to seek an Exemption from the Rules and guidance from [STaRSTAR](#) must be sought before any procurement activity commences.

9.1.2 An Exemption cannot be given where this would contravene the Regulations.

9.1.3 Exemptions will only be considered in exceptional circumstances. Examples of circumstances which may be considered exceptional could include the following:

- a. ~~Any of the circumstances identified in [Rule 5](#);~~
- a. ~~To comply with legal requirements;~~
- a. ~~The Contract is for Goods, Services or the execution of Works which are required in circumstances of extreme urgency;~~
- a. ~~Repairs or parts — if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;~~
- a. ~~Where a Service review includes the intention to co-terminate relevant Contracts.~~
- a. ~~[The arrangement is a permitted exemption from the requirement for competition contained in European or domestic legislation;](#)~~
- b. ~~[To comply with legal requirements;](#)~~
- c. ~~[The Contract is for Goods, Services or the execution of Works which are required in circumstances of extreme urgency or unforeseeable emergency involving risks to persons, property or serious disruption to Council services;](#)~~
- d. ~~[Repairs or parts — if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;](#)~~
- e. ~~[Where a Service review includes the intention to co-terminate relevant Contracts;](#)~~

- f. [Proprietary or patented goods or services are proposed to be purchased which, in the opinion of the ASO, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented goods is available; or](#)
- g. [The ASO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Goods, Services or execution of Works; or](#)
- h. [The ASO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person \(e.g. statutory undertakers\); or](#)
- i. [Goods are proposed to be purchased by or on behalf of the Council at a public auction; or](#)
- j. [Goods or Services are proposed to be purchased which are of a specialist or unique nature \(such as antiques for museums or a particular performance artist\); or](#)
- k. [Any other exceptional circumstances.](#)

9.2 Procedure for Exemptions

- 9.2.1 To apply for an Exemption the ASO must fill in the Exemption Form and submit it to the [STaRSTAR](#) for consideration and recommendation. This Exemption Form must then be signed (electronically or by hand) in accordance with the table below (unless Rule [109.2.2](#) applies).

Value of Contract/Quote	Decision Maker
All values	SRO for Finance and SRO for Legal or their nominees in accordance with the Council's Scheme of Delegation and in consultation with the Director of Procurement (STaRSTAR)

- 9.2.2 If an Exemption requires a Key Decision, then that Key Decision must be made in accordance with the Council's Constitution. Guidance from [STaRSTAR](#) must be sought if there is any doubt as to whether a decision is a Key Decision.
- 9.2.3 The ASO must ensure that the Exemption Form provides full details of the request and any supplementary documentation to support the request.

- 9.2.4 No commitment should be made to a potential Contractor prior to authorisation.
- 9.2.5 The Director of Procurement ([STaRSTAR](#)) is responsible for ensuring a complete record of all Exemptions. A record of the decision approving an Exemption and the reasons for it must be stored electronically on The Chest.
- 9.2.6 In circumstances of extreme urgency, the relevant decision maker in [109.2.1](#) above may authorise an Exemption in writing without the need to complete an Exemption Form. The written authorisation provided in accordance with this Rule [109.2.6](#) must be submitted to [STaRSTAR](#) to be stored electronically on The Chest.
- 9.2.7 The ASO, in conjunction with STAR and a STAR Legal Officer, shall ensure that the Contract terms and conditions are appropriate taking into account all relevant factors (such as benefit and risk to the Council) and ensure that the Contract complies with Rule 8

9.3 Modifications to a Contract or Framework Agreement

~~A Modification may be permitted if any of the limited criteria below applies and the Modification is not considered a substantial Modification as defined in Rule 10.3.4:~~

~~The proposed Modification is for an increase in price of less than 10% of the initial Contract value where there is sufficient budgetary provision and such a Modification is in compliance with the Financial Procedure Rules/Regulations and subject to 10.3.2; or~~

~~The proposed Modification is for an extension for a particular period where there is sufficient budgetary provision and such an extension is in compliance with the Financial Procedure Rules/Regulations and subject to 10.3.3; or~~

~~The proposed Modification meets the following conditions:~~

~~the need for the Modification has been brought about by circumstances which the Council, acting diligently, could not have foreseen; and~~

~~the Modification does not alter the overall nature of the Contract; and~~

~~any increase in price is not higher than 50% of the value of the original Contract or Framework Agreement.~~

~~Where criterion 10.3.1(a) is applicable, if several successive Modifications are made, the value shall be assessed on the basis of the net cumulative value of the successive Modifications.~~

~~Where criterion 10.3.1 (b) is applicable, the extension is not permitted where it would take the Contract value above the Regulation Thresholds.~~

9.3.1 Contracts and Framework Agreements may be modified during their term without a new procurement procedure in accordance with this Rule 9.3 in any of the following cases:

- (a) where the Modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses
 - (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
 - (ii) do not provide for modifications or options that would alter the overall nature of the Contract or the Framework agreement;
- (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor:
 - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
 - (ii) would cause significant inconvenience or substantial duplication of costs for the Council,
provided that any increase in price does not exceed 50% of the value of the original Contract or Framework Agreement;
- (c) where all of the following conditions are fulfilled:
 - (i) the need for Modification has been brought about by circumstances which a diligent Council could not have foreseen;
 - (ii) the modification does not alter the overall nature of the Contract or Framework Agreement;
 - (iii) any increase in price does not exceed 50% of the value of the original Contract or Framework Agreement.
- (d) where a new Contractor replaces the one to which the Council had initially awarded the Contract or Framework Agreement as a consequence of:
 - (i) an unequivocal review clause or option in conformity with sub-paragraph (a), or

- (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations;
- (e) where the Modifications, irrespective of their value, are not substantial within the meaning of Rule 9.3.5; or
- (f) where ~~paragraph~~ Rule 9.3.3 applies.

9.3.2 Where several successive Modifications are made:—

- (a) the limitations imposed by the proviso at the end of Rule 9.3.1 (b) and by Rule 9.3.1 (c)(iii) shall apply to the value of each Modification; and
- (b) such successive Modifications shall not be aimed at circumventing the Regulations.

9.3.3 This Rule 9.3.3 applies where the value of the Modification is below both of the following values:

- (a) the relevant OJEU Threshold and
- (b) 10% of the initial Contract or Framework Agreement value for service and supply Contract or Framework Agreement and 15% of the initial Contract or Framework Agreement value for works contracts,

provided that the Modification does not alter the overall nature of the Contract or Framework Agreement

9.3.4 For the purposes of Rule 9.3.3 where several successive Modifications are made, the value shall be the net cumulative value of the successive modifications.

9.3.5 A Modification of a Contract or a Framework agreement during its term shall be considered substantial for the purposes of Rule 9.3.1(e) where one or more of the following conditions is met:

- (a) the Modification renders the Contract or Framework Agreement materially different in character from the one initially concluded;

- (b) the Modification introduces conditions which, had they been part of the initial procurement procedure, would have:
 - (i) allowed for the admission of other Tenderer than those initially selected,
 - (ii) allowed for the acceptance of a Tender other than that originally accepted, or
 - (iii) attracted additional participants in the procurement procedure;
- (c) the Modification changes the economic balance of the Contract or Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement; or
- (d) the Modification extends the scope of the Contract or Framework Agreement considerably;
- (e) a new Contractor replaces the one to which the Council had initially awarded the Contract or Framework Agreement in cases other than those provided for in paragraph Rule 9.3.1(d).

~~A Modification of a Contract or Framework Agreement during its term is considered substantial if one of the following conditions is met:~~

~~the Modification introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other candidates than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;~~

~~the Modification changes the economic balance of the Contract or the Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement;~~

~~the Modification extends the scope of the Contract or Framework Agreement considerably to encompass supplies, services or works not initially covered.~~

~~A Contract must not be modified without consulting the Director of Procurement (STaR).~~

9.3.6 For the avoidance of any doubt, an extension of the term of a Contract or Framework Agreement should be treated as a Modification where the original Contract or Framework Agreement make provisions for such an extension of term;

- (a) a Contract or Framework Agreement term should not be automatically extended where the Contract or Framework Agreement contains provisions to extend the term, Further guidance

[on extensions of terms should be sought by reference to the Procurement Policy Handbook and STAR.](#)

9.4 Procedure for Modifications

- 9.4.1 To apply for a Modification the ASO must fill in the Modification Form and submit it to the [STaRSTAR](#) for consideration and recommendation. This Modification Form must then be signed (electronically or by hand) in accordance with the table below.

Value of Contract/Quote	Decision Maker
All values	SRO for Finance and SRO for Legal or their nominees in accordance with the Council's Scheme of Delegation and in consultation with the Director of Procurement (STaRSTAR)

- 9.4.2 The ASO must ensure that the Modification Form provides full details of the request and any supplementary documentation to support the request.
- 9.4.3 No commitment should be made to a potential Contractor prior to authorisation.
- 9.4.4 The Director of Procurement ([STaRSTAR](#)) is responsible for ensuring a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be submitted to [STaRSTAR](#) to be stored electronically on The Chest.

10. Declarations of Interest and Anti-Bribery and Corruption

- 10.1 The Council's reputation with regards to procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members of the Council and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure they comply with the obligations set out in the Council's Members' Code of Conduct and the Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time

- 10.2 Any Officer or Member must declare any interest which could influence their judgement in relation to procurement activity in accordance with the Council’s Codes of Conduct.
- 10.3 No gifts or hospitality should be accepted from any Bidders or Tenderers involved in procurement activity except in accordance with the Council’s Codes of Conduct.

11. Contract Management

- 11.1 All Contracts must have a Council Contract Manager (“Contract Manager”) for the entirety of the Contract. In the event that there is no named Contract Manager the ASO will fulfil the role of Contract Manager.
- 11.2 The Contract Manager will be responsible for reviewing monitoring and evaluating the contract to ensure that its provisions and the services within it are being followed and performed as they should be.
- 11.3 During the life of the Contract, the Contract Manager should monitor the Contract in respect to the following:
- a. Performance (against agreed KPIs where relevant);
 - b. Compliance with specification and contract;
 - c. Cost;
 - d. Any Best Value duties ;
 - e. Continuous Improvement;
 - f. User satisfaction; and
 - g. Risk management.
- 11.4 Where the Contract is to be re-let, this information should be available early enough to inform the approach to re-letting the next contract.
- 11.5 [STaRSTAR](#) can provide advice and support on good practice in performance management of Contracts.
- 11.6 All Contracts must be included and published on the Contracts Register maintained by [STaRSTAR](#) in line with the Local Government Transparency Code 2014. This is a mandatory requirement and it is the responsibility of the SRO for each Service to ensure that they have informed [STaRSTAR](#) of the

Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

12. Retaining Relevant Documents

12.1 All records in relation to the award of Contracts and the associated procurement process, including supporting documentation, shall be stored by [STaRSTAR](#) in an electronic filing system to be available for inspection by the Council's internal and external auditors, or Officer, immediately upon request. Records will be retained in accordance with relevant regulations applicable to electronic record retention.

12.2 Hard copies of all written contracts shall be retained as follows:

Contracts with a value between £5,000 and £249,999.99	for six years after the end of the Contract
all sealed Contracts and Contracts with a value of £250,000 and above	for twelve years after the end of the Contract
Contracts that are grant funded regardless of value	Must comply with retention period above or the terms and conditions of the grant, whichever is the longer

12.3 If legislation related to any individual Contract stipulates a longer retention period than this, then the legislation requirements takes precedence over the Council's minimum periods.

12.4 Once executed, the Council shall retain one original of the complete Contract documents in line with the timescales in the table above and one copy of the complete Contract documents shall be provided to the Contractor.

SCHEDULE 1

Local arrangements for Trafford Council

There are no local arrangements.

Comment [RS2]: No proposed changes to Schedule 1 for any of the Councils