

CONTRACT PROCEDURE RULES

CONTRACT PROCEDURE RULES INDEX

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CONTRACT PROCEDURE RULES

INTRODUCTION

These procedures are standing orders made pursuant to Section 135 of the Local Government Act 1972 relating to contracts (the procedures are referred to as the Contract Procedure Rules).

Guidance regarding the use of these Contract Procedure Rules together with general advice regarding procurement can be found on Trafford Council's intranet site or can be sought directly from the Strategic Procurement Service or Legal Services. These Contract Procedure Rules should also be read in conjunction with Trafford Council's Procurement Policy, the Financial Procedure Rules, Trafford Council's scheme of delegation and all other relevant parts of Trafford Council's Constitution. .

1 Statement of Principles

1.1 The Contract Procedure Rules provide the overarching rules which govern Trafford Council's procurement of Goods, Services and the execution of Works. Adherence to these Contract Procedure Rules will ensure that the principles underpinning the Rules are maintained. Compliance with the Contract Procedure Rules and observance of the EU Treaty and the general principles of EU law including those relating to non-discrimination, equal treatment, and transparency is mandatory for all officers when engaged in contractual processes.

1.2 The principles underpinning these Contract Procedure Rules are:-

1.2.1 the need to achieve accountability through effective mechanisms which enable Officers and Members of Trafford Council to maintain the highest standards of integrity and honesty and to enable them to discharge their personal responsibility on issues of procurement risk and expenditure of public money;

1.2.2 the need to provide consistent procurement policy to suppliers and achieve competitive supply;

1.2.3 the need to meet the commercial, regulatory and socio-economic goals of Trafford Council;

1.2.4 the need to achieve efficiencies by administering procurement processes which are cost effective;

1.2.5 the need to ensure fair-dealing by ensuring that Suppliers are treated fairly and without unfair discrimination, including protection of commercial confidentiality where required;

1.2.6 the need to maintain integrity by excluding corruption or collusion with suppliers or others from procurement processes ;

1.2.7 the need to ensure informed decision-making based on accurate information;

- 1.2.8 the need to ensure legality** in the administration of procurement processes and award of contracts;
- 1.2.9 the need to promote responsiveness** by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement;
- 1.2.10 The need to provide transparency** by ensuring that there is openness and clarity on Trafford Council's procurement policy and its delivery.
- 1.3 All Trafford Council Members and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure that they comply with the obligations set out in Trafford Council's Members' Code of Conduct and Employees' Code of Conduct respectively* and any other guidance issued in that regard.
- 1.4 Procurement decisions are among the most important decisions an Authorised Service Officer will make because the money involved is public money, regardless of the source of funding, and Trafford Council is concerned to ensure that high quality Goods, Services and the execution of Works are provided. Efficient use of resources in order to achieve best value for money is therefore an imperative. Trafford Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.5 These Contract Procedure Rules shall apply to all procurement activities where Trafford Council is to be a contracting body or commissioner of Goods, Services or the execution of Works regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets etc). For clarity, this also includes situations in which Trafford Council is holding money on behalf of other corporate bodies.
- 1.6 For the avoidance of any doubt these Contract Procedure Rules shall apply to any procurement activities undertaken by or on behalf of all state-funded schools in the borough of Trafford. Authorised Service Officers acting for, or on behalf of, state-funded schools shall refer to Trafford's Scheme for Financing Schools policy and seek further guidance from the Strategic Procurement Service prior to undertaking any such procurement activities.
- 1.7 Any failure to comply with any of the provisions of these Contract Procedure Rules must be reported immediately to the Director of Legal and Democratic Services. Failure by any Trafford Council Officer to comply with the provisions of these Contract Procedure Rules could be considered to represent a serious act of misconduct which could lead to disciplinary action being taken against them.

2 Definitions

* Part 5 of Trafford Council's Constitution

2.1 In these Contract Procedure Rules the words and phrases below have the following meanings:

“AGMA Procurement Hub” means the procurement team hosted by Trafford Council on behalf of the Association of Greater Manchester Authorities who promote collaborative procurement activities across Greater Manchester.

“Authorised Service Officer” means any Officer, within a directorate of Trafford Council, who has delegated authority to undertake procurement activity in accordance with paragraph 4.5 of these Contract Procedure Rules.

“Authorised Procurement Officer” means the relevant Strategic Procurement Service Officer (as nominated by the Head of Strategic Procurement) or within the AGMA Procurement Hub, who is responsible for the Goods, Services or execution of Works for which the Specification relates.

“Category Management” means the business improvement process that brings together people from different parts of a business. The aim is to analyse and review discrete parts of the overall spend (called “Categories”), with suppliers, and identify the most appropriate and effective approach to sourcing for each Category. The intention should always be to increase the value provided by the supply chain. A Category can be defined as a discrete area of spend with boundaries determined by the market facing nature of the function or attributes of the Goods, Services or execution of Works being purchased.

“Competitive Dialogue” means a procedure which can be used for complex purchasing where the final Specification is yet to be decided by Trafford Council. The process uses the selection stage to identify a number of tenderers, each of whom will be invited to contribute their ideas towards the final Specification. This is the "Dialogue" phase. When Trafford Specification has been decided then the Authorised Procurement Officers must declare the dialogue complete. Those Tenderers identified during the selection stage are then invited to compete for the provision of the Goods, Services or execution of Works in the "Competitive" phase.

“Contract”	means the legally binding agreement between Trafford Council and the Contractor, made by executing a formal agreement or Official Council Order, for the procurement by Trafford Council of all Goods, Services and the execution of Works and which incorporates the terms and conditions under which the Goods, Services or execution of Works will be provided.
“Contractor”	shall mean the Tenderer who the Council enters into a Contract with following the submission of a Tender or Quotation and who is appointed by Trafford Council to provide the Goods, Services or execution of Works. They may also be referred to as ‘suppliers’, ‘providers’ or ‘service providers’ within certain Trafford Council departments.
“Electronic Auctions”	means the process whereby Tenderers whose Tenders have previously been evaluated and scored for quality attributes are invited to compete on price or quantity through use of an electronic auction process which allows Tenders to be automatically scored and ranked to identify the most economically advantageous Tender (this may include weightings, where appropriate). This process allows bidders to amend their prices/quantities on line in real time to achieve their best score commensurate with their own business objectives.
“Electronic Tenders”	means the process whereby an electronic solution called ‘the Chest’ facilitates the complete procurement process from the advertising of the Specification through to the award of the Contract and electronic contract management. This includes the exchange of all relevant documents in electronic format. Secure electronic communication and an audit trail are key components of the system.
“Electronic Signature Regulations”	means the Electronic Signatures Regulations 2002 as amended from time to time
“EU”	means the European Union.
“Executive”	means the Executive of Trafford Council.

“Framework Agreement”	means an arrangement between one or more contracting authorities and more than one Contractor which establishes the terms and conditions (in particular the terms as to price and, where appropriate, quantity) under which Trafford Council, or another contracting authority, may purchase Goods, Services or the execution of Works and the terms and conditions under which the Contractor shall supply the Goods, Services or execution of Works. The Framework Agreement is not a legally binding agreement and does not guarantee any volume of business. Trafford Council, or another contracting authority, purchasing Goods, Services or the execution of Works under a Framework Agreement will be required to enter into a Contract with the Contractor.
“Goods”	means an inherently useful tangible item required by Trafford Council, from time to time, and supplied by a Contractor, in accordance with the Contract.
High Value Procurement”	means a procurement exercise where the purchase of Goods, Service or execution of Works is valued at a cost of £50,000 or above and those procurement activities which are high risk or involve a transfer of employees in accordance with TUPE. For the avoidance of any doubt, the figure stated is the total Contract value for the whole duration of the Contract term.
“Intermediate Value Procurement”	means a procurement exercise where the purchase of Goods, Services or execution of Works is valued at a cost between £5,000 and £49,999. For the avoidance of any doubt, the figure stated is the total Contract value for the whole duration of the Contract term.
“ITT (Invitation to Tender)”	means an invitation issued by Trafford Council to bidders to submit a Tender for the provision of Goods, Services or the execution of Works in accordance with the Specification.
“Local Procurement File”	means a record of all relevant meetings, discussions, decisions and correspondence relating to a procurement exercise held by the relevant department of Trafford Council
“Low Value Procurement”	means a procurement exercise where the purchase of Goods, Services of execution of

Works is valued at a cost less than £5,000. For the avoidance of any doubt, the figure stated is the total Contract value for the whole duration of the Contract term.

- “Negotiated Procedure” means a procurement procedure used in exceptional circumstances under which negotiation is permitted between Trafford Council and selected Persons before a Contract is awarded.
- “Officer” means any employee of Trafford Council.
- “Official Council Order” means an electronic order issued via Trafford Council’s electronic procurement system (“SAP EBP”) to a Contractor. It also means any order made by Trafford Council using a Purchasing Card.
- “OJEU” means the Official Journal of the European Union
- “Open Procedure” means the procurement procedure for inviting Tenders from bidders without a prior short listing of bidders process as set out in paragraph 14 of these Contract Procedure Rules.
- “Partnership” means an agreement between two or more independent bodies to work collaboratively to achieve shared objectives. This refers to arrangements where the risks and benefits are shared between partners and there are joint decision making processes in place.
- “Person” may include any individual, an individual (on behalf of a charity or community group), a sole trader, partnership or company (limited or unlimited) or any duly incorporated trade, professional or commercial body.
- “PIN” means the Prior Information Notice publicised in the OJEU by Trafford Council which provides basic information about Trafford Council’s intended procurement activity to all potential bidders.
- “Purchasing Cards” means charge cards which work in a similar way to credit cards and can be used by Authorised Service Officers to purchase Goods and/or Services.

“PQQ (Pre-qualification questionnaire)”	means the document used by Trafford Council to screen potential bidders, using the following criteria: (i) mandatory and discretionary exclusions (ii) economic and financial standing and (iii) technical and professional capability, to develop a list of qualified bidders.
“Quotation”	means a formal offer submitted by a Tenderer to supply Goods, Services or execute Works at a defined price
“Regulations”	means the UK regulations implementing the EU public procurement directives namely the Public Contracts Regulations 2006SI2006/5 as amended from time to time.
“Regulations Threshold”	means the financial threshold identified by the EU, as amended from time to time, above which a public contract must be let in accordance with public procurement legislation.
“Restricted Procedure”	means the procurement procedure in which Tenderers who have previously been shortlisted are invited to submit a further Tender in accordance with the provisions of paragraph 15 of these Contract Procedure Rules.
“Services”	means the time, effort and expertise required by Trafford Council, from time to time, and supplied by a Contractor, in accordance with the Contract, instead of a tangible product.
“Specification”	means the outputs, outcomes and the scope and nature of Goods, Services or execution of Works required by Trafford Council from a procurement process as detailed in the Specification.
“Strategic Procurement Service”	means Trafford Council’s central procurement team that will meet the procurement needs of all directorates of Trafford Council using a Category Management model.
“Tender”	means a formal offer submitted by a Tenderer in response to a Specification to supply Goods, Services or execute Works to Trafford Council at a stated price.
“Tender Documents”	shall mean the documentation issued by Trafford Council to bidders during a procurement exercise which shall include, but shall not be limited to, the

terms and conditions of the Contract, the Form of Tender, the Specification, and any other related documents or papers which will help to inform bidders' Tenders.

“Tenderer” means any Person submitting a Tender or Quotation in response to a Specification issued by Trafford Council

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time together with any European Council 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 Trafford 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 or mental effort or activity which is directed toward the production or accomplishment of something by the Contractor, from time to time, in accordance with the Specification.

“Writing” means 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 **Interpretation**

3.1 In the event of any conflict between EU law, English law and Council policy, the requirements of EU law shall prevail over English law and the requirements of English law shall prevail over Council policy.

3.2 All figures specified in these Contract Procedure Rules are exclusive of VAT.

3.3 In the event of any doubt as to the interpretation of these Contract Procedure Rules, or as to the proper procedure to be followed, advice should be sought from the Head of Strategic Procurement Service in the first instance.

4 **Compliance**

- 4.1 Every Contract entered into by Trafford Council shall be entered into pursuant to or in connection with Trafford Council's functions and shall comply with:
- (a) all relevant statutory provisions;
 - (b) the relevant EU procurement rules (the EU Treaty, the general principles of EU community law and the EU's public procurement directives implemented by the Regulations);
 - (c) Trafford Council's Constitution including these Contract Procedure Rules, the Trafford Council's Financial Procedure Rules and scheme of delegation; and
 - (d) Trafford Council's strategic objectives and policies including the procurement strategy.
- 4.2 These Contract Procedure Rules do not apply to:
- (a) employment Contracts for employees engaged on a PAYE basis;
 - (b) Contracts relating solely to the disposal or acquisition of securities or of an interest in land and property;
 - (c) Contracts for legal services including, but not limited to, the appointment of Counsel or the appointment of experts for the purpose of legal, or potential legal proceedings by the Director of Legal and Democratic Services;
 - ;
 - (d) hiring of premises and performance artists;
 - (e) Contracts for works of art or theatre, which are of genuine exclusivity;
 - (f) procurement activities for which a waiver has been authorised in accordance with these Contract Procedure Rules;
 - (g) existing Contracts which have been procured in accordance with the Regulations by another local authority, local authority consortium, or other public body, provided that Trafford Council has the legal power to participate in such a Contract.
- 4.3 It is the Authorised Service Officer's responsibility to ensure compliance with these Contract Procedure Rules and the Council's Financial Procedure Rules unless otherwise specified. Compliance with these Contract Procedure Rules will be monitored by the Head of Strategic Procurement Services.
- 4.4 All relevant documentation relating to all procurement activities including, but not limited to, all decisions, Quotations, Tenders, Tender Documentation and Contracts shall be open to inspection and monitoring by the Director of Finance, the Head of Strategic Procurement Service, the Director of Legal and Democratic Services, the Audit and Assurance Manager and any other Officer acting by authorisation of those identified in this paragraph 4.4.
- 4.5 Subject to paragraph 7.1 of these Contract procedure Rules, the director of the relevant directorate of Trafford Council is responsible for nominating an

Authorised Service Officer who shall work with the Strategic Procurement Service on High Value Procurement exercises. The director may change the nominated Authorised Service Officers at any time and must notify the Strategic Procurement Service of any such change.

- 4.6 Where procurement activities or Contract management is to be undertaken by someone other than an Officer, it must be a condition of any Contract between Trafford Council and that other body that they shall comply with the requirements of these Contract Procedure Rules.
- 4.7 Where procurement activities relate to the purchase of ICT Goods or Services, the Authorised Service Officer shall seek the advice of the ICT Operations Manager (or their nominated representative) prior to undertaking any procurement activity.
- 4.8 Where a procurement exercise will result in a Contract under which monies will be paid to Trafford Council, the Authorised Service Officer should seek further guidance from the Head of Strategic Procurement Services.
- 4.9 If Goods, Services or execution of Works are being acquired at no direct cost to Trafford Council advice must be sought from the Director of Legal and Democratic services.

5 **Waivers of Contract Procedure Rules**

- 5.1 In only a very limited number of circumstances a waiver of these Contract Procedure Rules may be requested by an Authorised Service Officer, such circumstances include;
 - (a) Low and Intermediate Value Procurement activities which the Authorised Service Officer, in consultation with the Head of Strategic Procurement Services, is genuinely satisfied that the requirement to obtain three Quotations cannot be achieved; and
 - (b) High Value Procurement activities which are valued at a cost which is below the Regulations Threshold and are of a unique nature which the Authorised Service Officer, in consultation with the Head of Strategic Procurement Services, is genuinely satisfied can only be purchased from a single source; and
 - (c) High Value Procurement activities which are valued at a cost which is below the Regulations Threshold and which the Authorised Service Officer, in consultation with the Head of Strategic Procurement Services, considers are of an emergency nature.
- 5.2 The Authorised Service Officer must obtain a waiver prior to undertaking any procurement activity by submitting;
 - (a) in relation to 5.1(a) above, a completed Quotation Exemption form
 - (b) in relation to 5.1(b) or 5.1(c) above, a completed Tender Waiver Formto the Head of Strategic Procurement Services. If approved by the Head of Strategic Procurement Services, the Quotation Exemption Form shall then be submitted to the Director of Finance for final authorisation and the Tender

Waiver Form shall then be submitted to the Director of Legal and Democratic Services for final authorisation.

- 5.3 Waivers of these Contract Procedure Rules will only be authorised in exceptional circumstances.
- 5.4 Waivers shall not, on any occasion, be made retrospectively and compliance with the Regulations shall not be waived in any circumstances.
- 5.5 Copies of all Quotation Exemption Forms and Waiver Forms shall be retained by the Head of Strategic Procurement Services.

6 Forthcoming Contracts and Contracts Register

- 6.1 For each financial year, Trafford Council shall publish a list of all its current Contracts and list all the Contracts which it expects to procure for the forthcoming financial year. Trafford Council shall also publish a copy of the capital programme.
- 6.2 Before the start of each financial year, the Head of Strategic Procurement Services shall consider whether or not to publish a PIN in the OJEU listing the Contracts which it expects to procure for the forthcoming financial year.

PRE-PROCUREMENT PROCEDURES

7 Delegated Authority

- 7.1 Any procurement activity carried out on behalf of Trafford Council must be carried out by an Authorised Service Officer with the appropriate delegated authority as set out in Trafford Council's Constitution and directorate scheme of delegation. Authorised Service Officers may only delegate to other Officers who have suitable experience and seniority, and this must be recorded to ensure a full audit trail is available. Officers shall be informed by the relevant Authorised Service Officer as to the extent of any delegated authority and any applicable financial thresholds for each procurement activity. In relation to Trafford Council's e-procurement system (SAP EBP), Authorised Service Officers shall only delegate to those Officers with the relevant approval levels against the appropriate cost centres and who have a comprehensive understanding of the Contract Procedure Rules

8 Pre-Procurement Procedure

- 8.1 Before commencing any procurement activity the Authorised Service Officer must;
 - (a) estimate the overall Contract value in accordance with paragraph 9 of these Contract Procedure Rules. The estimated value of a Contract will determine the appropriate procurement procedure to be followed under these Contract Procedure Rules; and

- (b) ensure, prior to commencement of any procurement exercise, that the budget holder responsible for the Contract has sufficient funds in place to sustain the Contract; and
- (c) identify the need for the procurement of the Goods, Services or execution of Works and has fully assessed all options for meeting Trafford Council's needs. Consideration must be given to Trafford Council's Procurement Strategy and any other relevant policies and strategies as appropriate; and
- (d) in consultation with the Authorised Procurement Officer, shall establish whether Trafford Council's requirement can be met through any existing Contracts (either directly held by Trafford Council or collaboratively formed with other authorities), and ensure that the estimated Contract value can be met from the appropriate budget (capital and/or revenue).

8.2 Before commencing any procurement activity the Authorised Service Officer must ensure sure that the appropriate approval for the procurement exercise itself is obtained, which may require a decision from Trafford Council's Executive in accordance with Trafford Council's Constitution. An example of a procurement activity that is likely to require an Executive Decision is any procurement activity which involves the transfer of employees in accordance with TUPE regulations. However, this is only one example of an activity which would require an Executive Decision and the Authorised Service Officer must refer to Trafford Council's constitution to determine what approval is required. Authorised Service Officers should seek further guidance from the Head of Strategic Procurement Services or the Director of Legal and Democratic Services if required;

8.2 (a) the Authorised Service Officer must provide the Authorised Procurement Officer with evidence of the appropriate approval and associated decision, where relevant, for each procurement exercise prior to the commencement of any procurement activity;

8.3 For procurement activities valued at over £100,000, the Authorised Procurement Officer must publish award decisions on Trafford Council's website in accordance with the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

9 Estimating the Contract Value

9.1 Estimates of Contract value and methods of valuation must be genuine and not designed to avoid exceeding any threshold in these Contract Procedure Rules or the Regulation Threshold. All Contract values must be calculated in accordance with the Regulations (even when the Regulations are not applicable) for consistency. Trafford Council should make the best use of its purchasing power by aggregating purchases wherever possible.

9.2 For the purpose of these Contract Procedure Rules, the value of a Contract is the expected amount of consideration (in money or money's worth) that will be received by the Contractor under the Contract. The Contract value must be calculated over the expected lifetime of the whole Contract as opposed to on a per annum basis. Estimates of Contract Value must include any funding that will be provided by a third party (e.g. government agency).

9.3 The total Contract value shall be calculated as follows:-

- (a) For "one-off" orders the estimated Contract value will be the individual order value;
- (b) where the Contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the Contract period, including any permitted extension of the Contract term;
- (c) where the Contract period is indefinite or uncertain, by taking the monthly price payable under the Contract and multiplying by 48;
- (d) where a Framework Agreement is to be used with no guaranteed commitment, the Contract value will be the estimated value for the purchases of Goods, Services or execution of Works over the full duration of the Framework Agreement term;
- (e) where Trafford Council has a single requirement for Goods, Services or execution of Works and more than one Contract has been entered into, or are to be entered into, the total Contract value must be the aggregated value of each of the individual Contracts. Strategic Procurement Services can provide further guidance on the Contract value in such an instance using reporting methods via Trafford Council's ProClass spend classification system. This system can be used to determine 'actual' spend linked to purchases made.

9.5 Once the Contract value is determined the Authorised Service Officer shall ensure that they are aware of the relevant Regulations Threshold and associated requirements

9.6 Where the estimated Contract value falls within 10% of the relevant Regulations Threshold, then a full and robust tender exercise compliant with the Regulations shall be undertaken.

10 **Use of Specifications**

10.1 In every procurement process Trafford Council must specify its requirements in a detailed, clear and precise manner, using outcome performance measures as appropriate. The specification must be fully prepared before the contract opportunity is advertised. Guidance on the content of a specification can be sought from the Head of Strategic Procurement.

- 10.2 Specifications must not include requirements that are discriminatory or that may distort competition of bids.
- 10.3 Specific products, sources or processes (including brands) must not be specified unless it is an essential factor necessary in meeting Trafford Council's requirements. In such a case the Specification must permit the use or provision of an equivalent product, source or process to the branded/specific product identified. For example, wherever appropriate, a non-discriminatory quality standard should be specified.
- 10.4 The rules set out within the Regulations relating to technical specifications are complex and require guidance on their interpretation and use. Advice must be sought from the Strategic Procurement Service in relation to the use of technical specifications.
- 10.5 Specifications must be in accordance with any directions issued by the Director of Legal and Democratic Services from time to time and all relevant policies of Trafford Council.

PROCUREMENT PROCEDURES

These Contract Procedure Rules define the required procurement procedure based on the estimated value of the Contract as follows:-

11 Low Value Procurement

- 11.1 Authorised Service Officers must utilise existing Contracts or Framework Agreements where there is a viable option to do so. Strategic Procurement Services can provide further guidance on any such options.
- 11.2 For Contracts or orders with an estimated value of less than £5,000 at least three written Quotations must be obtained and full details must be retained on Trafford Council's electronic tendering system "The Chest". The Chest can be used to access a 'QuickQuote' tool but access to this tool is restricted and Authorised Service Officers should seek further guidance from Strategic Procurement Services where appropriate. Quotations must be assessed against price only and the bidder with the lowest price must be appointed for the provision of the Goods, Services or execution of Works.
- 11.3 An Official Order may be issued once a bidder has been appointed and the Authorised Service Officer must ensure that any such Official Order contains a Specification and stipulates the agreed price and terms of payments.

12 Intermediate Value Procurement

- 12.1 Authorised Service Officers must utilise existing Contracts or Framework Agreements where there is a viable option to do so. Strategic Procurement Services can provide further guidance on any such options.

12.2 For Contracts or orders with an estimated value of between £5,000 and £49,999 at least three written quotations must be obtained and full details must be retained on The Chest. The Chest can be used to access a 'Request for Quotation' tool but access to this tool is restricted and Authorised Service Officers should seek further guidance from Strategic Procurement Services where appropriate. The Quotations must be assessed against a combination of price and quality weightings and the bidder with the overall highest score must be appointed for the provision of the Goods, Services or execution of Works.

12.3 An Official Order may be issued once a bidder has been appointed and the Authorised Service Officer must ensure that any such Official Order contains a Specification and stipulates the price and terms of payment.

13 **High Value Procurement**

13.1 Authorised Service Officers and Authorised Procurement Officers must utilise existing Contracts or Framework Agreements where there is a viable option to do so. Strategic Procurement Services can provide further guidance on any such options.

13.2 The following Contracts shall be treated as High Value Procurement activities;

- (a) Contracts or orders with an estimated value of between £50,000 and the Regulations Threshold;
- (b) Contracts or orders with an estimated value of the Regulations Threshold and above;
- (c) those Contracts where the Authorised Services and/or Authorised Procurement Officer perceives the risk in a specific procurement activity to be high, regardless of the Contract value; and
- (d) those Contracts or orders which involve a transfer of employees in accordance with TUPE.

13.3 The Authorised Procurement Officer, prior to the commencement of any High Value Procurement activities shall;

13.3.1 establish appropriate evaluation criteria to be used to assess Tenders. The Authorised Procurement Officer shall obtain the approval of any such criteria from the relevant Authorised Service Officer; and

13.3.2 in consultation with the Authorised Service Officer shall develop and document the desired procurement approach; and

13.3.3 ensure that the evaluation process includes a full risk assessment as part of the pre-qualification assessment and evaluation process in order to determine the appropriate type (including: employers' liability, public liability, professional indemnity, etc) and level of insurance requirements for each Contract having regard to the minimum acceptable levels as determined from time to time by the Director of Finance and all appropriate safeguards for performance of the Contract and the management of any risk.

- 13.4 An Authorised Procurement Officer must conduct the procurement process for all High Value Procurement activities. Such procurement exercises shall involve a tender process and will be conducted using Tthe Chest. The Authorised Procurement Officer shall determine whether to use either an Open Procedure, a Restricted Procedure or, in exceptional circumstances a Negotiated Procedure or Competitive Dialogue Procedure based on the requirements of the particular procurement exercise. Where the procurement activity is undertaken electronically, the procurement procedure may be accelerated in terms of timescales.
- 13.5 Where appropriate, the Authorised Procurement Officer and Head of Strategic Procurement must establish whether the Contract will involve the procurement of works, supplies or services as defined in the Regulations and, in the case of services, whether the Regulations will apply in full or in part. Where the Authorised Procurement Officer considers that the Regulations do not apply at all to the procurement activity, confirmatory written advice must be obtained from the Head of Strategic Procurement (in consultation with the Director of Legal and Democratic Services, where appropriate) before proceeding and any such advice must be retained on file.
- 13.6 The Authorised Procurement Officer shall ensure that, where the Regulations are applicable, such procurement activities are fully compliant with the Regulations.

TENDER PROCEDURES

14 Open Procedure

- 14.1 Tenders submitted under the Open Procedure shall be advertised via a public notice in a local or regional paper, or a relevant trade journal (or other equivalent appropriate placement) or on Trafford Council's website in order to target the relevant market for the particular Contract.
- 14.2 The public notice must be published by the Authorised Procurement Officer. The public notice must contain details of the proposed Contract and specify a time limit within which interested bidders may express an interest in submitting a Tender for the Contract.
- 14.3 Where the Regulations apply, the Tender must also be advertised using a contract notice within OJEU. All required fields within the contract notice must be completed and must include, amongst other detail, details of the evaluation/selection criteria to be used, the estimated Contract value and must clearly identify all authorities who are collectively participating in the procurement activity. The contract notice must specify a time limit within which interested bidders may express an interest in submitting a Tender for the Contract. All contract notices shall be completed and issued by the Strategic Procurement Service, in consultation with the Authorised Service Officer. .

14.4 Within six days after the expiry of the deadline date for expressions of interest, Trafford Council shall send an ITT to any bidder expressing an interest. All Persons who express an interest must be invited to Tender for the Contract.

15 **Restricted Procedure**

15.1 Tenders under the Restricted Procedure shall be advertised via a public notice in a local or regional paper, or a relevant trade journal (or other equivalent appropriate placement) or on Trafford Council's website in order to target the relevant market for the particular Contract.

15.2 The public notice must be published by the Authorised Procurement Officer. The public notice must contain details of the proposed Contract and specify a time limit within which interested bidders may express an interest in submitting a Tender for the Contract.

15.3 Where the Regulations apply, the Tender must also be advertised using a contract notice within OJEU. All required fields within the contract notice must be completed and must include, amongst other detail, details of the evaluation/selection criteria to be used, the estimated Contract value and must clearly identify all authorities who are collectively participating in the procurement activity. The contract notice must specify a time limit within which interested bidders may express an interest in submitting a Tender for the Contract. All contract notices shall be issued by the Strategic Procurement Service, in consultation with the Authorised Service Officer.

15.4 Within six days after the expiry of the deadline date for expressions of interest, Trafford Council shall send a Pre-Qualification Questionnaire (PQQ) to any bidder expressing an interest. All Persons who express an interest must be invited to Tender for the Contract. The PQQ must specify the return date for the PQQ. No PQQ received after the specified date and time for receipt of PQQ shall be accepted or considered by Trafford Council. Any requests to consider late submissions of PQQ, for reasons of technical difficulties when submitting or such like, must be referred to the Head of Strategic Procurement Services for determination.

15.5 Using published pre-qualification criteria, set in accordance with paragraph 17 below, the Authorised Procurement Officer, together with an evaluation team appointed in accordance with 22.4 below, will conduct an assessment of the PQQs submitted by bidders. Only the bidders that meet the required criteria must be invited by Trafford Council to submit a Tender for the Contract. A minimum of five bidders must be invited to Tender.

15.6 In the event that there are not enough bidders meeting the pre-qualification evaluation criteria to comply with the requirements of paragraph 15.5 above then, provided that best value for money can still be obtained through that procurement exercise, a lesser number of bidders can be invited to Tender

with the prior written approval of the Authorised Service Officer and the Head of Strategic Procurement.

- 15.7 Bidders will eligible to be invited to submit a Tender will be provided with an ITT.

16. **Negotiated Procedure and Competitive Dialogue Procedure**

- 16.1 Use of the Negotiated Procedure or Competitive Dialogue Procedure (or any other award procedure permitted by the Regulations but not listed in these Contract Procedure Rules) must be authorised, in writing and in advance of the commencement of any such procurement procedure, by the Director of Legal and Democratic Services following the submission of a written report from the Authorised Procurement Officer, in conjunction with the Authorised Service Officer.
- 16.2 Use of the Negotiated Procedure or Competitive Dialogue Procedure will only be applicable in very limited circumstances, usually where Trafford Council is unable to ascertain prior overall pricing of the Contract or is unable to draw up Specifications which are sufficiently precise to achieve the requirements of Trafford Council.
- 16.3 The Head of Strategic Procurement Services will conduct and direct the administration of any such procurement procedure in consultation with the Director of Legal and Democratic Services.
- 16.4 Where the use of Negotiated Procedure or of the Competitive Dialogue Procedure is authorised by the Director of Legal and Democratic Services a contract notice must be published within OJEU. All required fields within the contract notice must be completed and must include, amongst other details, details of the award criteria to be used, notification of the intention to limit the number of participants that will be invited to participate in the procurement process, notice of the intention to use stages to reduce further the number of bidders and solutions, the estimated Contract value and it must clearly identify all authorities who are collectively participating in the procurement activity. All contract notices shall be issued by the Strategic Procurement Service, in consultation with the Authorised Service. Officer
- 16.5 The contract notice must specify a time limit within which interested bidders may express an interest in submitting a Tender for the Contract. The Regulations set out the minimum timescales for receipt of expressions of interest and Tenders. Where Trafford Council has published a PIN announcing its forthcoming Contracts for the year ahead or provided electronic access to Tender Documents, then Trafford Council may rely on reduced timescales if appropriate.
- 16.6 Trafford Council shall send a Pre-Qualification Questionnaire (PQQ) to any bidder expressing an interest within the prescribed timescales. All Persons who express an interest must be invited to Tender for the Contract. The PQQ

must specify the return date for the PQQ. No PQQ received after the specified date and time for receipt of PQQ shall be accepted or considered by Trafford Council. Any requests to consider the late submission of a PQQ, for reasons of technical difficulties when submitting or such like, must be referred to the Head of Strategic Procurement Services for determination.

- 16.7 Using published pre-qualification criteria the Head of Strategic Procurement Services, together with an evaluation team appointed in accordance with 22.4 below, will conduct an assessment of the PQQs submitted by bidders and will determine which bidders will be invited through to the next stage in the procurement process.
- 16.8 A shortlisting process will be undertaken until the Head of Strategic Procurement Services and appointed Authorised Service Officers, are in a position to identify which bidders or bidder will be invited to submit a Tender.

17 **Pre-Qualification**

17.1 Trafford Council must only enter into a Contract with a Tenderer if it is satisfied, in relation to that Contract, as to that Tenderer's -

- (a) economic and financial standing
- (b) technical or professional capability

17.2 Technical capability includes, but is not limited to, the Tenderer's previous experience over the last three years (where applicable), statements of the goods, works or services available to Trafford Council, and quality management systems including human resources, health and safety and environmental management systems where relevant and appropriate to the performance of the Contract.

18 **The Invitation to Tender**

18.1 The standard ITT template shall be used for all procurement exercises and as a minimum must include the following provisions:

- (a) a form upon which the bidder can provide details relating to their bid ("Form of Tender") including reference to Trafford Council's ability to award in whole, in part or not at all; and
- (b) an Anti-Collusion Undertaking to be provided by the bidder; and
- (c) a description of the Services, Goods or execution of Works being procured and whether any variants to that description are permitted; and
- (d) the procurement exercise timetable and instructions regarding the return date and time for Tenders. Enough time should be allowed for bidders to prepare their Tenders; and

- (e) Trafford Council's terms and conditions of Contract as prescribed by the Director of Legal and Democratic Services from time to time;
- (f) the evaluation criteria to be used to assess Tenders including any weightings as considered appropriate; and
- (g) a statement regarding alterations to Tenders in accordance with the provisions of 21 below; and
- (h) whether Trafford Council is of the view that TUPE will be applicable in relation to the procurement activities;
- (i) provisions relating to Trafford Council's termination rights in the event of corruption discovery.

19 **Submission and Opening of Tenders and Quotations**

- 19.1 Tenders must be submitted in accordance with the requirements set out in the ITT. Trafford Council will only accept Tenders submitted electronically via The Chest.
- 19.2 No Tender received after the specified date and time for receipt of Tenders shall be accepted or considered by Trafford Council. Any requests to consider late submissions of Tenders, for reasons of technical difficulties when submitting or such like, must be referred to the Head of Strategic Procurement Services for determination
- 19.3 Tenders must remain unopened until the time and date specified for their opening. .
- 19.4 Electronic tenders must be opened by the Authorised Service Officer, the Director of Legal and Democratic Services and/or the Director of Finance. Each may nominate a representative to attend Tender openings should they so wish.
- 19.5 For the avoidance of any doubt the provisions contained in 19.1 – 19.4 inclusive) above are applicable to the administering of Quotations. In the rare instances where Quotations are not received electronically, each Authorised Service Officer shall ensure that accurate written records are maintained for all Quotations and that all the Quotation documentation, including the Quotation itself, is maintained on file.

20 **Electronic Procurement**

- 20.1 The use of e-procurement technology does not negate the requirement to comply with all elements of these Contract Procedure Rules, particularly relating to competition and value for money.

- 20.2 Requests for Quotations and ITTs must be transmitted by electronic means. In undertaking electronic procurement the Authorised Service Officer and/or Authorised Procurement Officer must:
- (a) ensure that evidence of all transmissions directed to bidders was successfully completed is obtained and recorded;
 - (b) ensure that Tenders and Quotations submitted electronically are kept in a separate secure folder which can only be opened in accordance with 19 above.
- 20.3 Electronic tendering must be undertaken using Trafford Council's preferred electronic system ('The Chest', or other system as identified by the Head of Strategic Procurement Services from time to time) and must be undertaken by the Authorised Procurement Officer in consultation with the Authorised Service Officer.
- 20.4 The electronic tendering system must have a full audit trail showing the details (including dates and times) of key events during the procurement process and must identify all Officers involved in the procurement activity.
- 20.5 Electronic auctions must only be undertaken using an e-auction system approved for use by the Head of Strategic Procurement and for types of Contracts agreed in advance by the Head of Strategic Procurement and;
- (a) where Goods, Services or the execution of Works are to be procured via an e-auction, the Director of Finance shall agree in advance any upper financial limit for bids;
 - (b) the rules of the e-auction must be clearly established in advance of the auction and communicated to all bidders. There must be a full audit trail showing the details, with dates and times, of key events in the auction process and must identify all Officers involved in the procurement activity;
 - (c) if an e-auction is to be used, it must be stated in the public notice issued at the start of the tendering process;
 - (d) communication with bidders during the e-auction must not be permitted unless it is regarding technical issues related to the auction process;
 - (e) Officers involved in monitoring the e-auction must not be permitted to leave the room during the auction and use of mobile telephones or other communication tools are not permitted by Officers during the auction.
- 20.6 The Chest shall be used to create all Official Orders. Official Orders must not be made retrospectively. Any exceptions to these provisions must be approved in advance by the Head of Strategic Procurement.

21 **Alterations to Tenders**

- 21.1 Trafford Council may accept alterations to Tender submissions as long as they are received prior to the closing date for Tender submissions. In such circumstances, any alterations must be made by resubmitting new Tender

documents and clearly highlighting which documents are correct and which should be considered as part of the tender process. Every ITT shall contain a statement, subject to paragraph 21.2, that Trafford Council will not accept alterations to submitted Tenders after the closing date.

- 21.2 A Tender may be amended after the closing date if the amendment is made only in order to correct an arithmetical error or other discrepancy made in good faith. Any such amendments must be prior approved by the head of Strategic Procurement.

22 **Tender Evaluation**

- 22.1 Tenders shall be evaluated in accordance with the relevant Regulations and the evaluation criteria (along with the associated weightings) must be set out in the OJEU advert or the ITT.
- 22.2 All Contracts, except Contracts where lowest price was predetermined to be the appropriate criterion, must be awarded on the basis of the offer which represents best value for money to Trafford Council.
- 22.3 The evaluation criteria must be clear, concise and unambiguous and must be predetermined and approved by the Authorised Procurement Officer, in consultation with the Authorised Service Officer and the Head of Strategic Procurement and listed in the ITT. The criteria cannot be amended once published in the ITT and must be strictly observed (at all times throughout the procurement procedure).
- 22.4 For each Contract, the Authorised Procurement Officer must form an evaluation team with responsibility for evaluating Tenders. Where required, the Director of Legal and Democratic Services and the Director of Finance can be consulted and, where they consider it appropriate, representatives of those directors may be included on the evaluation team.
- 22.5 Where an evaluation team is used during a procurement exercise, the Authorised Procurement Officer must ensure that evaluation of each bid is undertaken by all team members..
- 22.6 The Authorised Procurement Officer must ensure that all records relating to the Tender evaluation must be signed and dated by the relevant evaluation team member and scanned and retained on The Chest.

23 **Post Tender Clarification and Negotiation**

- 23.1 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 is possible.
- 23.2 Any such clarification procedures must be undertaken by the Authorised Procurement Officer and all such communication must be solely about seeking clarification and explanation and must be conducted either in writing

or in a meeting. All correspondence or meetings must be documented and retained. Where a meeting is required, there must always be more than one Officer present.

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

23.4 In no circumstances are post Tender negotiations permitted.

24 **Contract Award**

24.1 If only one Tender is received as part of a Tender process, then advice must be sought from the Head of Strategic Procurement on the correct way to proceed.

24.2 If payment in relation to the Contract is to be made by Trafford Council, the lowest Tender or the Tender which has been evaluated as providing best value for money to the Trafford Council (Most Economically Advantageous Tender) shall be accepted, provided this is within the relevant approved budget and the estimate for the Contract. For the avoidance of any doubt, this may not be the lowest priced Tender.

24.3 Where the Tender is not within the relevant approved budget but and the tender is within 10% of the estimated Contract Value and budgetary provision is available, the relevant Authorised Service Officer, with the approval of the Director of Finance, may accept the Tender. In all other circumstances the matter shall be reported to the Trafford Council's Executive for consideration and determination. This provision is subject to paragraph 24.7 below.

24.4 For the avoidance of any doubt, the Director of Finance cannot authorise acceptance under paragraph 24.3 where the value of the Tender return takes it higher than the Regulations Threshold.

24.5 A Contract may only be awarded by an Authorised Service Officer with the requisite delegated authority to award Contracts. For all procurements valued above the Regulations Threshold, the decision to award a Contract shall be made by the Authorised Service Officer on receipt of a report from the Authorised Procurement Officer.

24.6 All award decisions must be recorded in writing, signed and dated by the Authorised Procurement Officer, Head of Strategic Procurement and the relevant Authorised Service Officer.

24.7 Where a Tender is to be awarded on the basis of a best value for money evaluation and the price component of the Tender constitutes more than 10% or £10,000 over and above the lowest price Tender, the advice of the Director of Legal and Democratic Services and Director of Finance must be sought prior to the Authorised Service Officer's decision to award is determined.

24.8 Where a decision has been made to award a Contract which was tendered under the Regulations, the award can only be made after a notice of the proposed award has been given to all unsuccessful Tenderers and a period of 10 days 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. The notice must be issued by the Authorised Procurement Officer.

24.9 The Authorised Procurement Officer must publish a contract award notice in the OJEU and on Trafford Council's website no later than 48 days after the date of award of the Contract where a Contract has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations relating to Contract award.

25 **Debriefing**

25.1 The Authorised Procurement Officer responsible for each procurement exercise shall provide a full debriefing to unsuccessful Tenderers on written request. Feedback can be provided via the telephone, but a written record of the debrief conversation must be maintained and retained for future reference.

26 **Letters of Intent**

26.1 Letters of intent must only be used with the prior approval of the Director of Legal and Democratic Services and the content of any such letters must be prescribed by the Director of Legal and Democratic Services

CONTRACTS

27 **Contract Terms and Conditions**

27.1 Unless other forms of contract have been specifically approved by the Director of Legal and Democratic Services, for all Contracts (excluding those involving statutory undertakings) the following shall apply:

(a) Contracts with a value below £50,000 shall be made using an Official Order for Goods, Services or execution of Works and issued via Trafford Council's e-procurement system (which excludes commitments made through SAP Social Care). Trafford Council's standard terms and conditions of Contract shall be included with each official Order;

(b) Contracts with a value between £50,000 and the Regulations Threshold shall be made using an Official Order for Goods, Services or execution of Works and issues via Trafford Council's e-procurement system (which excludes commitments made through SAP Social Care). Trafford Council's standard terms and conditions of Contract shall be included with each Official Order and/or ITT;

- (c) Contracts with a value in excess of the Regulations Threshold shall be determined in consultation with the Head of Strategic Procurement and Director of Legal and Democratic Services.

Exceptions to this requirement must be approved in advance by the Director of Legal and Democratic Services and recorded and retained in writing.

27.2 No amendments or additions to Trafford Council's standard terms and conditions of Contract may be made without the prior approval of the Director of Legal and Democratic Services who should in any event be consulted in any case of doubt or where any complex or unusual contractual arrangements are proposed.

27.3 The Director of Legal and Democratic Services must be consulted, in advance of any procurement activity, where TUPE applies or may apply to a Contract.

28 **Form and Execution of Contract**

28.1 The following table details the relevant authorised signatories for Contracts:-

Total Contract Value	Form of Contract	Officer Authorised to sign Contract
Less than £5,000	Official order via the Council's e-procurement system	Authorised Officer under the Scheme of Delegation
Between £5,000 and £49,999	Official order via the Council's e-procurement system	Authorised Officer under the Scheme of Delegation
Between £50,000 and the Regulations Threshold	In writing including the standard terms and conditions of contract within the ITT	Signed by two Officers (one of whom must be from the following list) :- Chief Executive, Director of Legal and Democratic Services, Member of CMT, Head of Legal Services and the Head of Strategic Procurement. For Contracts let by the AGMA Procurement Hub, signatures are required from two of the following list:- the Head of Strategic Procurement, the Director of Legal and Democratic Services and the Head of Legal Services.

Over the Regulations Threshold	In writing including the Standard conditions of contract within the ITT	Under Seal or signed by two Officers (nominated by Director of Legal and Democratic Services)
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- 28.2 All Contracts with a value less than £50,000 must comply with the Financial Procedure Rules set out in part 4(b) of Trafford Council's Constitution.
- 28.3 All Contracts with a value over £50,000 must be in writing and executed as set out in the table in 28.1 above. Two copies must be signed by the Contractor and returned for signature by Trafford Council. One copy of the signed Contract must be returned to the Contractor and one copy must be retained by the Director of Legal and Democratic Services.
- 28.4 Every Contract above the Regulations Threshold in value must be entered into in writing and, as considered appropriate by the Director of Legal and Democratic Services, will either be under the common seal of Trafford Council and attested by the Director of Legal and Democratic Services or by an Officer nominated by him/her, or will be signed as a deed by two Officers nominated by the Director of Legal and Democratic Services (which may include the Director of Legal and Democratic Services).
- 28.5 Electronic signatures may be used in accordance with the Electronic Signature Regulations, provided the sufficiency of security arrangements has been prior approved by the Director of Legal and Democratic Services.

29 **Provisions to be Included in Contracts**

- 29.1 Every Contract in writing must contain clauses to cover the following –
- (a) Specification;
 - (b) the price to be paid, with a statement of discounts or other deductions and/or the amounts, frequencies and method of calculation of Contract payments;
 - (c) the payment terms in accordance with which the Contractor will be paid;
 - (d) the time or times within which the Contract is to be performed;
 - (e) protection for Trafford Council against the Contractor's defective performance by default provisions which are appropriate to the Contract;
 - (f) compliance with all relevant legislation requirements and Trafford Council policies;
 - (g) compliance with Trafford Council's insurance requirements;
 - (h) prohibition against assigning or underletting the Contract, or any part of it, or sub-contracting, except with the prior written consent of Trafford Council and upon such conditions as Trafford Council may think fit, having regard to all relevant legislation and circumstances;

- (i) allowing Trafford Council to terminate the Contract and recover from the Contractor the amount of any resulting loss if the Contractor or its employees or agents (with or without its knowledge):
 - i. does anything improper to influence Trafford Council to give the Contractor any Contract
 - ii. commits an offence under the Bribery Act 2010, Prevention of Corruption Acts 1889 to 1916 or under Section 117(2) of the Local Government Act 1972 as amended from time to time
- (j) if the Contractor is in breach of Contract Trafford Council can do any or all of the following:
 - i. determine all or part of the Contract or determine the Contractor's appointment;
 - ii. itself perform the Contract in whole or in part;
 - iii. recover from the Contractor any additional cost resulting from the completion or cancellation of the Contract;
- (k) that the Contractor shall agree to accede to any reasonable request by the Local Government Ombudsman or Audit Commission Inspectors for access to the Contractor or their documents;
- (l) that the Contractor shall be required to make available to Trafford Council upon request such information Trafford Council considers necessary whether in relation to employees engaged in the Contract or otherwise, to enable Trafford Council to meet its duties in relation to retendering the Contract (e.g. TUPE);
- (m) Where a Contract includes any element of Trafford Council's income or expenditure being based on the actual income or expenditure of a contractor, the Contract must include a clause giving Trafford Council right of access to the Contractor's and any sub-contractor's records.
- (n) that the Contractor will be required to provide an appropriate level of contract and quality monitoring to be agreed with Trafford Council at the outset of a Contract and which will detail the duties of both parties.

29.2 Every Contract over the Regulations Threshold which is for the execution of Works must, except as agreed by the Director of Finance, provide for liquidated damages to be paid by the Contractor in case the terms of the Contract are not duly performed. Trafford Council must also require and take sufficient security for the due performance of any Contract where it is considered to be necessary.

30 **Preventing Collusion**

30.1 Before entering into a Contract which has been the subject of the invitation of Tenders, a written assurance shall be obtained from Tenderers that they will not follow, or have not followed in relation to the Contract, the following practices:

- (a) communicating to a Person other than the Person calling for Tenders the amount of any proposed Tender in accordance with any agreement or arrangements so to communicate; or
- (b) adjusting the amount of any proposed Tender in accordance with any agreement or arrangement by the proposed Tenderer and any Person other than the Person calling for Tenders.

31 **Corrupt Practices**

31.1 Provisions must be included in every ITT and in every written Contract empowering Trafford Council to reject any Tender or terminate a Contract and recover from the Contractor the amount of any loss resulting from such termination if the Contractor or any person on his behalf whether employed by the Contractor or not (with or without its knowledge) :-

- (a) makes any arrangement or agreement with any third party which requires either party to fix or adjust his Tender price, or refrain from tendering, or
- (b) communicates to any Person, except Trafford Council, the amount or approximate amount of his tender otherwise than in confidence to enable his Tender to be made, e.g. to obtain premium quotations for insurances or a bond, or
- (c) gives, agrees to give, offers to give or promises any Person (directly or indirectly for the benefit of that person or any other) any gift, loan, fee, reward or other consideration or conferred any advantage as an inducement to, reward for or otherwise on account of such person having done, agreed or forborne to do anything in relation to any other tender or proposed Tender for any Contract, or
- (d) directly or indirectly canvasses any member or Officer in order to obtain or attempt to obtain:
 - i. entry to any lists of Persons approved by Trafford Council to carry out works on its behalf, or
 - ii. information concerning any other Tenderer or any Tender submitted by any other Tenderer, or
 - iii. any advantage or benefit to the disadvantage of other Tenderers.
- (e) shows favour or disfavour to any person in relation to any Contract with Trafford Council, or
- (f) otherwise commits any other offence under the Bribery Act 2010, Prevention of Corruption Acts 1889 to 1916 or Section 117 (2) of the Local Government Act 1972.

32 **Records of Tenders and Contracts Register**

32.1 A list of all Tenders and Quotations received must be maintained on The Chest.

32.2 Each Authorised Service Officer must maintain his/her own register of all Contracts entered into and must ensure that the Strategic Procurement Service has direct access to that register.

33 **Framework Agreements**

33.1 Where Trafford Council has entered into a Framework Agreement for the provision of specific Goods, Services or execution of Works then that Framework Agreement must be used to purchase those specific Goods, Service or execution of Works.

33.2 Where Trafford Council is able to call off from existing Framework Agreements procured by other public sector bodies (such as the Government Procurement Service, purchasing consortia or other local authorities), then Trafford Council may benefit from using those Contracts without entering into a separate procurement exercise. Advice should be sought from the Head of Strategic Procurement as appropriate.

33.3 The term of a Framework Agreement must not exceed four years in duration and cannot be extended without the prior approval from the Director of Legal and Democratic Services

33.4 Contracts based on Framework Agreements must be awarded by either:

(a) Applying the terms prescribed in the Framework Agreement (where such terms are sufficiently precise to cover the particular call off) without reopening competition; or

(b) Where the prescribed in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition in accordance with the following procedure:

i. inviting all Contractors within the Framework Agreement that are capable of executing the subject of the Contract to submit written Tenders; and

ii. fixing a time limit which is sufficiently long to allow Tenders for each specific Contract to be submitted, taking into account factors such as the complexity of the subject of the Contract; and

iii. awarding each Contract to the Tenderer who has submitted the best tender on the basis of the award criteria prescribed in the Framework Agreement.

33.5 Contracts awarded under Framework Agreements may continue beyond the expiry date of the Framework Agreement term. However, advice should be sought from the Head of Strategic Procurement before any such contracts are awarded.

34 **Joint Procurement**

34.1 Any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia not already in

existence on the date these Contract Procedure Rules came into effect must be approved by the Head of Strategic Procurement Services prior to the commencement of any procurement activities on behalf of Trafford Council.

- 34.2 Approval will only be given by the Head of Strategic Procurement Services where the joint procurement arrangement assures compliance with the Regulations and any other guidance relating to joint procurement issued by Trafford Council.

35 **Partnering Arrangements**

- 35.1 These Contract Procedure Rules apply to any proposal for Trafford Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement. This includes any arrangement involving one or more organisations in addition to Trafford Council through which either a specific project or services within any of the functions of Trafford Council are to be provided.

- 35.2 Advice must be sought from the Head of Strategic Procurement and the Director of Legal and Democratic Services in relation to any proposed partnership/partnering agreements prior to the commencement of any activities in relation to such proposals.

- 35.3 Partnering arrangements with private sector bodies must be established in accordance with the principles of best value for money.

- 35.4 The arrangements between Trafford Council and the Contractor in any partnering procurement shall be set out in a detailed Partnership/Partnering Agreement prescribed by the Director of Legal and Democratic Services from time to time.

35.5

36 **Procurement by Consultants and Staff of Partner Agencies**

- 36.1 Any consultants used by Trafford Council must be appointed in accordance with these Contract Procedure Rules. Where Trafford Council uses consultants to act on its behalf in relation to any procurement, the Authorised Service Office and/or the Authorised Procurement Officer must ensure that the consultants administer all procurement exercises in accordance with these Contract Procedure Rules. .

- 36.2 No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. Consultants may be involved as part of an evaluation team where their input is part of a group decision making process. Records of any recommendations made by the consultant and the evaluation process used must be maintained by the Authorised Procurement Officer. The Authorised Procurement Officer must ensure that the consultant's performance is monitored.

- 36.3 If an employee of a partner agency, working in a multi-disciplinary team with Trafford Council, is given delegated authority by the Authorised Service Officer, then they shall have the ability to act on behalf of Trafford Council in accordance with these Contract Procedure Rules, except they shall have

neither authority to make any decision on the award of Contracts, nor have the ability to sign Contracts.

37 Purchasing Cards

- 37.1 Only those Officers authorised to use a Purchasing Card should make purchases using a Purchasing Card and all purchases made with the use of a Purchasing Card must be in accordance with these Contract Procedure Rules. Further guidance should be sought from the Head of Strategic Procurement Service regarding the distribution and use of Purchasing Cards.
- 37.2 All purchases made with a Purchasing Card must utilise the appropriate Framework Agreements where they exist.
- 37.3 All invoice and expenditure receipts must be provided to the Head of Strategic Procurement Service in order to substantiate transactions.
- 37.4 Each cardholder must be responsible for the safety and security of the Purchasing Card.
- 37.5 Purchasing Cards shall not be issued to Officers without prior consultation and agreement from the Head of Strategic Procurement.

38 Statistical Returns

- 38.1 Each year Trafford Council must make a statistical return to Government for onward transmission to the European Commission concerning the Contracts awarded during the year under the EU procurement rules.
- 38.2 The Head of Strategic Procurement is responsible for this statistical return and shall make the necessary arrangements for information to be collected annually. Authorised Service Officers must comply with these arrangements.

39 Restrictions on Contractors

- 39.1 No Contract can be awarded to a Member of Trafford Council any Person in which any Member of Trafford Council, employer, sponsor or relative has an interest, unless their tender has been subject to the full competitive tender process and has been evaluated as being the successful Tender in accordance with these CPRs and that any such association in this respect has been disclosed during the Tender process and notified to the Director of Legal and Democratic Services.

POST CONTRACT ARRANGEMENTS

40 Monitoring of Contracts

- 40.1 The Authorised Service Officer must ensure that Contracts are monitored throughout the period of the Contract, and the performance of Contractor is reviewed regularly. This should be undertaken in conjunction with the relevant Authorised Procurement Officer.

41 **Contract Variation and Extension**

- 41.1 Contracts should not be extended beyond the period for which they were awarded unless provision for extension was included in the Contract documents. Where the terms do not expressly provide for extension, advice must be sought from the Head of Strategic Procurement.
- 41.2 An extension of Contract, not otherwise permitted within Contract documentation, will require the prior written approval of the Director of Legal and Democratic Services and the Director of Finance following consideration of a written report from the Authorised Service Officer. They will only approve such an extension if it can be demonstrated that this will achieve best value for money for Trafford Council and will not contravene any legal requirement. Extensions of Contract cannot be approved retrospectively.
- 41.3 Once a Contract has expired it cannot then be extended.
- 41.4 Authorised Service Officers must ensure that they allow sufficient time for a new procurement exercise to be carried out before a Contract expires.
- 41.5 All variations to a Contract must be authorised in writing by the appropriate Authorised Service Officer and made in accordance with the provisions of the Contract. Advice should be sought from the Director of Legal and Democratic Services prior to accepting or making any significant variations to Contracts.
- 41.6 If the Authorised Service Officer has reason to believe that the estimated value of any Contract will exceed the permitted variation below he/she must submit a written report to their immediate director and the Director of Finance.

Contract value:

Exceeding	Not Exceeding	Permitted Variation
-	£50,000	10% max
£50,000	£100,000	7.5%
£10,000	£1M	5%
£1M -		2.5%

42 **Claims Arising From Contracts**

- 42.1 Claims arising from Contracts (either by the Contractor or the Council) must immediately be referred to the Director of Legal and Democratic Services for legal advice and the Director of Finance on the financial considerations. The Head of Strategic Procurement must also be kept informed.
- 42.2 Where completion of a Contract is likely to be delayed, resulting in claims under the Contract, the Authorised Service Officer must inform the Director of Legal and Democratic Services and Director of Finance of the action taken or proposed.

43 **Termination of Contracts**

43.1 For any Contract, termination shall be approved by the appropriate Authorised Service Officer in consultation with the Head of Strategic Procurement and the Director of Legal and Democratic Services. Contracts may be terminated early by agreement with the Contractor prior to the expiry date or in accordance with the termination provisions set out in the Contract.

44 **Review and Amendment of Contract Procedure Rules**

44.1 These Contract Procedure Rules shall be reviewed and updated on a regular basis.

45 **Date of Approval and Implementation**

45.1 These Contracts Procedure Rules were approved by Trafford Council on [] and come into effect on [].