

Item 3a. Milestone Report - Contract Procedure Rules (CPRs)

Report to: STaR Joint Committee
Date: 13th April 2015
Report from: STaR Board

Recommendation: To Approve Harmonised CPRs for Stockport, Trafford and Rochdale Councils

1. BACKGROUND

- 1.1 In order to harmonise processes and deliver an effective and consistent procurement process it is considered essential that Stockport, Trafford and Rochdale (STaR) have a single set of Contract Procedure Rules (CPRs) for the three Councils. This is a major undertaking since the CPRs are currently specific to each Council and are contained within the Constitution of all the Councils.
- 1.2 A CPR working group was established to lead on the harmonisation process. The group consists of representatives from Finance and Legal Services representing STaR Councils and the Director of Procurement for STaR.
- 1.3 The Joint Committee's Terms of Reference include consideration of the CPRs under which it will operate for each of the Councils. This report therefore presents the proposed draft harmonised rules for consideration by the Joint Committee, as attached at Appendix One. Subject to agreement by the Joint Committee, each Council will separately consider the proposed rules and decide whether to alter their constitution to incorporate the rules. Until each Council has adopted the harmonised rules, STaR will operate on the existing rules which are different for each Council.
- 1.4 Should there be any further changes proposed or comments to be made a verbal update will be provided at the Joint Committee.

2. DRAFTING AND CONSULTATION PROCESS

- 2.1 The first draft of the harmonised Contract Procedure Rules (CPRs) for consideration by STaR Councils was completed in November 2014 and a consultation process carried out in December 2014. The consultation documentation identified the key changes from the existing CPRs to those proposed; this information was specific to each Council. Workshops for key stakeholders were organised and consultation feedback was captured and summarised for review.
- 2.2 As a result of the engagement process there was significant positive feedback regarding the proposed draft. Specific points included the following:

- Much clearer layout and formatting
- Straight forward and easy to understand
- More comprehensive
- The idea of a Procurement Handbook was well received, as was a simplified Scheme of Delegation
- If required, the inclusion of a Schedule to the CPRs allowing for Authority specific rules was welcomed
- The Procurement Initiation Document (PID) was seen as a useful tool to inform and commence the procurement process from the outset. A “light” version for lower value contracts would be beneficial
- Further consideration of the role of Pre-Qualification Questionnaires (PQQs) and financial vetting was requested.

2.3 In addition there have been several questions and clarifications raised regarding key features of the proposed CPRs. Issues which are of particular note include:

- The proposed move to a £25,000 threshold for open advertising of procurement opportunities and the impact in terms of additional resources on service managers and STaR.
- Clarity regarding roles and responsibilities of STaR and client groups within the procurement cycle.
- Requests for procurement training.

3. KEY ISSUES

3.1 In view of the responses received it was agreed at the Joint Committee meeting on 20 January 2015 that more time should be allocated to the process of incorporating consultation feedback into the new CPRs. Extra time was needed to address the issues raised and ensure that the CPRs are effective. Key actions were agreed to ensure that the above issues were addressed.

3.2 Drafting of CPRs

The CPR working group was tasked with agreeing and updating CPRs to incorporate all agreed matters arising from the consultation. The attached rules represent the result of this work.

3.3 Incorporation of Local Requirements

On 11 September 2014 Stockport's full Council adopted a policy in relation to the award of contracts to companies which have been involved in blacklisting construction workers and who have not rectified their practices. As a result of this local policy the working group recognised that unless there was a co-ordinated approach to local elected members' adoption of such policies across the three local authorities, it would be necessary to have a separate schedule for each local authority. In addition, it was considered inappropriate for an officer working party to recommend changes in the interests of harmonisation that would remove elected member involvement in procurement decision making as provided for under Stockport's existing rules. The only exception to this is a change to the procedure for authorising exemptions from compliance with the rules for Stockport. The law allows little discretion to exempt Councils from complying with the obligation to hold a competitive procedure before awarding a contract and the harmonised rules provide that exemptions will be agreed by officers.

Incorporation of Schedule One into CPRs provides for inclusion of Council specific requirements.

3.4 Open advertising thresholds

Lord Young's report of May 2013 recommended a number of reforms to create a simple and consistent approach to procurement across all public sector agencies. The reforms would support small and medium sized enterprises and voluntary organisations in gaining better and more direct access to contract opportunities. These recommendations have now been incorporated into regulations which require that where local authorities advertise contracts valued at £25,000 and above they must also advertise them on Contracts Finder. Contract Finder is a national internet portal which allows subscribers to view national procurement opportunities.

Concern was expressed during the consultation process that the requirement to advertise on Contracts Finder would result in a substantial increase in the number of bidders to be considered for each procurement opportunity over £25,000. The harmonised CPRs allow each Council to choose between quotation and tender in lower value bands. Where quotations are sought there is no need to advertise. Tenders will always be openly advertised through the Chest but with the additional requirement to advertise on Contracts Finder if the value is more than £25,000.

- 3.5 The harmonised rules will comply with the Regulations and ensure that openly advertised opportunities valued over £25,000 are placed on Contracts Finder. In order to try and understand the number of procurement activities which may be captured between the £25,000 and £49,999 threshold STaR have reviewed data sources to try and articulate numbers. The Contract Register was the first item to be reviewed but this provided limited information on contracts which fall between these threshold values. It is recognised that whilst the detail, content and accuracy of the Contract Register has improved significantly there is still much work to do in capturing all expenditure,

especially at the lower levels of spend. The detail of this exercise is listed in Appendix Two.

- 3.6 We were able to understand the magnitude of expenditure a little better for Rochdale since we had a report which listed spend data below the £50,000 threshold. Again the information is listed in Appendix Two. However, the detail should be treated with some caution in the sense that it lists the number of instances where the Council pays invoices between £25,000 and £49,999. This is not the same metric as the number of contracts between the thresholds.
- 3.7 It is proposed that the impact of requiring open advertising of opportunities in this value band and the impact of this on the Councils will be kept under review and reconsidered after the implementation of the harmonised rules.
- 3.8 Procurement Handbook
The Procurement handbook will be developed as a companion document to CPRs to provide a “how to guide” to procurement and working with STaR. It will support understanding, implementation and compliance with CPRs.
- 3.9 The development of this document is in progress. The Procurement Handbook will be an interactive document with hyperlinks to documentation so that users can easily navigate the information and access the documents they require. As part of a full overview of systems, processes and documentation within STaR, a quality system is being employed which prescribes all activities within the team and the interactions with clients. This is based on a “swim lane” approach which details key process flows, specific activities and the roles and responsibilities for each team within the cycle. An illustration of a swim lane is enclosed in Appendix Three.
- 3.10 Procurement Documentation
Procurement documentation is in the process of development which is proportionate and appropriate for lower value contracts. The intention will be to develop “user friendly” documentation which is streamlined and allows users to quickly progress through the process. Further, we will be consulting with the market to ensure that we understand and address some of the “barriers” that small, local and voluntary sector organisations may have encountered in the past.
- 3.11 Training and Support
STaR has contributed to the first phase of the work regarding the competencies required for “The Stockport Manager”. Training sessions will be scheduled as part of the CPR implementation process for all three Councils. These events will focus on the feedback received from the consultation process and demonstrate how this consultation has been put into practice.
- 3.12 Furthermore, pending approval and incorporation into the Constitution of each Council a full training and awareness programme will be developed for clients

providing access points to the intranet and the Procurement Handbook for reference.

4. KEY CHANGES TO CPRS

4.1 Changes specific to Stockport Council

The items listed below summarise the key changes to CPRs.

- a. New Schedule 1 which contains Local Rules for each Council including Stockport's blacklisting policy.
- b. All contracts will be recorded on a central contract register (openly advertised contracts of £25,000 will now be advertised on Contracts Finder) and all contracts must have a nominated contract manager.
- c. All procurement exercises irrespective of value will need to be registered with STaR via a Procurement Initiation Document.
- d. The number of value bands and procedures has been reduced and simplified.
- e. Verification and opening of tenders is far more flexible.
- f. All contracts to be on standard terms and conditions, not just those above £2,000.
- g. There will be additional flexibility for purchases made electronically
- h. There will be an option to seal contracts valued above £50,000 and not just £250,000.
- i. Approved Lists will be removed.
- j. Variations and Extensions will be renamed "Modifications" and made clearer.
- k. The grounds for exemptions from the rules will be clearer.

4.2 Changes Specific to Trafford Council

The items listed below summarise the key changes to CPRs.

- a. New Schedule 1 which contains Local Rules for each Council.
- b. All contracts are now recorded on a central contract register (openly advertised contracts over £25,000 will now be advertised on Contracts Finder) and all contracts must have a nominated contract manager.
- c. All procurement exercises irrespective of value will need to be registered with STaR via a Procurement Initiation Document.
- d. The number of value bands and procedures has been reduced and simplified.
- e. Late tenders considered by Head of Legal.
- f. Only arithmetical errors permitted now.
- g. Verification and opening of Tenders is far more flexible.
- h. Post-tender clarifications to be conducted by APO - no longer under guidance of Head of Legal.
- i. Pre-award reports no longer required. High value contracts can be picked up by Key Decision route. Procurement Policies can require internal reporting requirements where necessary.

- j. Contract sign off covered by scheme of delegation generally but values remain the same.
- k. All contracts to be on standard terms and conditions, not just those above £2,000.
- l. Additionally flexibility for purchases made electronically.
- m. Additional sealing requirements. Option to seal above £50,000 and not just £250,000.
- n. Transfer of contracts tightened up to ensure proper compliance.
- o. Approved Lists will be removed.
- p. Variations and Extensions will be renamed “Modifications” and made clearer.
- q. The grounds for exemptions from the rules will be clearer.
- r. Appointment of Consultants removed – is covered generally under the Rules

4.3 Changes specific to Rochdale Council

The items listed below summarise the key changes to CPRs.

- a. New Schedule 1 which contains Local Rules for each Council.
- b. All contracts are now recorded on a central contract register (openly advertised contracts over £25,000 will now be advertised on Contracts Finder) and all contracts must have a nominated contract manager.
- c. All procurement exercises irrespective of value now need to be registered with STaR via a Procurement Initiation Document.
- d. The number of value bands and procedures has been reduced and simplified.
- e. Late tenders to be considered by Head of Legal.
- f. Post-tender clarifications to be conducted by APO - no longer under guidance of Head of Legal.
- g. Verification and opening of Tenders is far more flexible.
- h. Pre-award reports no longer required. Local Rules now apply.
- i. Contract sign off covered by scheme of delegation generally but values remain the same.
- j. All contracts to be on standard terms and conditions, not just those above £2,000.
- k. Additionally flexibility for purchases made electronically.
- l. Transfer of contracts tightened up to ensure proper compliance.
- m. Approved Lists removed.
- n. Variations and Extensions changed to Modifications and made clearer.
- o. Exemptions – clearer and more flexible.
- p. Appointment of Consultants removed – is covered generally under the Rules.

4.4 Local Requirements

As detailed in paragraph 3.3 above, Schedule One prescribes Council specific rules where there are any.

5. NEXT STEPS

- 5.1 The actions listed below provide a summary of the next steps should the Joint Committee decide to recommend that the Harmonised CPRs are proposed for approval by each Council.
- 5.2 It is the intention to provide feedback to respondents to the consultation process. It is proposed that this will be via the training and awareness events referred to in item 4.13.
- 5.3 Training will focus on the key changes for each Council and will also provide signposting to the STaR intranet site for each Council where further information will be available such as the Procurement Handbook
- 5.4 Governance processes regarding how the harmonised CPRs should be incorporated into the Constitution of each of the three Councils is listed in Appendix Four. Democratic Services and Legal Teams of all STaR Councils have agreed the programme and pending the decision from the Joint Committee this item will be added to the appropriate meeting agendas for consideration. If the Joint Committee recommends the adoption of the harmonised rules, each Council will be required to adopt them as part of their individual constitutions before the harmonised rules will take effect.
- 5.5 Pending final approval and incorporation into the Constitution of each Council a full training and awareness programme will be developed for clients.

6. RECOMMENDATIONS AND DECISIONS REQUIRED

- 6.1 It is recommended that the harmonised CPRs enclosed in Appendix One are approved by the Joint Committee and that the Joint Committee recommends that the CPRs are incorporated into the relevant Constitution of each of Council.

APPENDIX ONE

Proposed CPRs including local rules listed under Schedule One for each Council

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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 “STaR”. Each of the STaR 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 STaR 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.
- 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 Policy for further guidance.
- 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, 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 STaR:

General Enquiries - email: procurement@star-procurement.gov.uk
tel: 0161 9121616

Legal Enquiries - email: starlegal@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 STaR 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 STaR 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 and are subject to the application of Rule 5.1 .
“CM”	means the Category Manager or similar role with equivalent experience and seniority within STaR
“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.
“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 Concessions Contracts 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.
“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, including an extension.
“Modification Form”	means the form supplied by STaR 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 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 STaR
“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.
“STaR Legal Officer”	means a member of the legal team jointly funded by all participating Council’s in accordance with the IAA, whose role is to provide legal support to STaR.
“STaR”	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
“STaR Councils”	means those local authorities who have resolved to delegated their Procurement Functions to the STaR 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 STaR.

4. **Contracts to which these Rules do not apply**

4.1 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.

5. Contracts which do not require full competition

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.

5.1 Call-Off Contracts

- 5.1.1 Call-off Contracts where a suitable Framework Agreement has been identified in accordance with [Rule 6.3](#).

5.2 No competitive market

- 5.2.1 Where any of the following circumstances apply and subject to Rule 5.2.2:
 - a. 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
 - b. 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
 - c. 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
 - d. Goods are proposed to be purchased by or on behalf of the Council at a public auction; or
 - e. 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
 - f. Any other exceptional circumstances.

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

- 5.2.2 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](#).

5.3 Exemptions as prescribed by legislation

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

6. Pre-Procurement Process

6.1 Authority to carry out procurement activity

6.1.1 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 must submit either a Quote or Tender 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.

6.2 Appraisal of the procurement activity

6.2.1 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 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.

6.2.2 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.

6.2.3 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 STaR must be sought where it is proposed that a Specification or request for a Quote is not used.

6.2.4 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

STaR but in any event, advice must be sought from STaR where it is proposed that such questions are to be used.

6.3 Framework Agreements

6.3.1 Where, following an options appraisal as required by [Rule 6.2](#), a suitable Framework Agreement is identified, the ASO must ensure that:

- a. Any Call-off Contract is entered into in accordance with the terms of the relevant Framework Agreement; 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.

6.3.2 For the avoidance of doubt, a Framework Agreement 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 has been tendered and awarded in accordance with EU public procurement legislation, and the Council is identified as a contracting authority.

6.3.3 Where a Framework Agreement has been set up following an EU Tender, there must be full compliance with EU rules when awarding Call-off Contracts under it.

6.4 Pre-Procurement Market Research and Consultation

6.4.1 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 STaR in all instances.

6.5 Estimating the Total Value of a Contract or Framework Agreement

6.5.1 The Council must not split Contracts or Framework Agreements to avoid public procurement rules or calculate the value of Contracts in such a way as to deliberately avoid exceeding the

Regulation Thresholds or any threshold identified in these Rules. Therefore all 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 should be calculated as follows and applies to the aggregate value of the Contract:

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

Where the duration of the contract is indeterminate or is longer than four years, this should be taken to be the estimated value of the contract over a period of four years.

6.5.2 The value of a Framework Agreement means the estimated amount payable by the users of the Framework Agreement 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.

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

6.5.4 The value of the Contract or Framework Agreement will determine which procurement activity to follow in accordance with Table 1 below subject to Rules 6.5.6 and 6.5.7:

Table 1

Goods, Services and Concessions

Value	Procurement Activity	Minimum Requirement for advertising the opportunity
£0 - £4,999.99	Minimum one Quote in accordance with Rule 7 - Quotes	N/A*
£5,000 - £49,999.99	Minimum three Quotes in accordance with Rule 7 - Quotes	N/A*
	In accordance with Rule 8 – Tenders	The Chest (and Contracts Finder over £25k)
£50,000 and up to the Regulation Thresholds	In accordance with Rule 8 - Tenders	The Chest and Contracts Finder

Above the Regulation Thresholds	Most appropriate procedure permitted by the Regulations	OJEU Notice and Contracts Finder
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Works and Public Works Concessions

Value	Procurement Activity	Minimum Requirement for advertising the opportunity
£0 - £4,999.99	Minimum one Quote in accordance with Rule 7 - Quotes	N/A*
£5,000 - £74,999.99	Minimum three Quotes in accordance with Rule 7 - Quotes	N/A*
£75,000 - £249,999.99	Minimum six Quotes in accordance with Rule 7 – Quotes	N/A*
	In accordance with Rule 8 – Tenders	The Chest and Contracts Finder
£250,000 up to the Regulation Thresholds	In accordance with Rule 8 - Tenders	The Chest and Contracts Finder
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**

6.5.5 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.

6.5.6 Irrespective of the value in Rule 6.5.4 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.

- 6.5.7 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.

6.6 Standards and Award Criteria

- 6.6.1 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, STaR can be consulted if it is proposed to use standards other than European standards.

- 6.6.2 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 STaR to ensure that it is compatible with the EU Directives and the Regulations.

- 6.6.3 The ASO must seek advice from STaR to ensure any award criteria are compliant with relevant legislation and best practice.

7. Quotes

7.1 Requests for Quotes

- 7.1.1 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.
- 7.1.2 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.

- 7.1.3 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 6.6](#); 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.
- 7.1.4 The proposed form of Contract must comply with [Rule 9](#) and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from a STaR Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.
- 7.1.5 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.
- 7.2 Submission and Receipt of Quotes**
- 7.2.1 Bidders must be given a reasonable period in which to prepare and submit a proper Quote, consistent with the complexity of the Contract requirement.
- 7.2.2 In the event that an abnormally low Quote is received, the ASO must take advice from STaR on how to proceed.
- 7.2.3 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.
- 7.2.4 If fewer than the minimum number of Quotes is received as stipulated in Table 1 in [Rule 6.5](#), then advice must be sought from the Director of Procurement (STaR) as to whether to proceed. Any decision must be recorded in writing and stored on The Chest.
- 7.3 Amendments to Quotes**
- 7.3.1 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.

7.3.2 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 (STaR).

7.4 Evaluation of Quotes

7.4.1 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 STaR 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.

7.4.2 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 STaR that the Contract can be awarded in accordance with [Rule 7.5](#) by updating the PID.

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

7.5 Contract Award – through a Quotation Process

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

7.5.2 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.

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

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

7.5.5 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).

7.5.6 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 9.2](#) unless Rule 9.2.5 applies.

7.5.7 STaR 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.

8. Tenders

8.1 Invitations to Tender

8.1.1 All Tender opportunities must be placed on The Chest and, where appropriate, Contracts Finder in accordance with Table 1 at [Rule 6.5](#).

8.1.2 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 6.6](#). 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](#).

8.1.3 The proposed form of Contract must comply with [Rule 9](#) and where possible the Council’s standard terms and conditions of Contract must be used. Advice must be sought from the

STaR Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.

8.1.4 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.

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

8.2 Pre and Post Tender Clarification Procedures

8.2.1 Providing pre-Tender clarification to potential or actual Tenderers, or seeking clarification of a Tender, is permitted subject to Rule 8.2.3.

8.2.2 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 8.2.3.

8.2.3 All pre- and post- tender communication must be conducted either in writing or in a meeting recorded by the ASO. 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.

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

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

8.3 Submission and Receipt of Tenders

8.3.1 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.

8.3.2 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.

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

8.3.4 If less than the minimum number of Tenders is received as stipulated in Table 1 in [Rule 6.5](#), then advice must be sought from the Director of Procurement (STaR) on how to proceed. Any decision must be recorded in writing and stored on The Chest.

8.4 **Verifying and Opening Tenders**

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

8.4.2 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

8.5 **Amendments to Tenders**

8.5.1 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.

8.5.2 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 (STaR).

8.6 **Evaluation of Tenders**

8.6.1 If a PQQ or an expression of interest prior to PQQ was used, all those Tenderers must be given feedback at the relevant stage.

8.6.2 In the event that an abnormally low Tender is received, the ASO must take advice from STaR on how to proceed.

8.6.3 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.

8.6.4 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 STaR that the Contract can be awarded by updating the PID.

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

8.7 Contract Award – through a Tender process

8.7.1 The winning Tender shall be awarded the Contract in accordance with the award criteria used.

8.7.2 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.

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

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

8.7.5 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.

8.7.6 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.

8.7.7 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 9.2](#) unless Rule 9.2.5 applies.

- 8.7.8 A STaR 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.
- 8.7.9 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.
- 8.7.10 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.

8.8 Enquiries about the Tender process

- 8.8.1 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.
- 8.8.2 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 (STaR) and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.
- 8.8.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Director of Procurement (STaR) who will advise on how to respond and notify the SRO for Legal.

9. Contract Provisions and Contract Formalities

9.1 Contract Provisions

- 9.1.1 All Contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from STaR as to the appropriate form of Contract to be used and where possible, be on the Council's standard terms and conditions.
- 9.1.2 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.

9.1.3 STaR can provide advice on Contract specific terms and conditions.

9.2 Contract Formalities

9.2.1 Once a decision to award has been made in accordance with Rule 7.5.3 or 8.7.3, the Contract must be either signed by the Officer authorised to award the Contract under the Council's Scheme of Delegation or by Seal and in accordance with Rule 9.3.2.

9.2.2 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.

9.2.3 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.

9.2.4 Rules 9.2.1 to 9.2.3 do not apply to purchases made through an Electronic Purchasing System (EPS).

9.2.5 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.

9.2.6 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.

9.2.7 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 STaR Legal Officer.

9.3 **Contracts under Seal**

9.3.1 A Contract must be sealed where:

- a. The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
- b. 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
- c. There is any doubt about the authority of the person signing for the other contracting party; or
- d. The Contract value is £250,000 or above.

9.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

9.4 **Transfer of Contracts**

9.4.1 No Contract should be transferred from one Contractor to another without first consulting STaR. 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 (STaR)

10. **Exemptions and Modifications**

10.1 **Exemptions**

10.1.1 In limited circumstances, it may be necessary to seek an Exemption from the Rules and guidance from STaR must be sought before any procurement activity commences.

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

10.1.3 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](#);
- 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;

- 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.

10.2 Procedure for Exemptions

10.2.1 To apply for an Exemption the ASO must fill in the Exemption Form and submit it to the STaR for consideration and recommendation. This Exemption Form must then be signed (electronically or by hand) in accordance with the table below (unless Rule 10.2.2 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 (STaR)

10.2.2 If an Exemption requires a Key Decision, then that Key Decision must be made in accordance with the Council's Constitution. Guidance from STaR must be sought if there is any doubt as to whether a decision is a Key Decision.

10.2.3 The ASO must ensure that the Exemption Form provides full details of the request and any supplementary documentation to support the request.

10.2.4 No commitment should be made to a potential Contractor prior to authorisation.

10.2.5 The Director of Procurement (STaR) 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.

10.2.6 In circumstances of extreme urgency, the relevant decision maker in 10.2.1 above may authorise an Exemption in writing without the need to complete an Exemption Form. The written authorisation provided in accordance with this Rule 10.2.6 must be submitted to STaR to be stored electronically on The Chest.

10.3 Modifications to a Contract or Framework Agreement

10.3.1 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:

- a. 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
- b. 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
- c. The proposed Modification meets the following conditions:
 - i) the need for the Modification has been brought about by circumstances which the Council, acting diligently, could not have foreseen; and
 - ii) the Modification does not alter the overall nature of the Contract; and
 - iii) any increase in price is not higher than 50% of the value of the original Contract or Framework Agreement.

10.3.2 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.

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

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

- a. 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;
- b. 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;
- c. the Modification extends the scope of the Contract or Framework Agreement considerably to encompass supplies, services or works not initially covered.

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

10.4 Procedure for Modifications

10.4.1 To apply for a Modification the ASO must fill in the Modification Form and submit it to the STaR 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 (STaR)

10.4.2 The ASO must ensure that the Modification Form provides full details of the request and any supplementary documentation to support the request.

10.4.3 No commitment should be made to a potential Contractor prior to authorisation.

10.4.4 The Director of Procurement (STaR) 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 STaR to be stored electronically on The Chest.

11. Declarations of Interest and Anti-Bribery and Corruption

11.1 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

11.2 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.

11.3 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.

12. Contract Management

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 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.
- 12.5 STaR can provide advice and support on good practice in performance management of Contracts.
- 12.6 All Contracts must be included and published on the Contracts Register maintained by STaR 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 STaR of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

13. Retaining Relevant Documents

- 13.1 All records in relation to the award of Contracts and the associated procurement process, including supporting documentation, shall be stored by STaR 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.

13.2 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

13.3 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.

13.4 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 Stockport Council

The following are incorporated into the Contract Procedure Rules.

1. Basic Principles and Responsibilities

- a. Denial of a job for discriminatory reasons such as trade union membership was made unlawful, and blacklisting was statutorily prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010.
- b. On 11th September 2014 the Council resolved to ensure that in the future the Council will not enter into contracts with any companies, whether as contractors or subcontractors, which are implicated in blacklisting unless they can demonstrate that they have “self-cleansed” and taken adequate measures to remedy past damage done and prevent any future occurrence.
- c. The Council should not invite tenders from, or award construction contracts to, companies that have breached the Blacklists Regulations.
- d. The Council considers that the blacklisting of individuals amounts to grave misconduct in the course of a business or profession unless the organisation has taken adequate measures to remedy past damage done and prevent future occurrence.
- e. Bidders for Council contracts will be required to certify that they have never blacklisted and if they have must produce to the Council’s satisfaction evidence that they have self-cleansed, to include details of the steps taken to remedy past damage done and prevent future occurrence.

SCHEDULE 1

Local arrangements for Trafford Council

There are no local arrangements.

SCHEDULE 1

Local arrangements for Rochdale Council

There are no local arrangements.

Analysis of the number of potential procurement activities which fall between the £25,000 and £49,999 threshold

In order to try and understand the number of procurement activities which may be captured between the £25,000 and £49,999 threshold STaR have reviewed data sources to try and articulate numbers.

There are currently 55 live contracts listed on the Contract Register between the £25,000 and £49,999 threshold. This appears to represent a relatively low number of contracts, particularly spread across three Councils. However, it is recognised that whilst the detail, content and accuracy of the Contract Register has improved significantly, there is still much work to do in capturing all expenditure, especially at the lower levels of spend. This means that using this information to understand the level of resource which may be required to implement full assessment of all bidders for contracts advertised on Contract Finder may be flawed.

We were able to understand the magnitude of expenditure a little better for Rochdale since we had a report which listed spend data below the £50,000 threshold. However, the detail should be treated with some caution in the sense that it lists the number of instances where the Council pays invoices between £25,000 and £49,999. This is not the same metric as the number of contracts between the thresholds. Whilst the data below provides some context it must be recognised that it is based on generic assumptions which may not be reflected in practice.

- Total number of suppliers with transactions between £25,000 & sub £50,000 is 279
- Average Number of Transactions per Supplier is just short of 4
- All of these transactions were discounted on the assumption that several payments indicated that they related to an overall contract value greater than £50k.

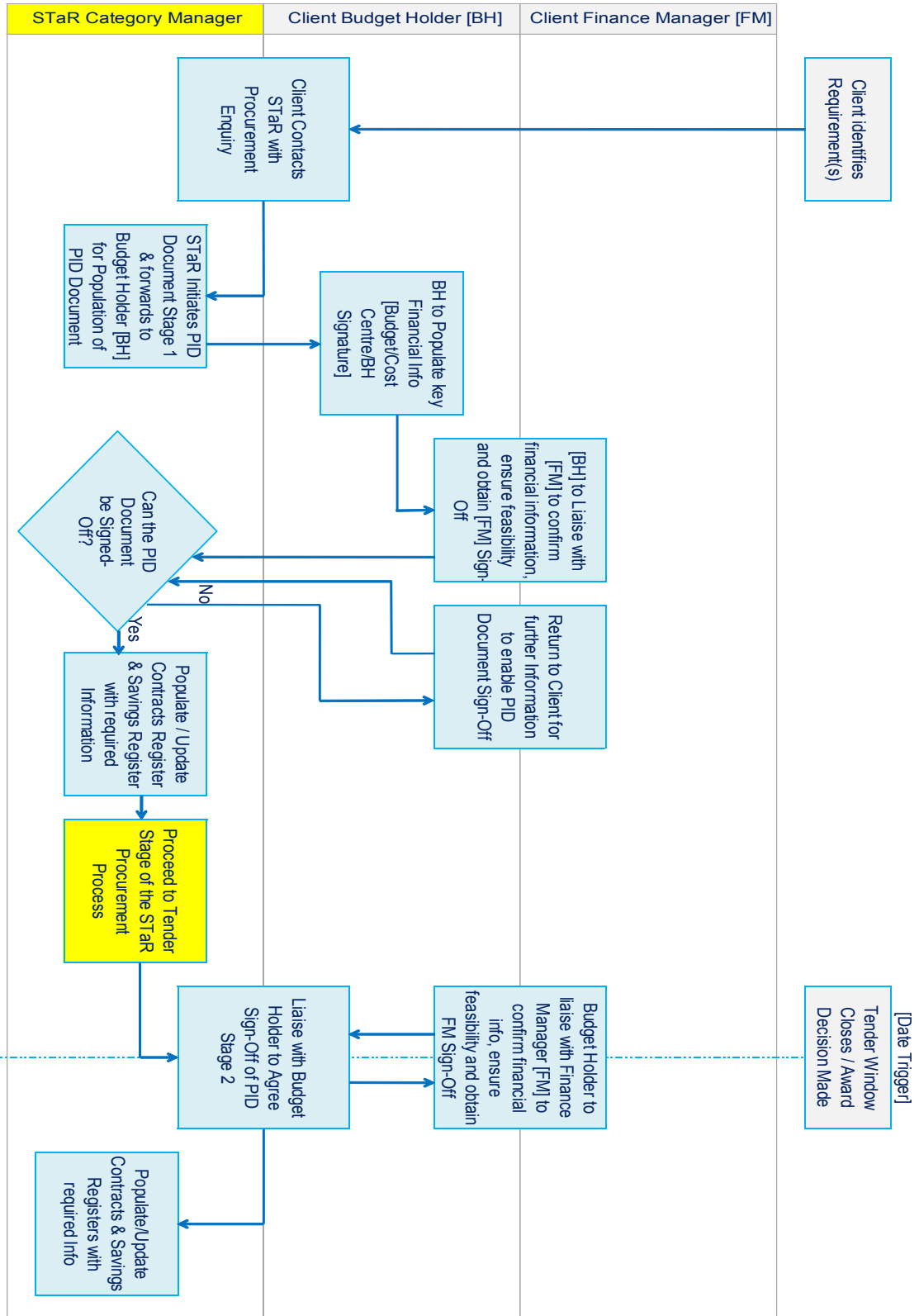
The remaining spending which fell between the thresholds was listed against 37 suppliers and represented one off transactions only. The assumption is that the 37 one off transactions represent the additional number of procurement opportunities which would need to be advertised openly on Contract Finder. The combined value of the 37 payments was £1.4m.

The data and the assumptions listed above are not ideal in helping us to understand the potential implications on resource as a result of open advertising between the £25,000 and sub £50,000 threshold.

It is proposed that the impact of requiring open tendering for contracts in this value band, and the impact of this on the Councils, will be kept under review and reconsidered after the implementation of the harmonised rules.

APPENDIX THREE

ILLUSTRATION OF A SWIMLANE FOR THE PROCUREMENT INITIATION DOCUMENT PROCESS



APPENDIX FOUR

STOCKPORT GOVERNANCE PROCESS PENDING RECOMMENDATION TO PROCEED WITH CPRS

Committee / Meeting Title	Frequency	Proposed Meeting Dates	Deadline for Papers
Corporate Leadership Team	Weekly	Tuesday 21 April 2015	16 April 2015
Constitution Working Party	AD Hoc	Monday 27 April 2015	Friday, 17 April 2015
CRM&G Scrutiny Committee	6-weekly	Tuesday 2 June 2015	Agenda and papers required Friday, 5 June 2015
Executive	6-weekly	Tuesday 16 June 2015	Agenda and papers required Friday, 5 June 2015
Council Meeting	6-weekly	Thursday 2 July 2015	Papers required Monday 22 June 2015

TRAFFORD GOVERNANCE PROCESS PENDING RECOMMENDATION TO PROCEED WITH CPRS

Committee / Meeting Title	Frequency	Proposed Meeting Dates*	Deadline for Papers
CMT (Corporate Director to determine items to be reported to CMT)	Bi-weekly	Wednesday 22 April 2015	Monday 20 April 2015
Executive Briefing	Monthly	8 June 2015*	4 June 2015
Scrutiny Cttee	Quarterly	17 June 2015*	9 June 2015
Standards Cttee	3x a year	24 June 2015*	16 June 2015
Executive	Monthly	29 June 2015*	18 June 2015
Council	Bi-monthly	8 July 2015*	30 June 2015

* Provisional, subject to approval at Annual Council 28 May

ROCHDALE GOVERNANCE PROCESS PENDING RECOMMENDATION TO PROCEED WITH CPRS

Committee / Meeting Title	Frequency	Proposed Meeting Dates	Deadlines for Papers
Democratic Structures Working Group	Ad hoc	Can be set up as soon as documents available	Seven working days in advance
Licensing and Regulatory Committee. (Amendments to the Council's Constitution have been delegated to Licensing and Regulatory Committee)	Monthly	8 June 2015	25 May 2015