

# **Staffordshire County Council Procurement Regulations**

**Approved by the Audit & Standards Committee on 26 October 2021  
Approved by Full Council on 9 December 2021**



## Change History

Change (most recent first)	Date of Change
D11.1 – updated wording regarding late tenders	01/03/23
F2.1 item 9 amended – change to Director for Corporate Services or County Solicitor	05/08/22
F2.1 item 10 added - employment disciplinary	21/07/22 (FC)
D17.1 to reflect novation; C12 insurance to reflect product liability and policy wording; D13 correction £3k lower limit	19/05/22
Threshold Ladder – updated Government Thresholds for 1/1/22; C3.1 to include VAT;	01/01/22
Insertion of Assistant Director for Commercial and Assets title; B2.6 improved; B2.7 new; B4.2 new; C1.4 improved; C3.3 reduced 4 to 3 years; C5 reflects DPS; C6 new (replaced Approved Lists); C11 improved; D2.7 includes SVP; D8.3 new; D11.3 new; D12.3 use of SS; D13 levels amended; D13.11 new; D14.3 new; D17 full amendment; E1.3 to capture all PCR process; F3.1 levels amended; F3.2 improved; Glossary – Band A def <sup>n</sup> widened / Cabinet Key Decisions and EODD new	09/12/21
Amended to remove OJEU and EU references	06 / 01 / 2021
The addition of C2.4 under Honesty and Conflicts of Interest.	14 / 07 / 2020
The addition the last bullet point under F3.2, Examples of Exceptions, and the removal of any reference to a unique single provider being an Exemption.	14 / 07 / 2020
Addition of B2.7 regarding wider Council Cabinet Key decisions.	27 / /12 /2019
Updated PCR Thresholds for 1 <sup>st</sup> Jan 2020 on page 5 and throughout.	27 / /12 /2019
B4.1 adjusted to widen use of the IGU Privacy Impact Assessment.	06 / 06/ 2018
Approved by the Audit & Standards Committee on 26 June 2017; Approved by Full Council on 20 July 2017	

FC – Full Council

## Contents

No.	SECTIONS	PAGE
	<b>Threshold Ladder.....</b>	<b>5</b>
<b>A</b>	<b>Aims, Applicability and Governance.....</b>	<b>6</b>
A1	Aims	6
A2	Applicability	6
A3	Governance	6
A4	Authority to Procure arrangements with leases, hire, rental etc	7
<b>B</b>	<b>Pre-Procurement Activities.....</b>	<b>7</b>
B1	Appointment of Third Parties to act on behalf of the Council	7
B2	Sourcing Strategy	7
B3	Threshold Ladder	8
B4	Information Security	9
<b>C</b>	<b>Overall Considerations.....</b>	<b>9</b>
C1	Contracts Register	9
C2	Honesty and Conflicts of Interest	9
C3	Contract Duration and Value	10
C4	Collaborative Procurement	10
C5	Framework Agreements / Dynamic Purchasing Systems	11
C6	Current Commercial Documentation	11
C7	Concession Contracts	11
C8	Procurement Tool Kit	12
C9	Purchasing / Procurement Cards	12
C10	Community Right to Challenge	12
C11	Contracts related to the Sale / Disposal of Council Assets	12
C12	Insurance	13
<b>D</b>	<b>Procurement Process.....</b>	<b>14</b>
D1	General	14
D2	Sustainable Procurement (Social & Environmental Value)	14
D3	Employment issues and TUPE	15
D4	Advertising	15
D5	Pre-Qualification	15
D6	Invitation to Tender ('ITT')	15
D7	Contract Terms and Conditions	16
D8	Issuing Requests, Receiving and Opening Quotations and Tenders	16
D9	Emailed Quotations	17
D10	Electronic Tendering and Auctions	17
D11	Late Tenders	17

D12	Evaluating Quotations and Tenders	18
D13	Approval to Award Contracts for Works, Supplies or Services	18
D14	Contract Monitoring and Management	19
D15	Tender File	19
D16	Transferring Contracts	20
D17	Contract Extension, Termination, Default and Modification	20
D18	Failed Procurements	21
<b>E</b>	<b>Public Contracts Regulations.....</b>	<b>22</b>
<b>F</b>	<b>Exemptions and Exceptions.....</b>	<b>22</b>
F1	General	22
F2	Exemptions - Circumstances where these Regulations do not apply	22
F3	Exceptions from these Regulations for Contract spends up to the Government Thresholds	23
F4	Non-Compliance of the Public Contracts and Concession Contracts Regulations	23
F5	Applying for / Authorising and Reporting an Exception	24
F6	Recording of Exceptions	24
<b>1</b>	<b>Annex 1 – Glossary of Terms.....</b>	<b>25</b>

**Notes:**

1. Any capitalised wording within these Regulations is further defined within the Glossary of Terms.
2. These Regulations apply to all quotation and tender processes commenced from and including 1<sup>st</sup> September 2017.
3. Quotation and tender processes commenced on or before 1<sup>st</sup> September 2017 will continue under the previous Council Procurement Regulations approved by Audit Committee on 26<sup>th</sup> June 2017.

**Threshold Ladder** (All Contract spends exclude VAT but must include it to determine if projects trigger the Government Thresholds, see C3.2)

Threshold	Process for Procuring	
Contract values up to £500	<p>Award to provider without formal procurement process.</p> <p>Use a Procurement / Purchasing Card (see section C9).</p> <p>Contract on the providers own terms.</p>	
Contract values at and over £500 up to <b>£25,000</b> (the <b>Council Advertising Threshold</b> )	<p>Obtain 3 written quotations.</p> <p>Consider a Procurement / Purchasing Card for the lower value spends in this range.</p> <p>Contract on Council model Terms and Conditions where possible; contract on provider's terms and conditions where there is a business need and any associated risks have been considered.</p>	<p>The Procurement Tool Kit (see section C8) is to be used specifically for</p> <ul style="list-style-type: none"> <li>• Advice on whether a procurement is required at all</li> <li>• Developing a Sourcing Strategy</li> </ul>
Contract values at and over the <b>Council Advertising Threshold</b> up to Government Thresholds limits (see below for these)	<p>Publically advertised procurement.</p> <p>Consult a Procurement Advisor to manage the procurement via electronic tendering. A Sourcing Strategy is required.</p> <p>Consult a Procurement Advisor before embarking on <u>any</u> procurement at and over £100,000.</p> <p>Contracts Register to be populated.</p> <p>ContractsFinder will be used for posting both adverts and award notices for spends £25,000 and over.</p> <p>Use Council model Terms and Conditions.</p>	<ul style="list-style-type: none"> <li>• Advising on Contract terms and conditions and procurement documentation</li> <li>• Preparing, issuing and evaluating quotations and tenders</li> <li>• Issuing quotations and tenders</li> </ul>
Contract values at, and over, the <b>Government Thresholds</b>  Appropriate VAT <b>must</b> be added to all full contract values to determine if Public, or Concession Contracts Regulations or are triggered	<p>In accordance with the Public Contracts Regulations for: -</p> <ul style="list-style-type: none"> <li>• Supplies and Services over £213,477*</li> <li>• Light Touch Regime contracts over £663,540*</li> <li>• Works over £5,336,937*</li> </ul> <p>In accordance with the Concession Contracts Regulations for: -</p> <ul style="list-style-type: none"> <li>• Works/Services over £5,336,937*</li> </ul> <p>Consult a Procurement Advisor on <u>all</u> procurements over the Government Thresholds.</p> <p>ContractsFinder and Find a Tender notices applicable.</p> <p>Use Council model Contract Terms and Conditions. *refreshed every 2 years from 1<sup>st</sup> January 2022</p>	

## **A AIMS, APPLICABILITY AND GOVERNANCE**

### **A1 Aims**

A1.1 These Regulations have the following main aims:

- to get best value / value for money, so that the Council may in turn offer better and more cost-effective services to the public;
- to keep to the obligations that govern spending public money;
- to enable visibility of Council spend data;
- to ensure the Council allows freedom of opportunity to trade, compete, be open, honest, fair and transparent in our procurements;
- to drive continuous improvement in our processes;
- to contribute to a healthy, happy and prosperous Staffordshire.

A1.2 There are legal and commercial consequences suffered by the Council as a result of failing to follow these Regulations.

### **A2 Applicability**

A2.1 These Regulations apply

- to all Contracts for the procurement of all Works, Supplies or Services by the Council, including, ad-hoc, one-off requirements
- to Officers of the Council undertaking any procurement activity on behalf of the Council
- to any Contract that results in the Council making a payment and/or where a service is being provided for the Council resulting in income being generated for the Council
- where the Council is acting as the lead organisation in a partnership or other joint procurement arrangement
- to the selling / disposing of our assets

### **A3 Governance**

A3.1 These Regulations are made under Section 135 of the Local Government Act 1972.

A3.2 The Council will review these Regulations periodically and as required by changes to legislation.

- A3.3 These Regulations enable a separate set of Procurement Instructions which represent the practice to be followed when conducting a procurement process.
- A3.4 The Assistant Director for Commercial and Assets may from time-to-time issue new and/or revise the Procurement Instructions setting out the practice to be followed when using these Regulations.
- A3.5 A failure to follow these Regulations by any Officer may result in disciplinary action being taken against the Officer.
- A3.6 Officers are directed to their Code of Conduct, the Whistleblowing Policy and the Integrity Policy should they become aware of a non-compliance or breach of these Regulations by other Officers.
- A3.7 If in any doubt about how these Regulations apply, Officers must always check with a Procurement Advisor.

#### **A4 Authority to procure arrangements with leases, hire, rental etc**

- A4.1 An Officer will not, without approval from the Assistant Director for Commercial and Assets, enter into a Contract for a provider to supply Supplies or Services under any operating lease, hire, rental or any other credit arrangements.

### **B PRE-PROCUREMENT ACTIVITIES**

#### **B1 Appointment of Third Parties to act on behalf of the Council**

- B1.1 The appointment of any third party to be responsible to the Council for preparing or supervising of a Contract on behalf of the Council (including contributing/leading the procurement process) must be prepared by a Procurement Advisor under a formal set of third party appointment terms.
- B1.2 All decisions made by any third party regarding a Council procurement must follow these Regulations.

#### **B2 Sourcing Strategy**

- B2.1 **Consult a Procurement Advisor before embarking on any procurement at and over £100,000.**
- B2.2 A written Sourcing Strategy (refer to the template on the Commercial intranet) is required for Contract values at / over the Council Advertising Threshold. Refer to the Commercial Intranet for the template. For Contract values at and over £100,000 written approval of the Sourcing Strategy is to be sought from a Procurement Advisor.
- B2.3 Whenever Officers buy Works, Supplies or Services for the Council, they must always act to promote competition and to achieve best value / value for money.

- B2.4 Prior to any procurement at or over the Council Advertising Threshold Officers must explain the procurement route in a written Sourcing Strategy by considering the following specifically in the order presented: -
- B2.4.1 Not buying the Goods, having the Works done or receiving the Services at all;
  - B2.4.2 By securing the provision of the Works, Supplies or Services in-house;
  - B2.4.3 By getting someone else to provide the ongoing Works, Supplies or Services (e.g. using the voluntary sector or via another Local Authority);
  - B2.4.4 By providing the Works, Supplies or Services via an existing Council Framework Agreement, Dynamic Purchasing System, Contract or similar arrangement;
  - B2.4.5 By providing the Works, Supplies or Services from an already pre-procured Framework Agreement or Dynamic Purchasing System or Contract provided by an external public sector body or from a Central Purchasing Body;
  - B2.4.6 By outsourcing/buying the provision of the Works, Supplies or Services through collaborative procurement with another local authority/partner, to/from an external provider on the open market by establishing a Contract;
  - B2.4.7 By outsourcing/buying (via quotes or tenders) the Works, Supplies or Services to/from an external provider on the open market by establishing a bespoke Council Contract.
- B2.5 It is important that Officers appraise the risk, value, provider activity, market pressures and all internal and external influencing forces associated with their procurement. Value may not always be proportional to risk. Consult a Procurement Advisor if in any doubt.
- B2.6 Early-on in the process it is important to agree whether a procurement project is considered as a Council Cabinet Key Decision, and therefore appropriate timely action sought where it does meet the criteria. Where this is the case, the Band Officer approvals within these Regulations must only be followed in strict accordance with the agreed Cabinet delegated decisions.
- B2.7 Where a Cabinet report or an Exception already documents the key requirements required by a Sourcing Strategy, no separate Sourcing Strategy document will be required

### **B3 Threshold Ladder**

- B3.1 The Threshold Ladder is presented at the front of these Regulations and is to be read in conjunction with these Regulations and the Sourcing Strategy options outlined in the Procurement Tool Kit. The Threshold Ladder clearly presents the procurement processes required for the various procured contract values.



## **B4 Information Security**

- B4.1 It is a mandatory requirement that a Privacy Impact Assessment (refer to the Information Governance Unit) is completed and evaluated by the Information Governance Unit and that an ICT Business Engagement Manager is consulted before any Cloud service procurement is carried out. The use of a Privacy Impact Assessment and 3rd Party Security Questionnaire should always be considered prior to issuing any other tender/quotation to the market. The Sourcing Strategy must make reference to these requirements.
- B4.2 The procurement of all ICT-related Suppliers / Services must be referred to the 'ICT' Commercial Team in the first instance prior to any procurement process commencing.

## **C OVERALL CONSIDERATIONS**

### **C1 Contracts Register**

- C1.1 A Contracts Register will be held by the Commercial Team which provides a central point for Contract information.
- C1.2 The Contracts Register provides full visibility of existing Contracts (to avoid any duplication) and is also a legal record of data as requested by the Transparency Code.
- C1.3 Every Contract awarded by the Council that has a total aggregated value at/over the Council Advertising Threshold will be recorded in the Council Contracts Register.
- C1.4 It is the responsibility of the Officer(s) (whoever is managing the procurement and the contract) to ensure that the Contracts Register is populated and updated on an ongoing basis as a result of any change in the Contract circumstance.

### **C2 Honesty and Conflicts of Interest**

- C2.1 In all their dealings, Members and Officers shall preserve the highest standards of honesty, integrity, impartiality and objectivity. This includes compliance with Bribery Act 2010, Codes of Conduct and Section 117 of the Local Government Act 1972 (as may be amended from time-to-time) as a minimum.
- C2.2 Officers who are deemed 'Key Influencers' to a procurement shall complete and sign a Declaration of Interest and Confidentiality Undertaking document (Procurement Instruction) for each procurement project with a Contract spend over the relevant Government Threshold.
- C2.3 Officers should not accept any gifts or hospitality from anyone tendering for a procurement/Contract they are involved with, or, from any current provider. Officers are reminded of the instructions on the intranet under Gifts and Hospitality and within the Constitution.

C2.4 Officers shall demonstrate consideration of Conflicts for Contract spends below the Government Thresholds, specifically following all instructions stated on the standard procurement template documentation.

### **C3 Contract Duration and Value**

C3.1 For the purpose of agreeing a procurement process, the total value of a Contract is the total estimated expenditure for the duration of the Contract including any extension options/periods.

C3.2 Contract values to exclude VAT except when determining if the Public or Concession Contracts Regulations are triggered. Appropriate VAT to be considered here, with all procurement documentation remaining with the net-VAT values.

C3.3 Contracts cannot be divided (disaggregated) into separate Contracts with the intention of avoiding the application of the Public Contracts Regulations or these Regulations.

C3.4 A Procurement Advisor must be consulted if a Contract is to last longer than 3 years including all extension periods.

C3.5 Officers are required to consider and include (aggregate) the value of similar requirements in other parts of the Council when calculating a Contract value. The total aggregated value means the total value of similar purchased Works, Supplies or Services over the duration of a Contract.

C3.6 If the Contract is for buying a single item, which is not related to buying other items, the Contract is worth the price, or estimated price, referred to in that Contract.

C3.7 If the Contract is for buying a related group of items, the Contract is worth the total price, or estimated total price, of the group.

### **C4 Collaborative Procurement**

C4.1 Where the Council takes the lead procurement role in a Collaborative Procurement, these Regulations will apply to each procurement process carried out under the collaborative arrangement.

C4.2 Where another public sector organisation takes the lead procurement role, its contract standing orders, or equivalent, will apply.

C4.3 Where the Council enters into formal joint buying or consortia purchasing arrangements, the related Contract and procurement strategy must protect the Council to a level proportionate to the risk involved, whilst at the same time providing the basis for a partnering approach and delivery of best value / value for money.

C4.4 A Procurement Advisor must be consulted prior to agreeing to enter into collaborative procurements.

## **C5 Framework Agreements / Dynamic Purchasing Systems ('DPS')**

C5.1 Framework Agreements and DPS's are agreements that allow Officers to place orders with selected providers on pre-agreed terms.

### **Joining another Contracting Authority's Existing Framework Agreement or DPS**

C5.2 Where the Council seeks to join an existing Framework Agreement or DPS then a due diligence exercise should be undertaken to ensure that the Framework Agreement or DPS was properly procured in accordance with the relevant legislation and ensure that the Council can access the Framework Agreement or DPS under the terms it was originally advertised with.

C5.3 A Procurement Advisor must be consulted before buying from a Framework Agreement or DPS that has been procured by another Contracting Authority.

C5.4 Officers are required to follow the instructions issued by the 3<sup>rd</sup> party Contracting Authority when procuring from this type of Framework Agreement or DPS. In doing so, Officers will be required to use different legal terms etc. There is no requirement to log any Exceptions to these Regulations as a result of this. However, these Regulations are to be used where the price/quality evaluation criteria have not been expressly stated / left open.

### **Setting-up a Framework Agreement / DPS**

C5.5 If Officers decide that they (or their partners) are likely to need to buy the Works, Supplies or Services repetitively in the future but are unsure of exact quantities, it may be that the best way to buy them is by initially setting up a Council Framework Agreement or DPS.

C5.6 Should a Framework Agreement or DPS need to be procured please consult a Procurement Advisor..

## **C6 Current Commercial Documentation**

C6.1 To ensure that Officers are current with all Commercial source documentation, proformas, and advice, the Council Commercial intranet must be referred to regularly.

## **C7 Concession Contracts**

C7.1 Officers must use a Concession Contract if they want to enter into a contract which gives the provider the opportunity to operate a business for commercial gain.

C7.2 Officers are to use these Regulations to procure Concessions Contracts unless the spend trigger given in the Threshold Ladder is triggered in which case the Concession Contracts Regulations shall apply.

C7.3 Officers must get advice from a Procurement Advisor before carrying out any procurement relating to a Concession Contract.

## **C8 Procurement Tool Kit**

C8.1 The Procurement Tool Kit is one of a suite of Procurement Instructions, and is an agreed set of standard documentation which is to be used for the preparation of a procurement (quotation or tender) and subsequent management of a Contract, for all Contract spends below those of the Government thresholds.

C8.2 It is mandatory to use the Procurement Tool Kit for Council procurements. Any exception from this must be agreed by the Assistant Director for Commercial and Assets.

C8.3 The standard documents that comprise the Procurement Tool Kit are to be tailored where indicated only. Officers must seek a Procurement Advisor's agreement regarding any other changes to the documents.

## **C9 Procurement / Purchasing Cards ('pCard')**

C9.1 For the transaction spend levels indicated in the Threshold Ladder Officers can, where appropriate, use a pCard for both procuring and payment. Refer to the Council's Financial Regulations for more details.

## **C10 Community Right to Challenge**

C10.1 The Community Right to Challenge means community organisations can submit to Local Authorities an expression of interest to run local services. This right is granted under the Localism Act 2016. If an expression of interest is accepted by the Council this may trigger a procurement exercise. Please consult a Procurement Advisor on receipt of any such public interest.

## **C11 Contracts relating to the Sale / Disposal of Council Assets**

C11.1 When selling / disposing Council assets Officers must also comply with the Council's Financial Regulations but always consult a Procurement Advisor for disposal of assets with an estimated value over £500.

C11.2 The process should aim to ensure best value for the council, transparency, openness, non-discrimination, and probity. These Regulations do not apply to Land and Buildings.

C11.3 Officers must document a proportionate business case for the particular sale/disposal including

- how it will achieve value for money;
- if there is a reserve/minimum acceptable price;

- any geographic, environmental and social value factors;
- the mechanism for evaluation; and
- a justification for the channel for seeking interest (relevant to the asset)

C11.4 Approval authority of the business case is to be in writing before any sale process and follow that of the appropriate Contract award approval for Band A, B and C Officers (section D13).

C11.5 Seek a Legal Advisor for sale terms and conditions for items over £500 in value.

C11.6 As a minimum, a sale with value of under £100,000 must seek a minimum of 3 offers, using email.

C11.7 As a minimum, a sale with a value at/over £100,000 must seek and collate expressions of interest from the Councils electronic tendering system supplier base.

C11.8 Officers must not release any items sold before payment is received. If payment is made by cheque, this must be cleared before items are released.

C11.9 Officers engaged in the sale may not purchase items unless a Declaration of Interest and Confidentiality Undertaking document has been approved.

## **C12 Insurance**

C12.1 Insurance conditions will be contained in the Contract terms and conditions. In terms of insurance, the Council will normally need the successful provider to have the following types and minimum limits of cover.

	<b>Works Contracts</b>	<b>Supplies and Services Contracts</b>
Public liability	£5 million	£5 million
Employers' liability	£10 million	£5 million
Professional indemnity (where relevant)	£5 million	£2 million
Product liability (where relevant)	£5 million	£5 million

C12.2 The above limits relate to each and every claim or any one occurrence in respect of public and employer liability and each and every claim / in the aggregate in respect of Professional Indemnity Insurance. For public liability and employers' liability, the cover must be in place throughout the period covered by the Contract. For professional indemnity, the conditions are more complicated. Not only must the cover be in place throughout the period covered by the Contract but also for a further six years after the end of the Contract (or 12 years if the Contract is under seal). For certain types of Services, for example, financial advice, the amount of professional indemnity insurance cover will need to be higher to protect the Council in

case anyone gives inappropriate advice.

C12.3 When providing Supplies or Services, the above limits may not be appropriate for small and medium enterprises ('SMEs') and sole providers. In these instances, the Council may be able to reduce these limits by applying for an Exception to these Regulations under section F.

C12.4 Where additional insurances are required, refer this to the Council's Head of Insurance for approval in the first instance.

## **D PROCUREMENT PROCESS**

### **D1 General**

D1.1 The Procurement Tool Kit further details the procurement process for seeking quotations and tenders under the Government Thresholds.

D1.2 Officers throughout the procurement must consider all other Council policies which could apply to the procurement project, e.g. The Strategic Plan, the Council's Financial Regulations, Business Plans, Delivery Plans, etc and legislative requirements such as (but not limited to) social value and equalities

### **D2 Sustainable Procurement (Social & Environmental Value)**

D2.1 Sustainable Procurement incorporates the achievement of environmental, economic and social outcomes through procurement processes. All, where relevant to the subject of the Contract, should be incorporated into every procurement process paying particular attention to the Council's published advice or Procurement Instructions for these areas.

D2.2 If in any doubt, Officers must seek the advice of a Procurement Advisor.

#### **Social Value**

D2.3 Social value is the added value / benefit to the community as a result of the commissioning / procurement process, supporting the Council's vision of a connected Staffordshire, and maximising the benefits of public sector spend to local communities, engaging community spirit, in turn improving service delivery and quality.

D2.4 The Public Services (Social Value) Act 2012 mandates the Council to consider the wider benefits which may be achieved through the procurement of Contracts specific to Services with spends at, or over, the relevant Government Threshold.

D2.5 The Public Services (Social Value) Act further requires the Council to consider whether to consult on social value issues prior to undertaking a procurement exercise.

D2.6 Officers should demonstrate their consideration of social value for all other Contracts spends other than those in D2.4.

D2.7 The evaluation of social value should be considered as part of the Sourcing Strategy and in accordance with the Council Social Value Policy.

### **Environmental Value**

D2.8 Environmental value focuses on the sustainable environmental considerations of a procurement. Please refer to the relevant Procurement Instruction.

### **D3 Employment issues and TUPE (Transfer of Undertaking Protection of Employment Regulations)**

D3.1 Implementing contractual arrangements can give rise to TUPE implications. It is not always obvious that there are TUPE implications; for example: -

- contracting with a new provider;
- outsourcing from in-house;
- bringing services back in-house

may invoke TUPE transfers.

D3.2 It is essential that Officers consider all TUPE implications prior to going out to procurement. Officers must seek the advice of a Procurement Advisor or a HR Advisor to ensure that any relevant TUPE arrangements have been considered.

D3.3 Contracts must contain relevant TUPE conditions to ensure all necessary practicalities for the application of TUPE are agreed and to safeguard the Council from risk (for example, to ensure that appropriate workforce (and other) information will be made available by the existing provider prior to the Contract end date in sufficient time to allow the Council to fulfil TUPE obligations.

### **D4 Advertising**

D4.1 It is mandatory that any public advert over the Council Advertising Threshold is placed on Contracts Finder by a Procurement Advisor.

### **D5 Pre-Qualification**

D5.1 A separate pre-qualification stage is prohibited when publically tendering for Contracts with a value of less than the Government Threshold as set for Supplies/Services regardless of whether the subject matter of the Contract is Works, Supplies or Services.

### **D6 Invitation to Tender ('ITT')**

D6.1 All below Government Threshold ITTs shall use the agreed standard documentation as described in the Procurement Tool Kit.



## **D7 Contract Terms and Conditions**

- D7.1 It is essential that Officers consider the model Contract Terms and Conditions well in advance of going out to procurement.
- D7.2 There must be written evidence for every Contract (regardless of value), and all Contracts must be in a form agreed with the Assistant Director for Commercial and Assets, i.e. all procurements must use the appropriate model Terms and Conditions and standard documentation available on the Councils intranet as the starting point. Where they are deemed insufficient, or require any change, this must be agreed by a Procurement Advisor or a Legal Advisor. Note – it is not an Exception to these Regulations to vary the Terms and Conditions.
- D7.3 Purchase orders must reference / contain model Contract Terms and Conditions. A quotation and a purchase order will create a legally binding Contract. Please see paragraph D13.7.
- D7.4 Officers are not permitted to enter into Contracts on the provider's Terms and Conditions for spends above the Council Advertising Threshold and should take care that they do not inadvertently enter into a Contract on the provider's Terms and Conditions.
- D7.5 It is accepted that Officers will contract on a provider's Terms and Conditions when using a Procurement / Purchasing Card.
- D7.6 In addition to D7.5, Officers should consider the use of model Council Contract Terms and Conditions below the Council Advertising Threshold although this is not mandatory.
- D7.7 In the rare event that a provider refuses to accept the model Contract Terms and Conditions, the provider's Terms and Conditions are to be referred to a Procurement Advisor or a Legal Advisor for review and possible approval.
- D7.8 Advice on any Terms and Conditions must be sought from a Procurement Advisor or a Legal Advisor.
- D7.9 The Assistant Director for Commercial and Assets must:
- keep a record or list of all model sets of Contract Terms and Conditions detailing when the conditions were last updated, who is responsible for updating them, and any changes to the models;
  - keep all current model Contract Terms and Conditions under review;

## **D8 Issuing Requests, Receiving and Opening Quotations and Tenders**

- D8.1 Where Officers issue only one or two quotations for procurements below the Council Advertising Threshold, Officers must report the exception in accordance with section F.



D8.2 Approval of a Procurement Advisor is required to abandon or terminate a procurement process (post advertisement) for Contract spends above the Council Advertising Threshold.

D8.3 To support local spend, Officers are to ensure that quotations are issued to providers within the Staffordshire boundaries. Officers to record a written justification locally (Exception not required) where this is not possible.

## **D9 Emailed Quotations**

D9.1 For procurements for Contracts with spends less than the Council Advertising Threshold, quotations shall be requested and received by the Council email system.

D9.2 Electronic quotations must:

- be received by Council email address; and
- have a date/ time of submission communicated to the recipients.

## **D10 Electronic Tendering and Auctions**

D10.1 All procurements at or above the Council Advertising Threshold must be conducted via the Council's electronic tendering system. All systems must, as a minimum, conform to the requirements stated in the Public Contracts Regulations. Third parties (see B1) must first seek approval from a Procurement Advisor to use an alternative electronic tendering system.

D10.2 Unless otherwise agreed by a Procurement Advisor, all electronic tendering for Contract spends above the Council Advertising Threshold will be performed by a Procurement Advisor.

D10.3 The Procurement Advisor (or agreed delegate) will manage the posting of the tender and manage the resulting clarifications only for electronic tendering performed for Contract spends at, and above, the Council Advertising Threshold. Officers shall prepare their tender in accordance with these Regulations and the Procurement Tool Kit.

D10.4 Approval from a Procurement Advisor is required to carry out an Electronic Reverse Auction.

## **D11 Late Tenders**

D11.1 Tenders received late will not normally be accepted. The Council reserves the right to accept a tender submission if other tenders have not been opened by Officers, the supplier must have contacted the Council prior to the submission deadline, and there are exceptional circumstances with the electronic Procurement system outside of the supplier's control (including where issues are caused by an act or omission of the Council).

D11.2 Any anomaly within the quotation process must be documented and authorisation to proceed sought in accordance with Exceptions (section F).

D11.3 Seek the advice of a Procurement Advisor to determine whether a tender fulfils D11.1 and whether the use of post-tender clarification is acceptable for tender anomalies and omissions for Contracts at/above the Council Advertising Thresholds.

## **D12 Evaluating Quotations and Tenders**

D12.1 For procurements of Contracts with spend less than the Council Advertising Threshold, it is required that the quality aspect of the Specification will be evaluated under a pass / fail criterion and that price criteria will form 100% of evaluation.

D12.2 For procurements of Contracts with spend at, and above, the Council Advertising Threshold, it is required that the price criteria will be a minimum of 80% of evaluation.

D12.3 Where Officers wish to deviate from the stated price ratio above, Officers must obtain written authorisation in accordance with Section F or (for Contracts with spends at, and above £100,000) using the Sourcing Strategy.

D12.4 An Exception must be recorded (see section F) where an alternative evaluation scoring formula is employed to that presented in the Procurement Tool Kit.

D12.5 For post-tender submissions, consult a Procurement Advisor where there is a requirement to deviate from prices initially received, or there is a need to deviate from the original Specification.

D12.6 Consult a Procurement Advisor for authority to accept a Variant Bid tender.

## **D13 Approval to Award Contracts for Works, Supplies or Services**

D13.1 For Contract awards with spends at, or over £3,000 up to £100,000 Officers must obtain the approval of an Officer **Band C** (and above).

D13.2 For Contract awards with spends at, or over, £100,000 and below £500,000 (the level of Executive Officer Delegated Decision) Officers must obtain the approval of an Officer **Band B** (and above).

D13.3 For Contract awards with spends at, or over, £500,000 (the Officers must obtain the approval of an Officer **Band A**).

D13.4 Ensure there is no conflict where the arrangement of a contract is also by the same Officer used to approve it.

D13.5 Any alternative solution to D13 for the approval of 'high' volumes of call-off contracts from a Framework Agreement or DPS must be presented by a **Band A** Officer to, and be agreed by, the Assistant Director for Commercial and Assets.

D13.6 Officers must ensure that a Contract award notice is issued by a Procurement Advisor on the Contracts Finder portal for contracts with a value at and above the Council Advertising Threshold, together with a completed entry on the Contracts Register.

### **Entering into Contract**

D13.7 The use of Offer and Acceptance and a valid Council purchase order will be used for all awards for Contract spends at and above £500, and under the Council Advertising Threshold, unless agreed by a Procurement Advisor or Legal Advisor.

D13.8 All awards over the Council Advertising Threshold will require the use of model Terms and Conditions. Consult a Procurement or Legal Advisor for advice on which Terms and Conditions will apply. The advice received will dictate whether the Contract is to be signed by the requisite Officer in accordance with banding in D13.1 to D13.3 or will require execution under seal.

D13.9 The authority to seal any Contract (the sealing authority) will also be in accordance with the Constitution, the Sub-Scheme of Delegation and the Officer banding in D13.1 to D13.3.

D13.10 Only an authorised officer of Corporate Services shall execute Contracts under seal.

D13.11 Officers shall ensure that the correct Purchase Order procedure is followed.

### **D14 Contract Monitoring and Management**

D14.1 Contracts awarded by or on behalf of the Council must be monitored and contract managed throughout the Contract term to ensure delivery of the Contracted Works, Supplies or Services in accordance with the Contract requirements and standards.

D14.2 Contract monitoring and management arrangements agreed during the procurement process will be determined by the complexity and risk associated with the Contract and conditions in the relevant market. Such arrangements must take account of both financial and quality aspects.

D14.3 Officers must refer to the Commercial Team document 'Financial Appraisal' as to the process and regularity required in vetting a provider's financial well-being.

### **D15 Tender File**

D15.1 Officers should ensure that written auditable records of all procurement activity (quotation, tender and otherwise) are kept in electronic format on the Council ICT server system including electronically scanned copies of any signed contract.

D15.2 Documentation shall be retained for a period stipulated in the Council's Records Retention and Disposal Policy.

## **D16 Transferring Contracts**

D16.1 In appropriate circumstances the Council may agree to transfer a Contract, by novation or assignment.

D16.2 Consult a Procurement Advisor prior to assigning or novating a Contract.

## **D17 Contract Extension, Default, Termination and Modification**

D17.1 The approval to: -

- end a Contract early; or
- extend a Contract in line with its Terms and Conditions; or
- serve a default notice; or
- novate (subject to compliance with Section D16 above)

shall be obtained from a **Band C** (and above) Officer where the Contract spend is less than £100,000; or

shall be obtained from a **Band B** (and above) Officer where the Contract spend is at, or over £100,000, and less than £500,000; or

shall be obtained from a **Band A** Officer where the Contract spend is at, or over, £500,000.

D17.2 Contracts, unless they have contractually already allowed for such a modification, may not be modified where any increase in price resulting from the modification exceeds 50% of the value of the original contract.

D17.3 The approval to materially modify a Contract that results in an increase in price of up to 25% of the value of the original contract: -

shall be obtained from a **Band C** (and above) Officer where the variation spend is less than £100,000; or

shall be obtained from a **Band B** (and above) Officer where the variation spend is at, or over, £100,000, and less than £500,000; or

shall be obtained from a **Band A** Officer where the variation spend is at, or over, £500,000.

D17.4 The approval to materially modify a Contract that results in an increase in price between (at/above) 25% and (at/below) 50% of the value of the original contract

- by a **Band B** (and above) Officer where the variation spend is less than £500,000.

- by a **Band A** Officer where the variation spend is at, or over, £500,000 subject always to this not being a Council Cabinet Key Decision.

D17.5 The total value of all modifications (i.e., where successive modifications are applied) to a Contract should not be above 50% of the value of the original contract to avoid any disaggregation spend.

D17.6 Approval must be sought from a Procurement Advisor prior to fulfilling the actions in D17.1, D17.3 and D17.4. Where applicable the Public Contracts Regulations will be used to manage the modification of the Contract.

## **D18 Failed Procurements**

D18.1 Where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to a compliant procurement under these Regulations, Officers may direct award the Contract to a provider provided that the initial conditions of the Contract are not substantially altered and that a formal note is made locally in writing documenting the issues and supporting the award. An Exception is not required. Note, failed procedures under the Public Contract Regulations have their own remedies for this situation.

## **E PUBLIC CONTRACTS REGULATIONS**

- E1.1 The Public Contracts Regulations are derived from the EU Public Contracts Directive and came into effect in the UK on the 26<sup>th</sup> February 2015.
- E1.2 Under the Public Contracts Regulations the Council is the Contracting Authority.
- E1.3 A Procurement Advisor must be consulted prior to using the Public Contracts Regulations / Concession Contracts Regulations, and must lead all procurements for Contract spends at, and above, the Government Thresholds. Specifically, all uses of Regulation 12, 32 and 72 must be approved by a Legal and Procurement Advisor.

## **F EXEMPTIONS AND EXCEPTIONS**

### **F1 General**

F1.1 Exemptions fit into the following categories: -

1. Circumstances where these Regulations do not apply;
2. Exemption from these Regulations for Contract spends up to the Government Thresholds.

### **F2 Exemptions - Circumstances where these Regulations do not apply**

F2.1 These Regulations do not apply to the following: -

1. Contracts of employment;
2. Contracts relating to interest in land (also known as property) – see a Procurement Advisor first;
3. Contracts entered into by schools using delegated budgets as they have their own Regulations to follow;
4. Investment transactions placed by the Director for Corporate Services for treasury management activities;
5. Contracts placed by the Director for Corporate Services investing money or assets of the Staffordshire County Pension Fund;
6. Grants which the Council make Grants should not be used as a Contract for Services;
7. When buying from within the Council;
8. In instances where Officers are buying works of art, museum artefacts, manuscripts or archive collection items;

9. Where instructing external legal advisers in accordance with Regulation 10 of the Public Contract Regulations 2015 and as authorised by the Director for Corporate Services or County Solicitor;
10. In circumstances when, for reasons of potential conflict and confidence, external professional /technical support and advice is required in relation to an employment disciplinary matter

### **F3 Exceptions from these Regulations for Contract spends up to the Government Thresholds**

F3.1 Any Works, Supplies or Services Contract or process declared to be an Exception from these Regulations must be authorised, in writing, as follows: -

- by a **Band B** Officer for Contract spends up to £100,000;
- by a **Band A** Officer where the Contract spend is at, or over, £100,000 up to Government Thresholds subject always to this not being a Council Cabinet Key Decision;

F3.2 Examples of Exceptions: -

- where an immediate need is created by a sudden, unforeseen, real and demonstrable emergency or danger to life or health that requires immediate action to protect the interests of the Council;
- issuing (not receiving) only 1 or 2 quotations when 3 were required;
- adjusting the level of insurances when seeking SME providers;
- when detracting from an 80% price evaluation criteria unless approved in accordance with section D12.3;
- in instances where the Works, Supplies or Services can be bought from only one provider and this can be justified;

F3.3 Examples of what are not considered as Exceptions: -

- when required to vary, or use legal terms other than, the model Terms and Conditions;
- where 3rd party Framework Agreements dictate the procurement rules to be used (see C5.4);
- for a failed tender process under D18 of these Regulations;

### **F4 Non-Compliance of the Public Contracts Regulations and Concession Contracts Regulations**

F4.1 No Officer may grant an Exception to procurements regulated by the Public Contracts Regulations or the Concession Contracts Regulations. The Exception Form alone cannot be used for any such approvals.

F4.2 Any risk of potential non-compliance of the Public Contracts Regulations or the Concession Contracts Regulations must be reported to the Council full Senior Leadership Team via a separate business case process (refer to

SLT Business Case Template).

## **F5 Applying for / Authorising and Reporting an Exception**

F5.1 All applications and subsequent authorisations for Exceptions must be in writing and recorded.

F5.2 All authorised Exceptions as described in F3.1 shall contain, as a minimum, the following: -

- Previous exceptions
- What part of the Regulations are not being followed
- Justification for the Exception
- Any monetary value underpinning the Exception
- Date of commencement if resulting in a Contract
- Duration of any subsequent Contract
- Commissioner/Requesting Officer of the Exception
- Procurement Advisor approval
- Band Officer approval name and post

## **F6 Recording / Reviewing of Exceptions**

F6.1 The Assistant Director for Commercial and Assets will keep a register of all exceptions to these Regulations.

F6.2 It is the responsibility of the originating Officer of the Exception to ensure that it is reviewed and remains valid. The originating Officer is to seek further approvals where necessary.



## Annex 1 - Glossary of Terms

Band A	Chief Executive, Corporate Directors and S151 Officer.
Band B	is an Officer who reports direct to a Band A.
Band C	is an Officer who reports direct to a Band B.
Central Purchasing Body	is a Contracting Authority in its own right that concludes pre-procured contracts for Works, Supplies or Services and allows access to these contracts by the wider public sector.
Commercial Team	is a Council department within the Corporate Services Directorate whom undertake all activities within a typical procurement/commissioning cycle activity on behalf of the Council and partner organisations.
Concession Contract	is a Contract between a company and the Council that gives the company the right to operate (and profit from) a specific business within the Councils jurisdiction, subject to certain conditions.
Concession Contracts Regulations (CCR)	came into force on 18 <sup>th</sup> April 2016 for the regulation of certain service and works concession contracts (see Threshold Ladder) where consideration given to the provider is that the provider is permitted to exploit the Works or Services that are the subject of the contract (together with payment if desired).
Constitution	is the Councils document that contains the rules and procedures for making decisions and managing the Councils business.
Contract	<p>is, for the purposes of these Regulations, any agreement (whether in writing or not) between the Council and one or more other parties in respect of the acquisition or sale of Works, Supplies or Services for payment or otherwise.</p> <p>Throughout these Regulations, also read 'Contract' in context of a framework agreement.</p>
Contracting Authority	is a defined term in the Public Contracts Regulations means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities. Staffordshire County Council is a Contracting Authority.
Contracts Finder	is the Government's online procurement portal for both providers and Contracting Authorities. For the former it

	presents new procurement opportunities; for the latter it is the mandatory portal to advertise their new opportunities and contract award information.
Contracts Register	is the list of Contracts entered into by the Council over a value of £25,000. This is held by the Assistant Director for Commercial and Assets and maintained by Officers.
Council	means Staffordshire County Council.
Council Advertising Threshold	is the lowest contract spend trigger at which a procurement is advertised to the public. See Threshold Ladder.
Council Cabinet Key Decision	A decision made around at/above £2 million, or implications on a service budget or affecting multiple divisions. Refer to current information on Committees and Decision-Making intranet.
Default Notice	is used to provide written notice that a provider is in breach of contract.
Electronic Reverse Auction	is the ability to compete providers in a 'live' situation (via specialised software) with the intention of reducing initially tendered prices.
Exceptions	are where these Regulations, in whole or in part, are not followed as presented, unless otherwise indicated.
Executive Officer Delegated Decision	A decision made around £500,000 to £1.999 million, or implications on a service budget, or policy amendment that is not a Council Cabinet Key Decision. Refer to current information on Committees and Decision-Making intranet.
Find a Tender Service (FTS)	The Government portal for publishing all public sector tender opportunities which have Contract spends over the Government Thresholds
Framework Agreement	is an agreement or other arrangement which sets the Terms and Conditions (in particular the price and, where appropriate, quality) under which the provider will enter into one or more (call-off) contracts with the Council. This may also be referred to as a call-off contract, a continuous contract or a standing offer.
Government Threshold	are the contract (spend) triggers that will apply to public procurement exercises run under the Public Contracts Regulations, and the Concession Contracts Regulations.
Assistant Director for Commercial	is the Council's Assistant Director for Commercial and Assets.

and Assets

HR Advisor	is an Officer allocated by the Head of HR.
Invitation to Tender	is a document which invites providers to bid for the provision of Works, Supplies or Services.
Key Influencer	is an Officer within a procurement project who, by virtue of their normal duties in that project, could influence the choice of provider.
Legal Advisor	is an Officer allocated by the County Solicitor.
Light Touch Regime	Contracts for health, social, prison, postal, certain legal services and other community services, which effectively replaced the previous Part B services in historic Public Contracts Regulations.
Monitoring Officer	a designated Officer of the Council with the unique role to ensure that the Council, its Officers and Elected Councillors maintain the highest standards in all they do.
Offer and Acceptance	is the process of awarding a Contract which is usually conducted without signature.
Officer	is any employee of the Council and also Members.
Pre-Qualification	is the stage used to assess providers for inclusion in the shortlist of providers who will be invited to submit a final tender. They specifically evaluate the suitability of potential providers in relation to their technical knowledge and experience, capability and financial and economic standing.
Procurement Advisor	is an Officer allocated by the Assistant Director for Commercial and Assets.
Procurement / Purchasing Card	The 'pCard' is an efficient means of ordering and paying using a bespoke credit card issued by the Council. Refer to Staffordshire County Council's Financial Regulations for more details.
Procurement Instructions	issued separately, are technical procurement instructions which are enabled by, and underpin, these Regulations. The Procurement Tool Kit is an example of a Procurement Instruction.
Procurement Tool Kit	is a particular Procurement Instruction which outlines the processes and considerations involved in compiling a quotation and tender for contract spends below the Government Thresholds.
Public	came into force on 26 <sup>th</sup> February 2015 and directly

Contracts Regulations (PCR)	implement the 2014 EU Public Sector Procurement Directive together with some UK reforms aimed to make public procurement more accessible to small businesses.
Quotation	is a request for price and any other relevant matter without the formal issue of a public tender, for Contract spends less than the Council Advertising Threshold.
Regulations	are the Council's Procurement Regulations and are the Councils own internal governance and policy to public procurement.
Senior Leadership Team ('SLT')	Council Officers appointed under Article 12 of the Constitution, led by the Chief Executive, to carry out the duties shown in these Regulations.
Services	in their purest form, are not Supplies or Works, although they may form part of these. Services are all encompassing and include all actions, both tangible and intangible.
Sourcing Strategy	is the written justification of the options considered, dismissed and ultimately decided upon when implementing a specific procurement process.
SME	Small and Medium-sized Enterprises.
Specification	is the descriptive document(s) detailing the requirements required from the provider in delivering the Works, Supplies or Services.
Supplies	are stock items or amounts, usually tangible, of something supplied or available for use.
Tender	is a provider's tender response to the Invitation to Tender.
Terms and Conditions	means the Council's standard model sets of legal terms and conditions (as may be amended from time to time). Refer to the Procurement Tool Kit for details.
Threshold Ladder	the Council's agreed procurement processes outlined at various Contract value spend triggers/thresholds.
Transparency Code	issued in 2015, the Local Government Transparency Code mandates the Council to publish various spend data, and in particular specific procurement-related information.
Variant Bid	is a tender which technically meets the Specification but delivers the solution by a different means from that specifically requested by the Contracting Authority in the Tender.
Works	is the subject matter of a Contract which is ordinarily property

construction and civil engineering related. A list of defined Works categories is shown in Schedule 2 of the Public Contracts Regulations.

The Council may also treat 'Works' as an agreement where a developer constructs a building on their own land (according to Council needs) and then transfers the land and structure to the Council at a later date. Refer these projects to a Procurement Advisor in the first instance.