



# **CONTRACT** **STANDING ORDERS**

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## 1. INTRODUCTION & DEFINITIONS

- 1.1 The CSO have been issued in accordance with Section 135 of the Local Government Act 1972 and are intended to promote good practice and public accountability and deter corruption. They provide a corporate framework for the procurement of all goods, services and works for the Council.
- 1.2 The CSO are designed to ensure that all procurement activity is conducted with openness, probity and accountability.
- 1.3 All Officers must comply with the statutory requirements of the United Kingdom Government. All Officers must also comply with the CSO along with the Financial Regulations; the Code of Conduct; the Anti-Fraud, Bribery and Corruption Policy and the Procurement Strategy and Policies. Contracting All Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.
- 1.4 Breach of the CSO will be taken very seriously as they are intended to both protect public money and demonstrate that the Council takes its role as a guardian of public money extremely seriously. Should any Officer be found to be in breach of these rules then it may be treated as gross misconduct and could result ultimately in the dismissal of the Officer. Similarly, anyone having knowledge of a failure to follow these rules must report a breach of the CSO to the Council's statutory Monitoring Officer as soon as possible afterwards. Any failure to report a breach by an Officer may also be treated as gross misconduct and could result in the Officer being dismissed.
- 1.5 At any point that the Monitoring Officer is required to be notified or consulted and the Monitoring Officer is not available, then Officers must contact one of the Deputy Monitoring Officers
- 1.6 DEFINITIONS

"CSO"	Contract Standing Orders
"Monitoring Officer"	Director of Corporate and Customer Service
"Officer(s)"	any person employed by the Council
"Deputy Monitoring Officer"	An officer designated as a Deputy Monitoring Officer, presently the Democratic & Electoral Services Manager and the Legal Services Manager
"Contracting Officers"	Officers of the Council responsible for entering into contracts and procuring goods and services.
"Section 151 Officer"	Director of Resources
"relevant Director of Service"	The Director with responsibility for the Officers Service. If the relevant Director is unavailable then the relevant Director will be the CEO or Monitoring Officer.
"CEO"	Chief Executive Officer and Head of Paid Service
"PCR 2015"	The Public Contract Regulations 2015
"Regulations 32 PCT 2015"	Found in full at <a href="#">Appendix 1</a> of these Contract Standing Orders

“Regulations 57 PCR 2015”	Found in full at <a href="#">Appendix 2</a> of these Contract Standing Orders
“Regulations 72 PCR 2015”	Found in full at <a href="#">Appendix 3</a> of these Contract Standing Orders

## **2. AUTHORITY**

- 2.1 The first stage of procuring any contract is to ensure that the Contracting Officer has sufficient approved funding for the potential procurement of goods or services. Authority for funding must be sought and granted where it is not accounted for within the department’s current budget. Contracting Officers must have regard to the Financial Regulations if the department’s current budget is insufficient.
- 2.2 Once the appropriate authority has been obtained, the Contracting Officer may then place orders within approved budgets and in line with the CSO. If the proposed order exceeds the approved budget, the officer must obtain advice of the Section 151 Officer and a supplementary budget estimate may be required.

## **3. DECLARATION OF INTEREST**

- 3.1 If it comes to the knowledge of a Councillor or Contracting Officer of the Council that a contract in which he/she has a financial, non-financial or personal interest has been or is proposed to be entered into by the Council, he/she shall immediately give written notice to the Monitoring Officer. Failure to do so is a breach of the Employee Code of Conduct and an offence in accordance with section 117 of the Local Government Act 1972. Such failure may result in disciplinary action against the Officer.
- 3.2 A Contracting Officer’s interests shall not conflict with their public duty. Any official position or information acquired in the course of employment should not be used to further personal interests or for the interests of others.
- 3.3 Contracting Officers should declare in writing to the relevant Director of Service any interest which may be in conflict with their public duty. Any such declaration by the Chief Executive or a Director of Service should be made in writing. A copy of any declaration must also be sent to the Monitoring Officer.
- 3.4 Where the Monitoring Officer confirms that the interest declared prevents participation, the Officer or Councillor must not take part in the tender process except to the extent permitted by the Monitoring Officer. If the declaration is made by the Monitoring Officer then he above assessment will be made by the Deputy Monitoring Officer

## **4. PREVENTION OF CORRUPTION**

- 4.1 Officers shall comply with the Employee Code of Conduct and must not invite or accept any gift or hospitality in respect of the award or performance of the contract. Officers will be required to prove that anything received was not received corruptly. High standards of conduct are mandatory. Corrupt behaviour may lead to dismissal and is a crime under the legislation referred to in CSO 4.4 below.

- 4.2 Officers should not accept significant personal gifts from contractors and outside suppliers. Token gifts of a very small value like pens marked with a company name, or calendars, which might be seen as advertisements, are acceptable.
- 4.3 Officers should notify the Monitoring Officer and Director of Service of any gifts received 'out of the blue' other than the token gifts outlined above. The Monitoring Officer should record receipt of the gift and decide whether the gift should be returned or forwarded to a local charity.
- 4.4 The following clause (or suitable alternative drafted by the Council's legal department) shall be put in every Council internally drafted contract:

"The Council may terminate this contract and recover all its losses if the Contractor, its employees or anyone on the Contractor's behalf does any of the following:

- i. Offer, give or agree to give to anyone, any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- ii. Commit an offence under the Bribery Act 2010 or Section 117 (2) of the Local Government Act 1972; or
- iii. Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees
- iv. Any clause limiting the Contractor's liability shall not apply to this clause."

## 5. **PRINCIPLES**

- 5.1 The CSO apply to any arrangement, **of any value**, made by, or on behalf of, the Council for the carrying out of works, supplies, goods, materials or services. '**Of any value**' includes where goods and services are provided free of charge under a framework panel agreement, or as a possible inducement to obtain future contracts.
- 5.2 The CSO do not apply to contracts for the acquisition, disposal or transfer of land or of any interest therein, for the lending or borrowing of money, or for a contract of employment which makes an individual a direct employee of the authority. Other Council policies and rules may apply to these types of contract, such as the Financial Regulations and Recruitment Policies. Further guidance should be obtained from Legal Services or the Business Support Manager as appropriate.
- 5.3 The following key principles apply to any procurement:-
- 5.3.1 All procurements must:-
- (a) realise value for money by achieving the best combination of highest quality of outcome and minimum whole life costs;
  - (b) achieve the highest standards of integrity;
  - (c) ensure fair and equal treatment of contractors;
  - (d) operate transparently, subject to any requirement for confidentiality;
  - (e) be in accordance with advice from Legal Services and Business Support Manager and as directed by the Monitoring Officer;
  - (f) comply with all legal requirements, Council priorities and policies; and

- (g) ensure that non-commercial considerations do not influence any contracting decision, except on ethical grounds or in the case of CSO 5.3.2.

5.3.2 For each procurement the Council must:

- (a) consider how the proposed procurement may improve the economic, social and environmental wellbeing of the District and how the Council can secure that improvement in carrying out the process of procurement;
- (b) ensure the contractor complies with relevant health and safety legislation and best practice in relation to the contractor's work force and business;
- (c) when there will be a TUPE transfer of Council staff, take steps to ensure that those staff are expressly given the right to join and participate in a trade union; and
- (d) consider whether to carry out any community consultation on the proposed procurement.

5.3.3 All contracts must be in writing and in accordance with CSO 23.

**5.3.4 All contracts must be entered into prior to the commencement of the undertaking or the delivery of the goods or the performance of the services. If for any reason this is not possible the Monitoring Officer must be informed immediately by the Contracting Officer wanting to enter into the contract. The Monitoring Officer may allow the contract to commence before the agreement is signed in the exceptional circumstance where the harm caused by the delay in commencing the contract outweighs any risk in the contract not being completed. The Contracting Officer will need to show why it was not possible to complete the contract prior to commencement and ensure contracts are signed as soon as possible.**

5.3.5 It is the Contracting Officer's responsibility to ensure all contracts are entered onto the Council's contract register and must be effectively monitored throughout the contract period. See CSO 24 for further information. All contracts with a specified duration should be recorded on the Contracts Register.

## **6. WAIVERS**

6.1 Contracts made by the Council must comply with the CSO and the Procurement Strategy. However, if the Procurement Process in CSO 12 cannot be completed for an unforeseen reason, the process may be waived. A waiver allows a contract to be placed by direct negotiation with one or more suppliers rather than in accordance with the requirements to ensure competition.

6.2 Waivers can only be considered in exceptional circumstances, and only if the procurement is under the UK Procurement Threshold. Considering a waiver must be risk based and always a last resort after all other options have been considered.

6.3 Waivers may be considered in, but not limited to, the following circumstances:-

- 6.3.1 Where the purchase of supplies or the execution of works or services involve specialist or unique skills or knowledge which cannot be obtained from other providers;
- 6.3.2 where the Council require upgrades to existing software packages or require repairs to, or parts for, existing machinery or equipment that are specific to that machinery or equipment;
- 6.3.3 the purchase of supplies or the works or services to be carried out constitute an extension of an existing contract provided that:-
  - (a) the original contract was procured through a best value exercise; and
  - (b) there is budget approval in place for the extension;
- 6.3.4 if the Council has already engaged with an organisation for a similar and related procurement provided that the Council will not be exposed to unacceptable risk and there is significant benefit to extending the scope of the contract to cover this additional requirement;
- 6.3.5 where, after advertising in accordance with the CSO, it has not been possible to obtain competitive prices for works, supplies or services;
- 6.3.6 In relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;
- 6.3.7 If works, supplies or services are urgently needed for the immediate protection of life or property or to maintain the immediate functioning of a public service that the Council is responsible for, on the basis of an unforeseeable emergency
- 6.4 Unique skills or knowledge under a waiver in CSO 6.3.1 does not include knowledge gained because the contractor has worked for the Council previously. Previous skills or knowledge gained by working for the Council previously can only be used where the contractor is providing additional advice on a same or very similar issue that was not previously contracted for.
- 6.5 In such circumstances Contracting Officers are required to seek advice from the Business Support Manager, namely with regards to Regulations [32](#) and [72](#) of the PCR 2015 and Legal Services in the first instance, and to notify the Section 151 Officer and Monitoring Officer of a potential failure to comply.
- 6.6 In order to request a waiver and for audit purposes the Contracting Officer must complete a waiver report having sought advice from the Business Support Manager. The waiver must address all of the following points:
  - 6.6.1 the reasons why the waiver is being requested and reasons why the waiver is being requested;
  - 6.6.2 the process which is intended to be followed instead;
  - 6.6.3 Confirmation of approved budget.

- 6.7 The waiver report is to be sent to Legal Services where a member of the team will review the report and provide advice to confirm if the waiver applies. The waiver report will be completed on the Council's Delegated/Urgent Decision Record Form.
- 6.8 Legal Services will send the waiver report with their advice and recommendation to the Section 151 Officer and Monitoring Officer to confirm the approval or refusal of the waiver.
- 6.9 Once approved the waiver report will be returned to the Contracting Officer and copied to Legal Services.
- 6.10 The Contracting Officer must send a copy of the waiver to the relevant Director of Service and the order, which was the subject of the waiver report may now be placed.

### ***Exceptional Waivers***

- 6.11 If unusual circumstances arise that are not listed in CSO 6.3, the Contracting Officer must refer the waiver to their Director of Service who may apply for an exceptional waiver with the agreement of the Section 151 Officer and Monitoring Officer.
- 6.12 If an exceptional waiver is agreed, the Director of Service must prepare a Delegated/Urgent Decision Record setting out full details of the particular circumstances, the reasons for requiring an exceptional waiver of the procurement process and provide a risk assessment. The Delegated/Urgent Decision Record must be sent to the Section 151 Officer and Monitoring Officer and follow the same process set out in CSOs 6.9 to 6.12.
- 6.13 The Business Support Manager will maintain a register of waivers and breaches on behalf of the Monitoring Officer.

## **7. FRAMEWORK AGREEMENTS**

- 7.1 **Before considering calling off from a Framework Agreement, prior advice should be obtained from the Business Support Manager and Legal Services. Once advice is obtained a Business Case is to be submitted for approval by the relevant Director of Service in consultation with the Chief Executive.**
- 7.2 A framework agreement is an agreement between the Council and the supplier or suppliers for the provision of goods, services or works. The framework agreement contains agreed terms for how instructions will be called off from time to time during the life of the framework. Where framework agreements are procured on behalf of or for the benefit of several contracting authorities (including the Council, which must be specifically mentioned or clearly identified by reference to a category in procurement of the framework agreement), the Council may then place orders against the framework if and when required during the framework period. Some frameworks allow for the Council to contract from the framework (to 'call off') either:-
- (a) by applying the terms laid down in the framework agreement without reopening competition, provided that the terms laid down in the framework agreement are sufficiently precise as to cover the call off; or

(b) by holding a further competition if the terms in the framework agreement are not precise or complete enough for the particular call off, provided that the Council invite bids from the relevant organisations within the framework. The Council must give an appropriate time period for organisations to respond, taking into account the circumstances and complexity of the contract and must award the contract to the bidder who has submitted the best bid based on the award criteria set out in the framework agreement.

7.3 The Council is part of the EM Lawshare arrangement. This is a consortium of public sector providers who have joined together to procure a framework agreement for the provision of external legal advice. All successful legal firms appointed to the panel have provided fixed hourly rates and provide additional benefits, like free training. Instruction of external solicitors who are part of the panel do not require Legal Services to comply with the provision of CSO 7.1 or obtain 3 written quotes.

7.4 All requests for legal advice whether free or for payment must be obtained through Legal Services. If an officer wishes to request advice on an ongoing matter this request must also be made through Legal Services.

7.5 CSO 7.4 does not apply to legal advice and services provided for insurance claims instructed via the Council’s external insurance claims handlers.

**8. SPONSORSHIP**

8.1 Sponsorship agreements, at their simplest, involves the payment of a sponsorship fee in exchange for publicity related benefits.

8.2 Sponsorship agreements must be entered into in compliance with these CSO and the Council’s Sponsorship Policy.

<b>Contract Type (Risk)</b>	<b>Total Value</b>	<b>Procurement Process</b>	<b>Advertising requirements</b>
<b>Sponsorship Agreement</b>	<b>ALL</b>	<b>Director of Service approval Refer ALL decisions over £25,000 to the relevant Committee</b>	<b>Council’s website Other appropriate channels as advised by Director of Service</b>

**9. CONCESSION CONTRACTS**

9.1 Concession contracts are contracts for a financial interest, where the ‘payment’ is either that the contractor has the right to exploit (profit from) the contract works/services, or that the contractor has such right together with some payment from the Council. The operating risk which comes from exploiting the works or services must pass to the contractor, and this risk must be more than a slight possibility of loss and involve real exposure to the changes of the market. Contracting Officers must contact Legal Services for assistance if they are unsure whether they are dealing with the procurement of a concession contract.

9.2 The CSO and Financial Regulations apply to all concession contracts.

9.3 Depending on the contract value, concession contracts may also be subject to the Concession Contract Regulations 2016. The current UK threshold for concession contracts is £5,336,937 inclusive of VAT from 1 January 2022. If a concession contract is valued at under this threshold, further advice must be obtained from the Business Services Manager, who will approve the appropriate procedure to follow. If a concession contract is valued at over this threshold, the procedure set out in the Concession Contract Regulations 2016 must be followed - officers must obtain further Legal and Procurement advice.

<b>Contract Type (Risk)</b>	<b>Total Value</b>	<b>Procurement Process</b>	<b>Advertising requirements</b>
<b>Concession Contracts (Low/Medium)</b>	<b>0.01p up to £5,336,937 inclusive of VAT from 1 January 2022.</b>	<b>Invitation to tender (See paragraph 12.4 of CSO)</b>	<b>Council's website Source Derbyshire  Contracts Finder (for projects above the value of <b>£25,000</b>)</b>
<b>Concession Contracts (High)</b>	<b>£5,336,937 inclusive of VAT from 1 January 2022.</b>	<b>The UK Threshold Level Procurement Procedure must be followed: See paragraph 12.5 of CSO</b>	<b>Council's website Contracts Finder Source Derbyshire Find a Tender service</b>

## **10. JOINT VENTURES AND PARTNERSHIPS**

- 10.1 The CSO apply to any proposal for the Council to become involved in a joint venture, collaboration or partnership with third parties (whether with private or publicly funded providers), including the monitoring of any such arrangement.
- 10.2 Where purchases are proposed using arrangements with another local authority, government department, health authority, primary care trust, statutory undertaker or public service purchasing consortium the Monitoring Officer must be consulted and procurement and legal advice must be obtained.
- 10.3 The risks and resources required to undertake the relevant tasks and roles must be assessed before the project commences.
- 10.4 Both the CSO and the conditions of grant relating to procurement of goods and services must be followed if the procurement exercise is being undertaken and grant funding is being claimed. If there is any conflict between the CSO and the funder's conditions of grant, then the stricter requirement will prevail.
- 10.5 The partnership agreement must be signed in writing setting out the respective roles and responsibilities.

10.6 The partnership must remain under review and appropriate accounting and audit arrangements must be put in place.

## **11. VALUING THE CONTRACT**

11.1 In estimating relevant contract values, Contracting Officers shall have regard to aggregation rules - this means the whole of the value or estimated value for a single contract, purchase or disposal calculated as follows:-

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period
- (b) where the purchase involves recurrent transactions in the coming twelve months, by taking the total price which might be paid during that period;
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48

11.2 Contracting Officers shall also have regard to a contract whole life cost including any optional extension periods when estimating the contract value. Whole life cost is the value expected to be paid for the contract duration. A three year contract valued at £20,000 per annum would equate to a £60,000 whole life cost. If the Council is entitled to extend the contract for another year then the value of the contract will be £80,000.

11.3 Contracting Officers must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of the CSO.

11.4 All contracts must set out that payment will be paid in Great British Pounds (GBP). Payments shall not be made to a contractor in any other currencies.

11.5 From 1 January 2022, Contracting Officers should be aware that the thresholds are inclusive of VAT.

## **12. THRESHOLDS AND PROCEDURES**

12.1 Contracting Officers should consider whether procuring within CSO 7 would be applicable to their particular procurement.

12.2 Where the estimated total value for a contract is within the values in the second column of the table below, as a minimum requirement, the procurement process in the third column must be followed. Contracting Officers should take procurement advice from the Business Support Manager or their appointed advisor (currently Derbyshire County Council).

<b>Contract Type (Risk)</b>	<b>Total Value</b>	<b>Procurement Process</b>	<b>Advertising requirements</b>
<b>Goods and Services</b>	<b>Up to £2,500 Single Purchase</b>	<b>Budget Holders Authorisation</b>	<b>None</b>
<b>Goods, Services and Works (Low)</b>	<b>£2,501 up to £30,000</b>	<b>3 Quotes in writing</b>  <b>(Details of the quotations should be provided to the Business Services Manager. Separate instructions should be sent to Legal Services to draft/review the contract to appoint before any order is placed).</b>  <b>See paragraph 12.3 of the CSO</b>	<b>Optional</b> Council's website Contracts Finder Source Derbyshire
<b>Services (Medium)</b>	<b>£30,001 but less than £213,477 inclusive of VAT from 1 January 2022.</b>	<b>Invitation to tender (See paragraph 12.4 of CSO)</b>	<b>Council's website Contracts Finder Source Derbyshire</b>
<b>Works (Medium)</b>	<b>£30,001 up to £5,336,937 inclusive of VAT from 1 January 2022.</b>	<b>Invitation to tender (See paragraph 12.4 of CSO)</b>	<b>Council's website Contracts Finder Source Derbyshire</b>
<b>Goods (Medium)</b>	<b>£30,001 but less than £213,477 inclusive of VAT from 1 January 2022.</b>	<b>Invitation to tender (See paragraph 12.4 of CSO)</b>	<b>Council's website Contracts Finder Source Derbyshire</b>
<b>Supplies and Services (High)</b>	<b>£213,477 and above inclusive of VAT from 1 January 2022).</b>	<b>The UK Threshold Level Procurement Procedure must be followed: See Paragraph 12.5 of the CSO</b>	<b>Council's website Contracts Finder Source Derbyshire Find a Tender service</b>

Contract Type (Risk)	Total Value	Procurement Process	Advertising requirements
Works (High)	£5,336,937 inclusive of VAT from 1 January 2022.	The UK Threshold Level Procurement Procedure must be followed: See paragraph 12.5 of CSO	Council's website Contracts Finder Source Derbyshire Find a Tender service
Social and other specific services (High)**	£663,540 Inclusive of VAT from 1 January 2022.	The UK Threshold Level Procurement Procedure must be followed: See Paragraph 12.5 of CSO	Council's website Contracts Finder Source Derbyshire Find a Tender service

Prior advice on any medium value procurement **must** be obtained from the Business Support Manager or Legal Services, as appropriate.

\*\* The limit for the Light Touch Procurement Regime where the list of applicable services are contained in Schedule 3 of the CPR 2015

Risk	Example
Low Risk - Goods	Purchase of tools, office Equipment
Low Risk – Services and Works	Consultant Services
Medium Risk - Goods	Larger Purchases – Vehicles, Machinery – any procurement over £30,000 but < £213,477 inclusive of VAT from 1 January 2022.
Medium Risk – Services and Works	Building Repair works – Any procurement over £30,000 but < £213,477 inclusive of VAT from 1 January 2022.
High Risk	Any procurement over £213,477 inclusive of VAT from 1 January 2022.

Please note the above 'risks' are for guidance only – if you are unsure please refer your query to either the Business Support Manager or Legal Services

### 12.3 The Low Value Procurement Procedure

- Refer to the Council's Financial Regulations.

**12.3.1 If the contract is uncomplicated and is of low business risk to the Council, three written competitive quotations must be obtained.**

12.3.2 A quotation is a written priced offer to undertake a supply or service received in response to an invitation from a Contracting Officer. Quotations are processed routinely, as opposed to the sealed bids defined by the tender route.

- 12.3.3 Insofar as an officer uses the Council's Official Order, by raising a Purchase Order, for the purchase of low value Goods or Services, on the Council's standard terms and conditions, through the Agresso system, so as to award the Order to the best quote, Legal Services does not have to be consulted.
- 12.3.4 Insofar as Goods and Services are not purchased on the Council's standard terms and conditions the standard terms and conditions of the supplier or any bespoke terms and conditions agreed between the parties, Legal Services must be consulted before entering into the Order.
- 12.3.5 The Order is a legally binding contract and must be stored on Agresso, registered on the Contract Register in accordance with CSO 25 and monitored in accordance with CSO 27.
- 12.3.6 If the contract is of a complex nature or carries a business risk, officers must consider the risk to the Council and document this in writing.** In order to assess business risk the Contracting Officer should give consideration to the purpose of the contract and any political sensitivity. For example; a minor works or maintenance contract may be low value but can carry a high business risk. If the works are not carried out correctly the Council's facility may need to be closed to the public whilst this is corrected or if the works are carried out dangerously, the Council could be liable for any personal injury sustained by a member of the public. Each outcome puts the Council at a high financial risk and carries a risk of bringing the Council into disrepute. Carrying out a tender process ensures that contractors are adequately evaluated to demonstrate performance, have suitable insurance and provides best value. Contracting Officers should obtain further advice if they are unsure how to assess risk for a project.
- 12.3.7 If the contract is of a complex nature or the risk is assessed as high,** then the **Medium Value Procurement Procedure must be followed**; formal contract documents must be put in place to safeguard the Council against those risks. Further advice should be obtained from the Business Services Manager, who will advise on the appropriate procedure to follow.

## 12.4 The Medium Value Procurement Procedure

- **Refer to the Council's Financial Regulations.**

- 12.4.1 Prior advice on any medium value procurement **must** be obtained from the Monitoring Officer, or Business Services Manager, as appropriate. Insofar as the relevant contract for the procurement is the Council's standard terms and conditions, Legal Services does not have to be consulted with respect to the terms of the contract. Insofar as the procurement does not incorporate Council's standard terms and conditions including the standard terms and conditions of the successful bidder or any bespoke terms and conditions agreed between the parties, Legal Services must be consulted before entering into the procurement.

12.4.2 Subject to adequate provision having been made in the approved estimates, the relevant Director of Service has authority to:-

12.4.2.1 invite tenders for the execution of works, including Schedules of Rates and Prices or the supply of goods, materials or services to the Council;

12.4.2.2 invite offers for the execution of works, the supply of goods, materials and services by the Council; and

12.4.2.3 enter into contracts or place orders on the Council's behalf accordingly provided that this authority shall not extend to any tender, contract or order where the original total estimated value exceeds the UK Threshold;

12.4.3 A tender is a response to a written invitation from a Contracting Officer to price for a supply or service, received by a password secured email by a specific date, opened at an agreed time in accordance with the CSO.

12.4.4 The initiation to tender must be advertised in accordance with the "Medium Procurement Advertising" at CSO 13.

12.4.5 The award of a contract is based on a tender, which is the most economically advantageous tender in accordance with the pre-determined evaluation criteria. This can include assessment on the basis of price/cost as well as other methods equivalent to value for money, which can include social and environmental requirements provided they relate to the contract.

## 12.5 The UK Threshold Value Procurement Procedure

- **The UK Procurement Rules apply therefore the procurement process must comply with both the CSO and with the PCR 2015.**
- **Refer also to the Council's Financial Regulations.**

12.5.1 The Director of Service must have sought prior advice on the UK Procurement Rules, the form of tender, specification and evaluation criteria from the Business Services Manager or the Council's external procurement provider (currently Derbyshire County Council). A brief summary of the types of tender procurement options are noted below.

(a) Contract awards which are estimated to exceed the UK Thresholds in value or amount shall be subject to a suitability assessment. Advice should be obtained from the Business Services Manager or the Council's external procurement provider.

(b) Procurement of the supply of services, goods or materials or the execution of work shall be advertised in accordance with UK Procurement Advertising set out in CSO 13 below and as appropriate for the individual procurement, a trade journal or local press may be

required to allow the services market to be opened up to competition. Procurement advice must be obtained from the Business Services Manager or the Council's external procurement provider before sending any UK contract notices to the Find a Tender Service.

## 12.6 Tender Procurement Options

There are five tender procurement options which the Council may use. In summary they are:-

<b>Open</b>	<p>All suppliers who request tender documentation will be invited to submit a tender by a set date. Following evaluation the contract will be awarded to the successful bidder.</p> <p>The open tender procedure is normally only used where the known marketplace is limited, and the Council needs to seek out extra interest, or where the timescale does not allow the two stage restricted tender procedure to be followed</p>
<b>Restricted</b>	<p>This is a two stage process. The first stage involves a suitability assessment where a short list of a minimum of 5 suppliers is identified. In the second stage suppliers are invited to respond to an Invitation to Tender (ITT). The contracts are awarded to the successful supplier following analysis of the ITT.</p>
<b>Competitive Dialogue</b>	<p>This is used for more complex procurements. The first stage involves a pre-qualification assessment, where a shortlist of a minimum of 3 suppliers is identified. The following stages, which allow for the reduction in the number of bidders involved in the process, include a successive series of dialogue sessions and submissions (outline solution, detailed solution, revised solution (optional) and final tender). After final tenders have been submitted limited post tender negotiations with the preferred bidder are permitted (as set out in PCR 2015 30(20) and an award is subsequently made.</p>
<b>Competitive Procedure with negotiation</b>	<p>This is multi-stage process. The first stage involves a prequalification assessment, where a shortlist of a minimum of 3 suppliers is identified. In the second stage suppliers are invited to respond to an Invitation to Tender (ITT). The Council may then award based on initial tenders or open negotiations with suppliers to seek improved offers, prior to a further invitation to submit revised and/or final tenders. After the final ITT has been issued no further negotiation is allowed, except discussion to clarify or fine tune the tender. An award is subsequently made.</p>
<b>Negotiated Position without prior publication</b>	<p>In certain narrowly defined permitted circumstances the contracting authority may also award a contract using the 'negotiated procedure without prior publication'. The Council approaches one or more suppliers seeking to negotiate the terms of the contract.</p>
<b>Innovation Partnership</b>	<p>This provides for a selection to be made of those who respond the advertisement. The Council uses a negotiated approach to invite suppliers to submit ideas to develop innovative products, services or</p>

	works aimed at meeting a need for which there is no suitable existing products on the market.
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### **13. ADVERTISING**

- 13.1 The contract opportunity should be advertised in accordance with the relevant Tables at CSOs 8, 9 and 12 and be based on the individual circumstances of the procurement and in accordance with the Procurement Strategy. The methods chosen must allow the market to be opened up to competition and the impartiality of the procurement to be reviewed. Advice should be obtained from the Business Support Manager
- 13.2 The advertisement will include details of contracts to be awarded and the award method.
- 13.3 Officers should obtain guidance on the advertisement requirements for any particular procurement from the Business Support Manager via Council's external procurement provider

### **14. EVALUATION CRITERIA**

- 14.1 All evaluation criteria must have been determined in advance of requesting quotes or entering into the tender process. Evaluation criteria must be put into order of importance on the evaluation sheet.
- 14.2 All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.
- 14.3 Weighting between price and non-price elements of the tender will be strongly influenced by the contract type goods or services. All contracts need to use a cost effectiveness approach to weight the importance of the non-price elements against cost to achieve the most economically advantageous balance between quality and price. Non-price elements of the evaluation criteria can include life cycle costing, equalities, business continuity, environmental and sustainability considerations.
- 14.4 The evaluation criteria must be published in the tender pack and the documentation should clearly explain to bidders the basis of how the decision will be made. It should be made clear how the evaluation criteria specified will be applied, the weightings to be attached to each criteria, how the criteria are divided into any sub-criteria and the weightings attached to each of those sub criteria.

### **15. OBTAINING QUOTES**

- 15.1 All contractors invited to quote must be given an adequate period in which to prepare and submit a proper quotation, consistent with the complexity of the contract requirement (typically at least one week should be allowed for submission of a quote).
- 15.2 All contractors invited to quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

15.3 All invitations to quote shall include:

- (a) the specification detailing the Council's requirements to enable the submission of competitive offers;
- (b) the Council's terms and conditions;
- (c) the closing date and time for the receipt of quotation and confirmation that no quotations received after that date and time will be considered

15.4 Legal Services must be consulted if the contractor refuses to accept the Council's Standard Terms and Conditions.

## **16. INVITATION TO TENDER**

16.1 All contractors invited to tender must be given an adequate period in which to prepare and submit a proper tender, consistent with the complexity of the contract requirement (typically at least four weeks should be allowed for submission of tenders). Where the Public Contract Regulations 2015 apply the Regulations lay down specific minimum time periods for tenders; advice on this can be sought from the Business Support Manager.

16.2 All contractors invited to tender must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

16.3 All invitations to tender shall include:

- (a) the specification detailing the Council's requirements to enable the submission of competitive offers;
- (b) the Council's terms and conditions of contract that will apply which;
- (c) a requirement for candidates to complete fully and sign or show acceptance of all tender documents;
- (d) a requirement for tenderers to declare that the content, price or any other figure or particulars concerning the tender have not been disclosed by the candidate to any other party;
- (e) a requirement that the tender shall be sent electronically using the Council's approved e-tendering portal;
- (f) a statement that failure to comply with any of the foregoing requirements will render a tender liable to disqualification;
- (g) the closing date and time for the receipt of tenders and confirmation that no tenders received after that date and time will be considered
- (h) a statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; nor shall the Council have to give reasons for the rejection of any tender and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.

16.4 Where the Council encounters a system failure of the e-tendering portal which disadvantages any potential bidder from submitting their bid; the Council has discretion to extend the period of submission for tenders. Where the Council chooses to extend a deadline it is important that all bidders are treated equally and are aware of, and, given the extension. Where a bidder is at fault for failing to comply with a tender

deadline the Council is under no obligation to extend the deadline but will consider each case on its merits and seek advice of the legal services department.

- 16.5 All tenders shall be kept within the secure area of the Council's e-tendering portal until the time appointed for their opening.
- 16.6 The electronic receipt issued within the Council's e-tendering portal will be accepted as proof of an electronic submission.

## **17. CLARIFICATION PROCEDURES**

- 17.1 Clarifying an invitation to tender to potential or actual candidates or seeking clarification of a tender whether in writing or by way of a meeting is permitted, provided that any such clarification does not improve the bidding organisation's submission or provide additional information that may improve their score.
- 17.2 Where the circumstances so warrant a Director of Service following consultation with the Monitoring Officer may postpone, for a reasonable period, the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened.

## **18. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS**

- 18.1 The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the procurement documents provided to tenderers.
- 18.2 Appropriate financial checks should be made for those contractors invited to bid for medium or high value Goods and Services. The Contracting Officer should liaise with the Council's Internal Auditor who will undertake financial and resource appraisals.
- 18.3 For procurements over the UK Threshold, the evaluation team appointed to evaluate tenders received must act under the main principle of independence. The evaluation team should therefore consist of the Contracting Officers, other officers from independent service areas, the Business Support Manager (or a designated procurement officer from Derbyshire County Council) and a Finance Officer. Any officer who has any interest in the proposed contract (including any involvement in any product trials, etc.) must not be a member of the evaluation team and declare an interest as contained in CSO 3.
- 18.4 If an error or discrepancy is identified on examining tender submissions, the tenderer is to be given details of such error or discrepancy and afforded an opportunity of confirming or withdrawing their tender. An exception to this may be authorised only by Section 151 Officer following advice from Legal Services and completion of a record of decision.
- 18.5 In accordance with Regulation 57 of the Public Contract Regulations 2015, any company responding to a UK tender shall be excluded from the tender process if it or its directors have been convicted of conspiracy, corruption, bribery, fraud or money laundering, terrorist offences or offences linked to terrorist activities, Money laundering or terrorist financing, Child labour and other forms of trafficking human beings, Non-

payment of tax and social security contributions and any other offence within the meaning of Regulation 57. Any instances where a service has information relating to these practices must contact the Section 151 Officer.

- 18.6 Before any notification of award is provided to the bidders the final evaluation sheet must be signed off by the relevant Contracting Officer.
- 18.7 The Council must notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as soon as reasonably possible. The notification of the award decision should advise the tenderer that they are successful without formally committing the Council to an implied form of contract. The notification should contain:-
  - the award criteria
  - the score the tender obtained against those award criteria
  - the score of the winning tender achieved
  - the name of the winning tenderer
  - the relative advantages of the winning Tenderers bid
- 18.8 Tenderers should be offered a debrief, whether successful or not, to assist them in preparing future bids. The relevant officer should also retain a record of all debrief requests and responses.
- 18.9 If a standard form of contract is stipulated in the tender documents this should be prepared and issued as part of the tender documentation, but would need to be completed/populated by Legal Services at this stage.
- 18.10 Works must not commence on site nor should services be provided until the formal contract is executed and all terms and conditions have been agreed between the parties concerned.
- 18.11 Where procurement has been subject to the PCR 2015, there must be a standstill period of 10 days before a contract can be awarded. This is to allow an unsuccessful bidding organisation an opportunity to challenge the proposed decision to award. This period should be included in the procurement timetable before the contract can be awarded.

## **19. NOMINATED SUB-CONTRACTORS**

- 19.1 In the CSO any reference to a contract shall, where appropriate, also be taken to include a sub-contract.
- 19.2 The appropriate Director of Service or person nominated by him/her shall, after advertising the procurement, regardless of the value of the sub-contract, be authorised to nominate to the main contractor the person/organisation whose tender or quotation is, in his/her opinion, the most economically advantageous tender.
- 19.3 The terms of the invitation shall require an undertaking by the tenderer that if he/she is selected he/she will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her obligations under the main contract in relation to the work or goods included in the sub-contract.

## **20. RISK REGISTER**

- 20.1 For contracts where risk is evident and for all contracts over the UK Threshold in force from time to time, the Contracting Officer is required to notify the Director of Service for inclusion on the corporate risk register.

## **21. GUARANTEE BONDS**

- 21.1 The Director of Service may as part of a risk assessment decision require the contractor to provide a performance bond. The Section 151 Officer approval must be sought where the bond provision is waived. Such an approval should be in writing and documented on the file.

## **22. CONTRACT DOCUMENTATION**

- 22.1 All contract documentation must be in writing, identify the terms and conditions that apply.

- 22.2 In the first instance, officers should seek to incorporate the Council's standard terms and conditions into the contract the Council is proposing to be a party to. It is recognised that there may be circumstances where incorporating the Council's standard terms and conditions may not be appropriate. This includes, but is not limited to:

22.2.1 Entering into licencing agreements wherein the licensor's standard terms and conditions will almost always apply e.g. licence to use Microsoft Software;

22.2.2 Contracts called off under a Framework Agreement as the Framework Agreement incorporates its own call-off contract terms;

22.2.3 Circumstances where the Council has a weak bargaining position e.g. entering into a contract with a utility provider; and

22.2.4 Circumstances where a bespoke form of contract is being entered into.

- 22.3 Legal Services must be consulted where the Council's standard terms and conditions are not to be incorporated into the proposed contract.

- 22.4 Save for the discrete circumstances noted at CSO 22.2 above, all contracts:

22.4.1 shall expressly prohibit the contractor from transferring, assigning or sub-letting the whole or any part of the contractor's contractual obligations without the prior written permission of the Council.

22.4.2 must specify that payments are to be paid in GBP.

22.4.3 include the Council's standard provisions regarding freedom of information and data protection compliance.

22.4.4 include the following provision "The Supplier/Contractor must comply with the Council's Safeguarding Children and Vulnerable Adults Policy

from time to time in force or, if the Supplier/Contractor has their own policy, this must have been approved as an adequate substitute by the Council”.

- 22.5 Every contract which is for the carrying out of works shall require the contractor to indemnify the Council against any claim which may be made in respect of personal injury to any person unless due to the negligence of the Council and against any claim for damage to property of third parties due the negligence of the contractor to the value approved by the Section 151 Officer. The contractor shall upon demand produce satisfactory evidence that he/she is insured against any such claims.
- 22.6 Wherever possible, Contracts shall require goods and materials used in their execution and all workmanship to be in accordance with a specified British Standard. Only if no British Standard exists should a European or other Equivalent Standard be stated.
- 22.7 Every contract which is for the carrying out of works shall specify the work, materials, matters or things to be furnished, had or done, the price to be paid with a statement of discounts or other reductions and the time or times within which the contract is to be performed.
- 22.8 A contract for the supply of goods or materials shall provide that if a contractor fails to deliver part or all of the goods or materials within the time(s) specified the Council may determine the contract either wholly or in part and purchase other goods or materials of the same or similar description to make good such default, or in the event of the contract being wholly determined to acquire goods or materials remaining to be delivered.
- 22.9 The contract shall also provide that the amount by which the cost of purchasing other goods or materials exceeds the corresponding amount which would have been payable to the contractor shall be recoverable from the contractor.
- 22.10 Where appropriate, and as advised by Legal Services, a contract shall provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. If advised appropriate, the amount of liquidated damages to be specified in each such contract shall be determined by the Director of Service following consultation with the Monitoring Officer
- 22.11 A contract for more than £2,500, to be entered into on a supplier’s terms or negotiated terms must not be signed unless reviewed by Legal Services and until the Monitoring Officer has confirmed acceptance of the contract terms.

### **23. SIGNING THE CONTRACT DOCUMENTATION**

- 23.1 All contracts must be signed by the Council before the contract provisions begin. Refer to CSO 5.3.4.
- 23.2 Where a contract is to be signed underhand, electronic signatures may not be used where statute imposes a requirement for the document to be in writing with an original signature. Advice should be sought from Legal Services where there is uncertainty.

Examples include property transactions, transfer of securities, assignments of copyright etc.

23.3 Where the contract is to be the form of a deed, the contract must be signed under the Council's seal and attested as required by the Constitution.

23.4 A contract must be executed as a Deed where:

- the Council wishes to enforce the contract for more than six years after it ends;
- the Monitoring Officer so directs.

### **Contract Value Signatory/Execution Requirements**

<b>Contract Type (Risk)</b>	<b>Value</b>	<b>Requirement</b>
Goods & Services	Up to £2,500	Authorised budget holder
Goods, Services and Works	£2,501 up to £30,000	Formalised by the issue of an award letter (signed by the relevant Director of Service) and the subsequent issuing of a purchase order and the Council's standard Terms and Conditions (where appropriate).
Goods, Services and Works	Over £30,001	Formal contract documentation executed as a Deed
Sponsorship Agreements	ALL	Formal contract documentation signed by the Monitoring Officer, the Section 151 Officer or Chief Executive, or any Director of Service reporting to the Chief Executive
Concession Contracts	ALL	Formal contract documentation signed by the Monitoring Officer, the Section 151 Officer or Chief Executive or any Director of Service reporting to the Chief Executive

## **24. STORAGE OF CONTRACT DOCUMENTATION**

24.1 Once the contract documentation has been signed and dated, the Contracting Officer must pass the documentation listed below to Legal Services who will then arrange for the documentation to be stored in the Council's strong room, in accordance with the Council's Document Retention Policy.

- Copy of Contract
- Copy of any waiver
- Copy of 3 written quotes with reasons for the decision to accept the successful quote (if applicable)
- Completion Notice
- Any formal tender documents as detailed in CSO 26

## **25. CONTRACT REGISTER**

25.1 Contracts over £5000 are onto be entered onto the Contracts Register

25.2 Following the distribution of the completion memorandum referred to at CSO 24, the Contracting Officer will liaise with the Business Support Manager to arrange for the contract details to be entered onto the Council's Contract Register.

## **26. RECORDS**

26.1 Contracting authorities are required by PCR 2015 to maintain comprehensive records of procurement activities, including:-

- (a) the rationale for the procurement route taken
- (b) the officer(s) undertaking the procurement process and taking the decisions
- (c) a copy of the business case and risk assessment (where appropriate)
- (d) names of bidding organisations, both successful and unsuccessful along with copies of all tenders and suitability assessment questions
- (e) the selection decision and reasons for selection, criteria, weighting and scores
- (f) copy of the award letter and other notification letters
- (g) the contract details including the value, how this is broken down and calculated
- (h) copy of the final contract
- (i) copy of the contract review and management process including the officer responsible for on-going contract management
- (j) reasons for abandoning a procedure.

## **27. CONTRACT SUPERVISION, MONITORING AND REVIEW**

27.1 The Contracting Officer must ensure that the contract is performed as per the specification. For every contractual relationship the relevant Director of Service shall appoint a suitably qualified, experienced and trained officer to be the contract manager. The contract manager shall be responsible for actions such as:

- (a) Regularly reviewing management information and supplier performance (as detailed in the tender and contract documentation).
- (b) Meeting with the supplier at a frequency appropriate to the contract value (but no less than annually) to discuss contract compliance, performance, service development, innovation etc.
- (c) Dealing with instances of off and non-contract spend within the Council.
- (d) Benchmarking the Contract to ensure it continues to provide Best Value for Money.
- (e) Monitoring any ongoing efficiency savings and reporting these to the Director of Service.
- (f) Monitoring that all outputs and outcomes (including social value commitments) are delivered and take appropriate action where a Supplier fails to perform.
- (g) Make recommendations about options for future procurements / extensions to the Contract

27.2 The relevant Director of Service will be accountable for ensuring the contract performance is supervised, monitored and reviewed. Any failure to follow the terms and conditions of the contract must be reported to the Monitoring Officer.

27.3 If the Council appoint any person (not being an officer of the Council) to supervise a contract, then it shall be a condition of such appointment that in relation to such

contract he/she shall comply with the CSO and Financial Regulations as if he/she were a Director of Service of the Council.

## **28. VARYING THE CONTRACT TERMS**

28.1 Any changes to contract terms during the contract period are not permitted without prior approval from Legal Services. A copy of the original contract must be supplied to Legal Services for review. Any variations must comply with the CSO or UK Regulations as applicable. The Decision to vary a contract must be recorded on a Delegated Decision Form signed by the relevant Director of Service unless the decision must be referred to members.

## **29. EXTENDING THE CONTRACT**

29.1 Extensions of the contract beyond the contract period originally awarded or indicated spend are not permitted without prior consultation with Legal Services. A copy of the original contract must be supplied to Legal Services for review. Any extension must comply with the CSO or UK Regulations as applicable. The Decision to extend a contract must be recorded on a Delegated Decision Form signed by the relevant Director of Service unless the decision must be referred to members.

29.2 Following the extension of the contract the Contracting Office must ensure that CSOs 24 and 25 above are completed in relation to the extended contract

## **30. REVIEW AND AMENDMENT OF THE CSO**

30.1 The Monitoring Officer is authorised to make technical amendments from time to time to ensure that these Rules are consistent with legislative requirements, best practice guidance issued from central government and changes in Council policies, procedures and personnel.

30.2 A formal review and update of the CSO Rules will take place at least every two years.

**REGULATION 32 OF PCR 2015**

*32.— Use of the negotiated procedure without prior publication*

(1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.

(2) *General grounds*

The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—

a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Cabinet Office if it so requests;

b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,

(ii) competition is absent for technical reasons,

(iii) the protection of exclusive rights, including intellectual property rights,

but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

(3) For the purposes of paragraph (2)(a)—

a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents;

b) a request to participate shall be considered not to be suitable where the economic operator concerned—

(i) is to be or may be excluded under regulation 57, or

(ii) does not meet the selection criteria.

(4) For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

(5) *Additional grounds relevant to public supply contracts*

The negotiated procedure without prior publication may be used for public supply contracts—

- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but contracts awarded in reliance on this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs;
- (b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (c) for supplies quoted and purchased on a commodity market;
- (d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

(6) In the case of paragraph (5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.

(7) *Additional ground relevant to public service contracts that follow a design contest*

The negotiated procedure without prior publication may be used for public service contracts where the contract concerned—

- (a) follows a design contest organised in accordance with this Part, and
- (b) is to be awarded, under the rules provided for in the design contest, to—
  - (i) the winner of the design contest, or
  - (ii) one of the winners of the design contest.

(8) Where paragraph (7)(b)(ii) applies, all winners must be invited to participate in the negotiation.

(9) *Additional ground relevant to new works or services which repeat similar ones*

The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project

for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2).

- (10) The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.
- (11) As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when it applies regulation 5.
- (12) This procedure may be used only during the 3 years following the conclusion of the original contract.

**REGULATIONS 57 PCR 2015”****57.— Exclusion grounds: Mandatory exclusions**

- (1) Contracting authorities shall exclude an economic operator from participation in a procurement procedure where they have established, by verifying in accordance with regulations 59, 60 and 61, or are otherwise aware, that that economic operator has been convicted of any of the following offences:—
- (a) conspiracy within the meaning of section 1 or 1A of the Criminal Law Act 19771 or article 9 or 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 19832 where that conspiracy relates to participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime<sup>3</sup>;
  - (b) corruption within the meaning of section 1(2) of the Public Bodies Corrupt Practices Act 18894 or section 1 of the Prevention of Corruption Act 19064;
  - (c) the common law offence of bribery;
  - (d) bribery within the meaning of sections 1, 2 or 6 of the Bribery Act 2010, or section 113 of the Representation of the People Act 19835;[...]<sup>6</sup>
  - (f) any offence listed—
    - (i) in section 41 of the Counter Terrorism Act 2008; or
    - (ii) in Schedule 2 to that Act where the court has determined that there is a terrorist connection;
  - (g) any offence under sections 44 to 46 of the Serious Crime Act 2007 which relates to an offence covered by subparagraph (f);
  - (h) money laundering within the meaning of sections 340(11) and 415 of the Proceeds of Crime Act 20027;
  - (i) an offence in connection with the proceeds of criminal conduct within the meaning of section 93A, 93B or 93C of the Criminal Justice Act 19888 or article 45, 46 or 47 of the Proceeds of Crime (Northern Ireland) Order 19969;
  - (j) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004<sup>10</sup>;
  - (k) an offence under section 59A of the Sexual Offences Act 2003<sup>11</sup>;
  - (l) an offence under section 71 of the Coroners and Justice Act 2009;[...]<sup>12</sup>
  - (m) an offence in connection with the proceeds of drug trafficking within the meaning of section 49, 50 or 51 of the Drug Trafficking Act 1994<sup>13</sup> ; [...]<sup>14</sup> [(ma) an offence under section 1, 2 or 4 of the Modern Slavery Act 2015; or]<sup>14</sup>
  - (n) any other offence within the meaning of [Article 57(1)(a), (b), (d), (e) or (f)]<sup>15</sup> of the Public Contracts Directive—
    - (i) as defined by the law of any jurisdiction outside England and Wales and Northern Ireland; or
    - (ii) created, after the day on which these Regulations were made, in the law of England and Wales or Northern Ireland.
- (2) The obligation to exclude an economic operator also applies where the person convicted is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator.
- (3) *Mandatory and discretionary exclusions for non-payment of taxes etc*

An economic operator shall be excluded from participation in a procurement procedure where—

- (a) the contracting authority is aware that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions; and
- (b) the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the United Kingdom.

(4) Contracting authorities may exclude an economic operator from participation in a procurement procedure where the contracting authority can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions.

(5) Paragraphs (3) and (4) cease to apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.

(6) *Exceptions to mandatory exclusion*

A contracting authority may disregard any of the prohibitions imposed by paragraphs (1) to (3), on an exceptional basis, for overriding reasons relating to the public interest such as public health or protection of the environment.

(7) A contracting authority may also disregard the prohibition imposed by paragraph (3) where an exclusion would be clearly disproportionate, in particular—

- (a) where only minor amounts of taxes or social security contributions are unpaid; or
- (b) where the economic operator was informed of the exact amount due following its breach of its obligations relating to the payment of taxes or social security contributions at such time that it did not have the possibility of fulfilling its obligations in a manner described in paragraph (5) before expiration of the deadline for requesting participation or, in open procedures, the deadline for submitting its tender.

(8) *Discretionary exclusions*

Contracting authorities may exclude from participation in a procurement procedure any economic operator in any of the following situations:—

- (a) where the contracting authority can demonstrate by any appropriate means a violation of applicable obligations referred to in regulation 56(2);
- (b) where the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business

activities are suspended or it is in any analogous situation arising from a similar procedure under the laws and regulations of any State;

- (c) where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable;
- (d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
- (e) where a conflict of interest within the meaning of regulation 24 cannot be effectively remedied by other, less intrusive, measures;
- (f) where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure, as referred to in regulation 41, cannot be remedied by other, less intrusive, measures;
- (g) where the economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- (h) where the economic operator—
  - (i) has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or
  - (ii) has withheld such information or is not able to submit supporting documents required under regulation 59; or
- (i) where the economic operator has—
  - (i) undertaken to—
    - (aa) unduly influence the decision-making process of the contracting authority, or
    - (bb) obtain confidential information that may confer upon it undue advantages in the procurement procedure; or
  - (ii) negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

(9) *Exclusion during procedure*

Contracting authorities shall exclude an economic operator where they become aware, at any time during a procurement procedure, that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs (1) to (3).

(10) Contracting authorities may exclude an economic operator where they become aware, at any time during a procurement procedure, that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraphs (4) or (8).

(11) *Duration of exclusion*

In the cases referred to in [paragraphs (1) and (2)]<sup>16</sup>, the period during which the economic operator shall (subject to paragraphs (6), (7) and (14)) be excluded is 5 years from the date of the conviction.

(12) In the [situations referred to in paragraph (8)]<sup>17</sup>, the period during which the economic operator may (subject to paragraph (14)) be excluded is 3 years from the date of the relevant event.

(13) *Self-cleaning*

Any economic operator that is in one of the situations referred to in paragraph (1) or (8) may provide evidence to the effect that measures taken by the economic operator are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

(14) If the contracting authority considers such evidence to be sufficient, the economic operator concerned shall not be excluded from the procurement procedure.

(15) For that purpose, the economic operator shall prove that it has—

- (a) paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
- (b) clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities; and
- (c) taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

(16) The measures taken by the economic operator shall be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct.

(17) Where the contracting authority considers such measures to be insufficient, the contracting authority shall give the economic operator a statement of the reasons for that decision.

**REGULATIONS 72 PCR 2015”***72.— Modification of contracts during their term*

- (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—
- (a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses—
- (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
  - (ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;
- (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,
- provided that any increase in price does not exceed 50% of the value of the original contract;
- (c) where all of the following conditions are fulfilled:—
- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
  - (ii) the modification does not alter the overall nature of the contract
  - (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.
- (d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of—
- (i) an unequivocal review clause or option in conformity with sub-paragraph (a), or
  - (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative

selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part;

- (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8); or
  - (f) where paragraph (5) applies.
- (2) Where several successive modifications are made:—
- (a) the limitations imposed by the proviso at the end of paragraph (1)(b) and by paragraph (c)(iii) shall apply to the value of each modification; and
  - (b) such successive modifications shall not be aimed at circumventing this Part.
- (3) Contracting authorities which have modified a contract in either of the cases described in paragraph (1)(b) and (c) shall [submit]<sup>2</sup> a notice to that effect, in accordance with regulation 51, for publication.
- (4) Such a notice shall contain the information set out in part G of Annex 5 to the Public Contracts Directive , but as if—
- (a) paragraph 9 (financing by EU funds) were omitted;
  - (b) in paragraph 11, "in the Official Journal of the European Union" read "on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)"; and
  - (c) in paragraph 12, "*date of dispatch*" were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.
- (5) This paragraph applies where the value of the modification is below both of the following values:—
- (a) the relevant threshold mentioned in regulation 5, and
  - (b) 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts,
- provided that the modification does not alter the overall nature of the contract or framework agreement.
- (6) For the purposes of paragraph (5), where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.
- (7) For the purpose of the calculation of—
- (a) the price mentioned in paragraph (1)(b) and (c), and

(b) the values mentioned in paragraph (5)(b),

the updated figure shall be the reference figure when the contract includes an indexation clause.

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

(a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;

(b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—

(i) allowed for the admission of other candidates than those initially selected,

(ii) allowed for the acceptance of a tender other than that originally accepted, or

(iii) attracted additional participants in the procurement procedure;

(c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;

(d) the modification extends the scope of the contract or framework agreement considerably;

(e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).

(9) A new procurement procedure in accordance with this Part shall be required for modifications of the provisions of a public contract or a framework agreement during its term other than those provided for in this regulation.