

## **PART 7 - CONTRACT RULES**

### **SECTION 1 INTRODUCTION AND PURPOSE**

#### **1.1 Introduction**

- 1.1.1 Contract Procedure Rules are made under section 135 of the Local Government Act 1972. They include provision for competition, and regulate the manner in which procurement and tendering take place within the Council.
- 1.1.2 These Contract Procedure Rules (CPRs) are intended to secure competition, quality and value for money in the award of contracts for the supply of goods, works or services. In addition, these Contract Procedure Rules are designed to ensure that a contract is entered into only in circumstances, which can demonstrate:
- Certainty in the terms of the contract
  - Consistency in the application of the law (including all relevant UK and EU Procurement Regulations) and *Council* policy
  - Probity
  - Protection of Council Officers, Members and the Council in all procurement and contracting situations.
- 1.1.3 To achieve these objectives, these Contract Procedure Rules must be followed by Officers each and every time Medway Council (hereafter referred to as 'The Council') enters into a contract regardless of the value of the contract or the contract type.
- 1.1.4 These Contract Procedure Rules provide a basis for true and fair competition by providing transparent and auditable procedures, which if followed will give confidence that a fully accountable and unimpeachable procurement regime exists within the Council.
- 1.1.5 These Contract Procedure Rules also protect the legal position of the Council in respect of compliance with EU and UK law (general law and in relation to the Procurement Regulations) and in its contractual dealings with external third party suppliers and contractors.

#### **1.2 Application of Contract Procedure Rules and contract letting processes**

- 1.2.1 These Contract Procedure Rules apply to all Officers involved in the issuing of Orders or the letting of Contracts for works, services and supplies (goods) necessary for the delivery of the Council's functions, whether funded from Revenue, Capital or external Grant sources.
- 1.2.2 A contract is a legally binding agreement under which the Council receives the benefit of, or incurs liability for, a commodity from a third party. This could include:

- Payment of money
- Performance of services
- Execution of works/construction
- Supply of goods, supplies or materials
- Income generation arrangements

1.2.3 All contracts entered into by the Council are subject to these Contract Procedure Rules, the provisions contained within the Council's Financial Procedure Rules and in accordance with guidance from the Strategic Procurement Team and Legal Services Team respectively. Where there is a conflict between these Contract Procedure Rules and the Council's Financial Procedure Rules, the former shall prevail, subject to guidance and clarification from the Council's Monitoring Officer in consultation with the Council's Chief Finance Officer.

1.2.4 The letting of contracts is also subject to the Council's Procurement Gateway Process. Please refer to Section 2 for further guidance.

### **1.3 Review and amendment of Contract Procedure Rules**

1.3.1 These Contract Procedure Rules shall be reviewed on a regular basis, not less than annually, by the Monitoring Officer who shall consult with the Strategic Procurement Board. The Monitoring Officer shall make minor changes to the Contract Procedures in accordance with section 14.3 of Article 14 of the Council's Constitution. Any other amendments will be the subject of approval by Council.

### **1.4 Interpretation of Contract Procedure Rules**

1.4.1 The interpretation of these Contract Procedure Rules is solely a matter for the Council's Monitoring Officer and is not open to interpretation by any other Officer of the Council.

1.4.2 Where an Officer of the Council is unsure of the meaning and implications of these Contract Procedure Rules, guidance **must** be sought from the Council's Strategic Procurement Team, in consultation with and on behalf of the Council's Monitoring Officer and such guidance and direction shall prevail.

1.4.3 Any failure to comply with these Contract Procedure Rules may result in disciplinary action being taken against an officer(s) and may be seen as gross misconduct.

### **1.5 Procurement governance structure**

1.5.1 The governance structure of procurement within the Council is as follows:

- The Cabinet – for decision making in respect of executive functions
- The Council – for all other decision making

- The Strategic Procurement Board - The Strategic Procurement Board acts as a Cabinet Advisory Group to the Monitoring Officer and the Chief Finance Officer, in order to assist them in the procurement and contract decision-making process.

The Strategic Procurement Board consists of:

- The Deputy Leader (Portfolio Holder for Finance, the Council's Procurement Champion and Strategic Procurement Board Chair or such other portfolio holder as the Leader of the Council may substitute at his/her discretion).
  - The Portfolio Holder for Adult Services (or such other portfolio holder as the Leader of the Council may substitute at his/her discretion) (Note: the Cabinet appoints Cabinet Members to the Strategic Procurement Board)
  - The Monitoring Officer (Assistant Director, Housing and Corporate Services with over-arching responsibility for Strategic Procurement and Legal Services).
  - The Chief Finance Officer.
  - The Strategic Procurement Manager.
  - Other key representatives from each of the Council's respective Directorates.
- Strategic Procurement Team – Strategic team led by the Strategic Procurement Manager, responsible for providing strategic support and quality assurance to the Council's Directorates as well as representing and acting on behalf of the Council's Monitoring Officer in all procurement and contract related activities, matters and issues.
  - Directorate Management Team – Led by each respective Director, with operational procurement and contract management responsibility delegated to Assistant Directors and / or Heads of Service in accordance with these Contract Procedure Rules.

## 1.5.2 Primary objectives of Contract Procedure Rules

1.5.2.1 These Contract Procedure Rules set out the regulations that must be followed by officers on each and every occasion that supplies (goods), services and works are procured on behalf of the Council.

1.5.2.2 These rules have 5 primary objectives:

- (1) To ensure that the Council obtains Value for Money and fulfils its duty of achieving *Best Value* as defined in Section 3 of the Local Government Act 1999. It is of primary importance that Officers, on behalf of the Council, engage in procurement activity with the intention

of delivering Best Value services to the citizens of Medway, both at the point of contracting and through effective contract management, throughout the contract term.

- (2) To ensure that the Council complies with English law and European law in force in England that governs the procurement of supplies (goods), services and works.
- (3) To establish procurement procedures which, when followed, should protect Members and Officers of the Council from any allegation of acting unfairly or unlawfully which may be made in connection with any procurement by the Council relating to supplies (goods), services, or works.
- (4) To ensure that any risks associated with commencing procurement processes and subsequently entering into contracts are assessed as part of the procurement process and the Council’s Procurement Gateway Process.
- (5) To ensure that fairness and transparency remains at the forefront of all procurement activity undertaken by Officers and approved by Members on behalf of the Council.

Procurement decisions made by Officers and Members must be fair and transparent and Officers must maintain clear auditable records throughout a procurement process to demonstrate the fairness and transparency of the process.

All potential suppliers must be treated equally and Officers must be clear and consistent about the process being undertaken at every step of the procurement and contracting process.

1.5.2.3 Officers must follow the Council’s **10 Strategic Procurement Objectives** as listed below.

<p><b><u>Strategic Procurement Objective 1</u></b></p>	<p>Only procure what is necessary to support the achievement of the Council’s Strategic Priorities and Core Values. These are:</p> <p><b>Core Values</b></p> <ul style="list-style-type: none"> <li>• Putting our customers at the centre of everything we do.</li> <li>• Giving value for money.</li> </ul> <p><b>Strategic Priorities</b></p> <ul style="list-style-type: none"> <li>• A clean and green environment.</li> <li>• Safer communities.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Children and young people having the best start in life.</li> <li>• Older and vulnerable people maintaining their independence.</li> <li>• People travelling easily and safely in Medway.</li> <li>• Everyone benefiting from the area's regeneration.</li> </ul>
<b><u>Strategic Procurement Objective 2</u></b>	Procure what is most cost effective for the Council as a whole as opposed to what solely benefits a single team or department.
<b><u>Strategic Procurement Objective 3</u></b>	Purchase supplies (goods), works and services that provide the best combination of value for money and quality outcomes and that meets UK/EU Health and Safety, Environmental/Sustainability (carbon footprint/reduction initiatives), Equalities and Quality Assurance standards.
<b><u>Strategic Procurement Objective 4</u></b>	Ensure that decisions on procurement are based upon good governance, sound project management, comprehensive and robust supporting data/evidence, analysis of options and assessment of risks.
<b><u>Strategic Procurement Objective 5</u></b>	Treat suppliers/contractors fairly and transparently and improve opportunities to do business with the Council for all suppliers/contractors but especially local Small, Micro and Medium Enterprises (SMME), local Voluntary and Community Sector (VCS) organisations and (Black Minority Ethnic (BME) groups in accordance with the parameters prescribed within UK/EU law.
<b><u>Strategic Procurement Objective 6</u></b>	Take a planned, proactive and coordinated approach to strategic and operational procurement and effectively communicate this approach to all relevant stakeholders, both internal and external to the Council.
<b><u>Strategic Procurement Objective 7</u></b>	Comply with both UK and EU procurement legislation and best practice as prescribed within these Contract Procedure Rules, within guidance provided by the Council's Strategic Procurement Team and Legal Services Team on behalf of the Council's Monitoring Officer and as advised by the Strategic Procurement Board and the Cabinet/Council.
<b><u>Strategic Procurement Objective 8</u></b>	<p>Minimise costs of buying activities where this is consistent with the achievement of best value for money and in the best interests of the Council as a whole through initiatives such as:</p> <ul style="list-style-type: none"> <li>• Aggregated termed contracts.</li> <li>• The creation of bespoke Framework Agreements</li> <li>• The use of OJEU compliant Framework Agreements from Local Authority Purchasing Bodies such as but not limited</li> </ul>

	<p>to:</p> <ul style="list-style-type: none"> <li>– Buying Solutions (Part of the Cabinet Office's Efficiency and Reform Group - formerly OGC Buying Solutions)</li> <li>– Eastern Shires Purchasing Organisation (ESPO).</li> <li>– Yorkshire Purchasing Organisation (YPO).</li> <li>– Kent Procurement Strategy Group (Formerly the Kent Buying Consortium).</li> <li>– Regional, Improvement and Efficiency Partnerships (RIEP) and Improvement and Efficiency South-East (IESE).</li> </ul>
<b><u>Strategic Procurement Objective 9</u></b>	<p>Provide information on what the Council spends, who spends it, when it is spent and with whom it is spent.</p> <p>Furthermore, to ensure that this information it is routinely available as and when requested by Corporate Finance on behalf of the Council's Chief Finance Officer and / or the Council's Strategic Procurement Team on behalf of the Council's Monitoring Officer.</p>
<b><u>Strategic Procurement Objective 10</u></b>	<p>Work in partnership both internally to the Council and externally with other Councils and the Private Sector to achieve optimum results, quality outcomes and sustainable delivery of the Council's services.</p>

## 1.6 General principles

### 1.6.1 Before any contract is made, there must be:

- (a) The proper authority of the Council in accordance with the processes set out in the Constitution, the Procurement Gateway Process (as specified in **Section 2** of these Contract Procedure Rules) and / or Directorate scheme of delegation, as specified and approved by the appropriate Director of each respective Directorate.
- (b) Adequate budgetary provision for the procurement requirement within existing budgets. All such expenditure must be committed in accordance with procedures set out and prescribed by the Chief Finance Officer.

Where ambiguity exists in respects to the availability of budgets, the decision of the Chief Finance Officer must first be obtained and that decision shall prevail in all instances and the procurement direction will be dictated accordingly.

- (c) Compliance with the Council's Procurement Gateway Process for Category A and Category B Procurements as prescribed by these Contract Procedure Rules and by the Council's Strategic Procurement Team in consultation with and on behalf of the Council's Monitoring Officer (as specified in **Section 2** of these Contract Procedure Rules).

- (d) Compliance with the procedure for taking key decisions as provided in the Constitution.

## 1.7 Scope of these Contract Procedure Rules

- 1.7.1 These Contract Procedure Rules apply to all procurement and contracting activity undertaken by the Council unless any such procurement is expressly prescribed under these Rules, or subject to an *Exemption* (as specified in **Section 1.8**)
- 1.7.2 These Contract Procedure Rules apply to all procurement and contracting activity including:
  - (a) **Spot/Defined Contracts** that are for a defined requirement for a firm price, normally a single purchase of works, supplies (goods) or services;
  - (c) **Framework Agreements** approved by the Council's Strategic Procurement Team in consultation with and/or on behalf of the Council's Monitoring Officer, Strategic Procurement Board or Cabinet (as specified in **Section 3.2**).
  - (d) **Works Contracts** where contracts are let by public authorities for civil engineering and building works and works concession contracts;
  - (e) **Services contracts** where contracts are for the provision of a service (including maintenance contracts) and have revenue-funding implications upon the Council.
  - (f) Any **Consultants** used by the Council shall be appointed in accordance with **Section 3.3** of these Contract Procedure Rules and any HR policy on the use of consultants
  - (g) **Partnering Contracts**, which may be developed for specific activities, will also be subject to these Contract Procedure Rules
  - (h) **Income Generating Contracts**, where the Council is exploiting its physical and/or intellectual assets, or is involved in the provision of services through a joint venture with other public/private sector organisations;
  - (i) **Contracts funded by grants**, where the Council is named as a party to the contract with the contractor, be it as lead authority or partner authority, subject to the grant funding conditions of the issuing body.
- 1.7.3 This specifically applies to situations in which the Council identifies a requirement as part of its service delivery and obtains funding which will be used to procure said requirements.

Where ambiguity exists as to whether or not a grants funded project should be subjected to a procurement process in accordance with these Contract Procedure Rules, the decision Monitoring Officer and/or Chief Finance Officer shall be sought and that decision shall be final and binding.

- 1.7.4 All contracts must be managed in accordance with the Financial Regulations as prescribed by UK/EU law and in accordance with the Council's *Financial Procedure Rules* and guidance from the Chief Finance Officer.

## **1.8 Exemptions and exceptions to these Contract Procedure Rules**

### **1.8.1 Exemptions to these Contract Procedure Rules**

- 1.8.1.1 In accordance with Sections 1.8.1.2 to 1.8.1.3, individual provisions within these Contract Procedure Rules may be exempted in exceptional circumstances where it is considered to be in the best interests of the Council to do so, provided that the exemption does not breach any EU or UK Directive, Statute or Regulation.
- 1.8.1.2 Any Officer acting on behalf of an appropriate Director to request an exemption to a procurement process in line with these Contract Procedure Rules, must complete an Exemption To Contract Rules Form. This form must be approved and signed by the appropriate Director before submission to the Strategic Procurement Team for the Monitoring Officer to consider.
- 1.8.1.3 The Council's Monitoring Officer will review the exemption request and will make a decision in consultation with the Strategic Procurement Board as to whether to accept or reject the exemption set out in the Exemption To Contract Rules Request Form. This decision by the Monitoring Officer will be minuted and communicated for informational purposes to the appropriate Director as part of the *Strategic Procurement Board Process*.
- 1.8.1.4 All approved Exemptions To Contract Rules will be submitted to the Full Council for information purposes.
- 1.8.1.5 Circumstances where time is lost through inadequate forward planning or a lack of internal resources existing to manage procurement processes will not automatically constitute the basis for an exemption under these Contract Procedure Rules.
- 1.8.1.6 The Monitoring Officer will have ultimate discretion to consider resources and time constraints in the overall context of risk of non delivery when deciding upon whether to accept or reject an Exemption To Contract Rules request.
- 1.8.1.7 In the event that a valid reason for urgency exists, the Monitoring Officer will have ultimate discretion to consider an exemption outside of this formal decision-making mechanism. Any such occurrence shall be reported retrospectively to the Strategic Procurement Board by the appropriate Officer as per Sections 1.8.1.1 – 1.8.1.7 of these Contract Procedure Rules.

## 1.8.2 Exceptions to these Contract Procedure Rules

1.8.2.1 Negotiations leading to the award of a contract can be entered into with one or more potential contractors without advertisement in the following exceptional circumstances subject to approval by the Council's Monitoring Officer via the Strategic Procurement Board in accordance with Section 1.8.1:

- Where for technical or artistic reasons or reasons connected with the protection of exclusive rights the contract can only be awarded to one economic entity.
- In a case of extreme urgency brought about by unforeseen circumstances, which are not attributable to the Council, when there is insufficient time to secure quotations or tenders.
- Procurements of Supplies (Goods), Services, or Works where the procurement procedure to be followed by the Council is the subject of express legislation.
- Supplies (Goods), Works or Services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) but any such expenditure in excess of **£15,000** must reported to the Strategic Procurement Team within 1 week of the date of the contract award using the *Exemption Request Form*. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- Contracts for the acquisition and disposal of land or property that are covered within the remit of the Assistant Director, Housing and Corporate Services and within the Financial Limits as prescribed within part 5 of chapter 3 of the Constitution.
- Contracts for employment for staff, except where an agency is used to supply the staff.
- Works orders with utility infrastructure providers, e.g. Gas Mains.
- Where supplies are acquired from a closing down sale in circumstances permitted by the Regulations.
- Where the contract is for replacement goods or installations and contracting with an alternative supplier to the supplier of the initial goods or installation would either result in incompatibility with existing goods or installations or lead to disproportionate technical difficulties in the operation and maintenance of existing goods or installations.
- Where the provision of services is reserved to the winner of a design contest as specified in the Regulations.

- Where the Council has entered into a contract and additional works or services not exceeding 20% of the value of the original contract are needed through unforeseen circumstances and can not be separated from the original works or services without major inconvenience to the Council or are necessary for the later stages of performance of the contracts.
  - The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Procedure Rules.
  - Contract extensions permitted by the Regulations.
  - In any other circumstances permitted by the Regulations.
- 1.8.2.2 The Director of Children and Adults shall have authority to award without competition a contract where a placement is sought for an individual with a registered care provider of their choice under the National Health Service and Community Care Act 1990. The Director of Children and Adults will through the appropriate scheme of delegation, keep a record of the reasons for the choice of provider, which will be maintained on the individual's case notes. In addition, a record of the annual cumulative expenditure with each provider will be maintained by the Director of Children and Adults and made available for audit purposes upon request.
- 1.8.2.3 A Director shall have authority to award without competition a contract where the particular needs of an individual (either an adult or a child) require a particular social care package, or where an individual has special educational needs which are only available from a particular provider in the opinion as appropriate of the Director of Children and Adults
- 1.8.2.4 In relation to **Sections 1.8.2.2** and **1.8.2.3**, The Director of Children and Adults will through the appropriate scheme of delegation, keep a record of the reasons for the choice of provider, which will be maintained on the individual's case notes. In addition, a record of the annual cumulative expenditure with each provider will be maintained by the Director of Children and Adults and made available for audit purposes upon request.
- 1.8.2.5 The Monitoring Officer may engage a barrister or solicitor without competition. The appointment will be made on the basis of which barrister or solicitor is in the opinion of the Council's Monitoring Officer, best able to provide the necessary expertise and value for money. The Council's Monitoring Officer will maintain a departmental record of the amounts of expenditure with external barristers and will ensure that this information is made available for audit purposes upon request.
- 1.8.2.6 The Monitoring Officer may procure without competition, emergency accommodation for the homeless for individual service users that are not covered by a Council Framework Agreement or Contract.
- 1.9 **Delegated authority and officer responsibilities**

- 1.9.1 Any procurement carried out on behalf of the Council may only be undertaken by Officers with the appropriate delegated authority to carry out such tasks. This delegation must be included in the current scheme of delegation as prescribed within the Council's *Constitution* or as advised by the appropriate Director.
- 1.9.2 Each Director is responsible for all procurement activity within their respective Directorate and has the overall responsibility for ensuring Directorate compliance with these Contract Procedure Rules, the Council's Procurement Strategy, Financial Regulations, the Procurement Gateway Process and all UK and European Legislation in force in England.
- 1.9.3 Through the appropriate scheme of delegation, this authority may be passed down to Assistant Directors, Heads of Service and other appropriate Officers within each Directorate and Department. However, ultimate responsibility and accountability will remain with the appropriate Director in respects to Officer conformance with these Contract Procedure Rules unless the Constitution sets out otherwise.
- 1.9.4 Officers must ensure that agents, including consultants, acting on their behalf also comply with these Contract Procedure Rules as prescribed with **Section 3.3** of these Contract Procedure Rules,
- 1.9.5 The Officer responsible for managing any contract or procurement process must comply with the Employee Code of Conduct and Anti-Fraud and Corruption policies, and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- 1.9.6 The Officer responsible for managing any contract or procurement process **must** establish if an existing Contract or Framework Agreement exists before seeking to let another Contract (See **Section 3.2**). This Contract or Framework Agreement **must** be considered accordingly as part of a robust options appraisal in line with the Procurement Gateway Process for Category A and Category B Procurements as prescribed in **Section 2.2** and **Section 2.3** of these Contract Procedure Rules. In appraising Framework Agreements and existing Contracts, the Officer **must** provide tangible and demonstrable evidence within the *Procurement Gateway 1 Report*, whether or not these arrangements provide Value for Money and whether or not the works, supplies (goods) or services therein are "fit for purpose" for the particular requirement.
- 1.9.7 The Officer responsible for managing any contract or procurement process **must** consult with the Council's Strategic Procurement Team prior to commencing any tendering activity where the contract value is anticipated to be greater than the *EU Threshold for supplies (goods), works or services*. See also **Section 2.1.4**
- 1.9.8 The Officer responsible for managing any contract or procurement process **must** ensure that when any employee or contractor arrangement may be affected by any transfer arrangement, such as the Transfer of Undertaking Protection of Employment (TUPE), that advice is obtained from HR and/or

Legal Services before proceeding with inviting tenders. Officers must consult Pensions and Payroll concerning all TUPE and pension issues before the advert for the contract opportunity is placed, as this will affect the financial value of the contract. Where guidance and confirmation as to the applicability of TUPE is not sought from HR and/or Legal Services, the procurement process will not be permitted to commence nor can be subjected to the Procurement Gateway Process in respects to Category A or Category B Procurements, as prescribed within **Section 2** of these Contract Procedure Rules.

- 1.9.9 The Monitoring Officer and the Chief Finance Officer shall both have the delegated authority to enter into contractual arrangements on behalf of the Council for all contracts involving the purchase of utilities (i.e. gas, water and/or electricity supply) on behalf of both the Council and schools. This delegation shall apply to both individual contracts let between the Council and the utility supplier, and where the Council enters into any Framework Agreement or Consortia Agreement for such supplies.
- 1.9.10 Any such award agreed directly by the Council's Monitoring Officer and the Council's Chief Finance Officer or through delegation to the Council's Strategic Procurement Team, will be reported to the Strategic Procurement Board for informational and audit purposes. The Strategic Procurement Board will have the discretion to decide whether or not to report any such award(s) to the Cabinet for informational purposes.

## SECTION 2 THE COUNCIL'S PROCUREMENT GATEWAY PROCESS

### 2.1 Procedure by value of requirement – general principles

- 2.1.1. Obtaining Best Value is an underlying principle of these Contract Procedure Rules. The complexity of the procurement procedures that must be followed will vary depending on the value and risk.
- 2.1.2. The Total Value of the procurement activity is defined as the total (whole life) anticipated contract/purchase value and this will be calculated as follows:
- (a) Where the contract is a capital or one-off purchase or 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 for the same type of items, by aggregating the value of those transactions over the contract period, including any allowable extension periods;
  - (c) Where the total contract value over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;
  - (d) For Framework Agreements with no guaranteed commitment the contract value will be the estimated value of orders placed/commissions let under the Framework Agreement over the full duration of the contract term;
  - (e) Where an in house service provider is involved, by taking into account TUPE workforce matters, redundancy and similar/associated costs as guided by Legal Services, Human Resources, Pensions and Payroll and Strategic Procurement Teams;
  - (f) Where a partnering arrangement is to be put in place, the total value of the likely partnership;
  - (g) For income generation contracts the Total Value will be the estimated revenue stream payable to the Council over the period of the contract. Where the total revenue stream over the full duration of the contract (not just the annual value) is uncertain, by multiplying the monthly payment by 48 or annual payment by 4;
- 2.1.3 The Total Value must be calculated in pounds sterling exclusive of Value Added Tax.
- 2.1.4 Contracts must not be artificially under estimated or divided into two or more separate contracts where the effect is to avoid the application of these Contract Procedure Rules or UK/EU Procurement Legislation by disaggregation as this is a breach of the EU Procurement Regulations and could expose the Council to reputational and financial risk.

- 2.1.5 The Council should make the best use of its purchasing power by aggregating purchases and consolidating its supplier bases wherever practical and as directed by the Strategic Procurement Team in consultation with and on behalf of the Monitoring Officer and/or Chief Finance Officer. The Monitoring Officer and/or Chief Finance Officer may consult with the Strategic Procurement Board before making strategic decisions relating to demand management and spend analysis strategies.
- 2.1.6 Before a decision is taken to let a contract with an external supplier for the provision of supplies (goods), services or works, an assessment must be made by the appropriate Director to use internal resources whenever, bearing in mind value for money (Best Value). The reason for contracting with an external supplier must be clearly documented on file and through the Procurement Gateway Process for Category A and Category B Procurements.
- 2.1.7 For the purposes of these Contract Procedure Rules, the in-house provider also includes any Joint Venture, Private, Public Partnership (PPP) or other such partnership arrangement that the Council is a member of.
- 2.1.8 No person shall unlawfully disclose or make any commercial use of any information of whatever kind or description which has been given to that person in confidence by the Council or by any officer or Member of the Council, or where such confidential information has come to the knowledge of that person whilst engaged in the course of their employment, to any person who is not authorised or entitled to receive or make use of such information. Any person identified as breaching this obligation may be subject to the disciplinary process as set in **Sections 1.4.3** and **4.7.1**.
- 2.1.9 Any Member or Officer who believes there has been a breach of these Contract Procedure Rules should report the matter to the Monitoring Officer or use the Council's Whistleblowing Policy.
- 2.1.10 The Council operates a risk and value based Procurement Gateway Process which is split into two categories:
- Category A Procurements - Relate to procurements where the anticipated value over the entire contract term is below £100,000.00 and the risk is deemed as insignificant.
  - Category B Procurements - Relate to procurements where the anticipated value over the entire contract term is above £100,000.00 and for all procurements that are above the EU procurement threshold for supplies (goods), works or services.

## 2.2 Low value transactions – Category A procurements

- 2.2.1. Defined as Category A Procurements, which are transactions, valued below £100,000.00 for supplies (goods), works or services which cannot be obtained via an existing Contract or a Framework Agreement tendered in compliance with the EU Procurement Regulations.
- 2.2.2 The appropriate Assistant Director and/or Head of Service must sanction the commencement of any procurement activity below £100,000.00 which must thereafter be subjected to the Procurement Gateway Process for Category A Procurements
- 2.2.3 Category A Procurements require Officers to follow the following processes in accordance to value:
- For requirements up to the value of £1,000.00 (defined as Inconsequential Risk), a minimum of one quotation confirmed in writing or by email is sufficient using the Low Value Quotation Form. Officers must keep confirmed Low Value Quotations Forms as returned by suppliers on record for audit purposes and make reference to them on the corresponding Financial Purchase Orders. In emergency situations or for spot purchasing from an existing contract the confirmation can be received within 24 hours of a phone order. However, any such emergency phone order must be followed by a written quotation for audit purposes.
  - For requirements between £1,000.00 and £15,000.00 (defined as Inconsequential Risk), a minimum of one written quotation must be obtained using the *Invitation to Quote* document.
  - For requirements between £15,000.00 and £100,000.00 (defined as Insignificant Risk), a minimum of three written quotations must be obtained using the *Invitation to Quote* document. Officers **must** ensure that they liaise with their Strategic Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan before commencing a Category A Insignificant Risk Procurement Project.
- 2.2.4 As highlighted in **Section 2.2.3**, Written Quotations must be obtained for all requirements up to £100,000.00, before any order is processed and any contract is entered into, using either the Low Value Quotation Form or the *Invitation to Quote* document and this must specify, in sufficient detail to establish quality and cost:
- (a) The supplies (goods), services or works to be supplied;
  - (b) Where and when they are to be supplied;
  - (c) The Total Value of the proposed transaction;

- (d) That the order is made on the basis that the Council's Standard Simple Terms & Conditions of Contract for Supplies (Goods) and Services Under £100,000.00 which applies in all circumstances unless agreed upon in conjunction with the Legal Services Team.
  - (e) That the order is placed on the basis that the appropriate Terms and Conditions of Contract for Works is used. Any Officer placing a Works order on this basis must ensure that the proposed contract form to be used offers the Council the appropriate protection against, reputation and financial risk and has been approved by the Legal Services Team.
- 2.2.5 In the case of Works Contracts, a breakdown of labour cost and material cost must be clearly shown on the Invitation to Quote document.
- 2.2.6 In the case of Consultancy Contracts, the use of tendered and pre-agreed hourly/day rates is acceptable provided that such rates are clearly identified within the Invitation To Quote documentation.
- 2.2.7 Quotations must be priced on a like-for-like basis. Officers must not “distort” the requisite number of quotes to be sought (as prescribed within **Section 2.2.3**) by selecting any firms that are known to be inappropriate, or uncompetitive, or unlikely to respond.
- 2.2.8 Written quotations must be fully evaluated before any order is processed in accordance with the evaluation criteria, which must be clearly specified within the Invitation To Quote documentation sent to companies.
- 2.2.9 Where the Low Value Quotation Form is used for transactions valued below £1,000.00, the basis for evaluation will be cheapest price. Where an Officer wishes to evaluate on the basis of a mixture of quality and price, the Officer must use the *Invitation to Quote* document and issue as a minimum one quotation.
- 2.2.10 Quotations must be subject to a pre-determined deadline in respects to time and date (which must be clearly specified in the appropriate quotation document), must be received in written form, opened simultaneously and signed in the presence of two witnesses once the quotation return deadline has elapsed. Signed and witnessed quotation documentation must be kept by the procuring department for audit purposes.

### **2.3 Transactions above £100,000.00 – Category B procurements**

- 2.3.1. Category B Procurements are subjected to a risk categorisation process based upon Low, Medium and High Risk ratings. Category B Procurements are also subject to management by the Council's Strategic Procurement Team, the Strategic Procurement Board and the Cabinet in accordance with the associated risk categorisation.
- 2.3.2. For requirements above £100,000.00 the Procurement Gateway Process for Category B Procurements must be followed to ensure that Best Value for Money is obtained taking into account these Contract Procedure Rules,

Financial Rules, EU and UK Legislation and guidance from the Council's Strategic Procurement Team on behalf of the Council's Monitoring Officer.

2.3.3. Category B Procurements require Officers to follow the Procurement Gateway Process for Category B Procurements as directed by the Strategic Procurement Team and in accordance with risk and value.

2.3.4. The decision on the risk of the procurement project will initially be based upon value as specified below:

- Low Risk – For Supplies (Goods), Services and Works requirements between £100,000.00 and £250,000.00 – Approved at all appropriate stages of the Procurement Gateway Process by the Monitoring Officer, in consultation with the Strategic Procurement Team unless otherwise determined by the Monitoring Officer, in consultation with the Strategic Procurement Board.
- Medium Risk – For Supplies (Goods), Services and Works requirements above £250,000.00 – Approved at all appropriate stages of the Procurement Gateway Process by the Monitoring Officer in consultation with the Strategic Procurement Board unless otherwise determined by the Monitoring Officer, in consultation with the Strategic Procurement Board.
- High Risk – Any Supplies (Goods), Services and Works requirements categorised as High Risk by the Monitoring Officer in consultation with the Strategic Procurement Board regardless of value – Recommended by the Monitoring Officer, in consultation with the Strategic Procurement Board to the Cabinet for approval at all appropriate stages of the Procurement Gateway Process.

(Note: In determining the level at which procurement decisions are taken regard will be had to requirements relating to key decisions as set out in Article 12 and the Leader and Cabinet rules in Chapter 4 of the Council's Constitution).

2.3.5. The Procurement Gateway Process for Category B procurements requires Officers to subject procurement projects to a 5 stage process. This 5 stage process is outlined below:

- Gateway 1 – Project commencement/options appraisal – Officers must complete and submit a Gateway 1 Report for review and approval dependant upon the risk parameters outlined in **Section 2.3.4** and in accordance with **Sections 2.3.5, 2.3.6** and **2.3.7**.
- Gateway 2 – Procurement tendering and contract document Creation / advertisement creation and despatch / procurement tendering process completion – Officers must complete all necessary procurement documentation and tendering formalities in accordance with **Section 3** of these Contract Procedure Rules.

- Gateway 3 – Procurement tender process review and contract award - Officers must complete and submit a Gateway 3 Report for review and approval dependant upon the risk parameters outlined in **Section 2.3.4** and in accordance with Sections **2.3.5**, **2.3.6** and **2.3.7**.
- Gateway 4 – Procurement post project completion review - Officers must complete and submit a *Gateway 4 Report* for review and approval dependant upon the risk parameters outlined in **Section 2.3.4** and in accordance with **Sections 2.3.5**, **2.3.6** and **2.3.7**.
- Gateway 5 – Procurement contract management report (prescribed by the Strategic Procurement Board and not automatically mandatory) - Officers must complete and submit a *Gateway 5 Report* for review and approval to the Monitoring Officer, in consultation with the Strategic Procurement Board as and when prescribed.

2.3.6. To commence a Category B Low Risk Procurement Process, Officers must:

- Liaise with the Strategic Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan.
- Complete a *Procurement Gateway 1 Report* and submit to their respective DMT for review.
- Relevant Director (DMT) must then either approve the report as Low Risk and submit to the Strategic Procurement Team for review and approval or upscale the report to Medium Risk and submit to the Strategic Procurement Board for review.
- In the event that the relevant Director (DMT) approves a report as Low Risk, the Strategic Procurement Team will review and either approve the procurement process for commencement at Gateway 1 or reject and return the report to the respective DMT for further discussion and review.
- Once a report has been approved by the Monitoring Officer, in consultation with the Strategic Procurement Team, the Gateway 1 stage will be concluded and this will be reported to the Strategic Procurement Board by a representative of the Strategic Procurement Team.
- The Strategic Procurement Board will review the approval decision of the Strategic Procurement Team and may require the Monitoring Officer to upscale the procurement risk to Medium Risk and call in the procuring Officer to present the Gateway 1 report for a further review at the next Strategic Procurement Board.
- If the Monitoring Officer, in consultation with the Strategic Procurement Board approves the decision of the Strategic Procurement Team as Low Risk, then the procurement process will be permitted to continue to Gateway 2. The Monitoring Officer, in consultation with the Strategic Procurement Board will also set the risk and reporting stages for the

remainder of the procurement process for Gateway 2, Gateway 3, Gateway 4 and Gateway 5 (if so required) as per the parameters prescribed in **Section 2.3.3** of these Contract Procedure Rules.

- Once the initial Gateway 1 and subsequent Gateway stages have been approved by the Strategic Procurement Board, the Authorised Officer must liaise with the Strategic Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan.

2.3.7. To commence a Category B Medium Risk Procurement Process, Officers must:

- Liaise with the Strategic Procurement Board Directorate Representative and place the procurement project on their respective Directorate Forward Procurement Plan.
- Complete a *Procurement Gateway 1 Report* and submit to their respective DMT for review.
- Relevant Director (DMT) must then either approve the report as Medium Risk and submit to the Monitoring Officer, in consultation with the Strategic Procurement Team for review and approval or recommend the report to be upscaled to High Risk and submit to the Strategic Procurement Board for review.
- In the event that the relevant Director (DMT) approves a report as Medium Risk, the Monitoring Officer, in consultation with the Strategic Procurement Team will review and either place the report on the Strategic Procurement Board agenda for a Gateway 1 review and approval or return the report to the respective DMT for further discussion and review.
- Once a report has been reviewed and approved by the Monitoring Officer, in consultation with the Strategic Procurement Team and placed upon the Strategic Procurement Board agenda for a Gateway 1 review, the Authorised Officer will be required to attend the Strategic Procurement Board to present the Gateway 1 Report.
- The Monitoring Officer, in consultation with the Strategic Procurement Board will review the Gateway 1 Report and either approves the Medium Risk rating or upscale the procurement risk to High Risk and instruct the presenting Authorised Officer to submit the Gateway 1 report for a further review by the Cabinet.
- If the Monitoring Officer, in consultation with the Strategic Procurement Board approves the Medium Risk decision, then the procurement process will be permitted to continue to Gateway 2. The Monitoring Officer, in consultation with the Strategic Procurement Board will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, Gateway 3, Gateway 4 and Gateway 5 (if so required) as per

the parameters prescribed in **Section 2.3.3** of these Contract Procedure Rules.

- If the Monitoring Officer, in consultation with the Strategic Procurement Board upscales the risk rating to High Risk, then the Gateway 1 decision making process will be decided upon by the Cabinet. The Cabinet will also set the risk and reporting stages for the remainder of the procurement process for Gateway 2, Gateway 3, Gateway 4 and Gateway 5 (if so required) as per the parameters prescribed in **Section 2.3.3** of these Contract Procedure Rules.
- Once the initial Gateway 1 and subsequent Gateway stages have been approved by the Monitoring Officer, in consultation with the Strategic Procurement Board and/or the Cabinet, the Authorised Officer must liaise with the Strategic Procurement Board Directorate Representative and update the project the procurement project on their respective Directorate Forward Procurement Plan.

2.3.8. Category B High Risk Procurement Process are prescribed by the Monitoring Officer, in consultation with the Strategic Procurement Board with recommendations for the decision-making associated with the initial Gateway 1 stage and subsequent Gateway 2, Gateway 3, Gateway 4 and Gateway 5 stage processes being made to the Cabinet.

2.3.9. Upscaling Category A Procurements to Category B Procurements

2.3.9.1. Where deemed necessary for the achievement of best value, management of internal/external risk and adherence to UK/EU Procurement laws, the Council's Strategic Procurement Team, on behalf of the Council's Monitoring Officer can at any time upscale a Category A Procurement to a Category B Procurement.

2.3.9.2. Any such decision by the Council's Strategic Procurement Team to upgrade a procurement project from Category A to Category B will require Officers to conform to the Council's Procurement Gateway Process for Category B Procurements.

2.3.9.3. Any such decision to upgrade a procurement from a Category A to a Category B by the Council's Strategic Procurement Team on behalf of the Council's Monitoring Officer will be final and must be adhered to by Officers of the Council.

Officers through the Procurement Gateway Process for Category B Procurements will have the opportunity to present a case to the Strategic Procurement Board. This will provide Officers with an opportunity to challenge the decision of the Council's to upgrade a procurement from Category A to Category B.

Any such challenge against the decision of the Council's Strategic Procurement Team by an Officer of the Council will be reviewed and decided upon by the Monitoring Officer in consultation with the Strategic Procurement

Board (except in the case of urgency when the Monitoring Officer will make the decision in consultation with the Chief Finance Officer).

The decision of the Council's Monitoring Officer to either uphold the decision made by the Council's Strategic Procurement Team or support any such Officer challenge will be final and binding.

Any such decision will be project and situation specific and cannot be automatically relied upon or assumed by any Officer to apply across the board for challenging future decisions made by the Council's Strategic Procurement Team.

### **SECTION 3 COMMON TENDERING PRINCIPLES**

#### **3.1 CALL OFF FROM EXISTING CONTRACTS**

- 3.1.1 Where the Council's procurement requirement can be satisfied from an existing Contract then any order will be considered an Exception to these rules as long as the call-off arrangements defined within the individual contract are followed or where the original contract can be varied to meet the requirement. However The Strategic Procurement Team must be consulted before invocation of any such variation.
- 3.1.2 In all instances Supplies (Goods), Services or Works should be obtained via appropriate existing approved arrangements. These include:
- (a) In-house services (for example printing and design, facilities management, etc.)
  - (b) Established corporate contracts
  - (c) An approved list of suppliers maintained by the Council or a formally approved organisation
  - (d) Consortia of which the Council is a member (for example KBC/CBC/OGC)
  - (e) Approved nationally negotiated contracts (for example those arranged by the Office of Government Commerce).
- 3.1.3 Orders and payments for Supplies (Goods), Services or Works shall be undertaken in accordance with the *Financial Procedure Rules*.

## 3.2 Framework agreements (existing arrangements)

3.2.1 A framework agreement in the context of these Contract Procedure Rules is:

- Where the overall terms and conditions and pricing are agreed but the cost of each call-off will vary dependent upon the requirement via a mini-competition

OR

- Where the costs and terms have been expressed whereby the most economic provider is chosen.

Officers cannot automatically make use of a framework agreement; rather any proposed use of a framework agreement must be appraised in accordance with the Council's Procurement Gateway Process at Gateway 1.

Where Officers are proposing to use a framework agreement in relation to a Category A Procurement, guidance must be sought from the Council's Strategic Procurement Team before use.

This is a mandatory requirement to ensure that the framework agreement is applicable to the Council, provides the best value procurement route and to ensure that Officers understand and adhere to the protocols set by the creator (Purchasing Body) of the framework agreement.

Where Officers are proposing to use a framework agreement in relation to Category B Procurements, the framework agreement must be appraised against other available procurement options as prescribed within the Procurement Gateway 1 Report.

3.2.2 The Strategic Procurement Team and Strategic Procurement Board must approve the process for establishing and maintaining a Framework Agreement prior to the creation of the Framework and this must be subjected to an appropriate Category A or Category B procurement process based upon projected value over the duration of the Framework Agreement.

3.2.3 When procuring from (calling-off) a Framework Agreement, Officers must adhere to the protocol set out under the existing Framework Agreement terms and must seek advice from the Strategic Procurement Team and Legal Services if in any doubt.

3.2.4 The requirements to advertise under OJEU for requirements in excess of the EU threshold would have been satisfied by the original OJEU advert for the Framework creation itself and therefore, where the Framework is being used, the Council will not be required to subject the procurement requirement to any further EU competition if the value of the proposed call-off is above the appropriate EU threshold for Supplies (Goods), Services or Works.

3.2.5 The Invitation to Quote procedure set out at **Section 2.2** shall be used in preference to a formal Invitation to Tender where no other formal process is specified within the terms of that Framework.

3.2.6 Where there are no alternative Framework Agreement holders, then a benchmarking exercise should be conducted to establish Value for Money. Officers should contact The Strategic Procurement Team for advice when this applies.

### 3.3 **Engagement of consultants**

3.3.1 Officers may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or if Officers requiring them do not have the resources or capability to meet the needs of the service.

3.3.2 Consideration should be given to using the Buying Solution's framework contracts for business, professional, and ICT consultancy services.

3.3.3 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services, and lodge all such documents and records with the appropriate Officer at the end of the contract.

3.3.4 Officers shall ensure that any consultant working for the Council has appropriate indemnity insurance and shall liaise with the Insurance Team to verify the level required.

3.3.5 Any third party (e.g. a consultant) who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these Contract Procedure Rules as if they (the consultant/third party) were Officers of the Council.

3.3.6 Any consultants used to undertake procurement activity must be instructed to follow the Council's Constitution and these Contract Procedure Rules in the undertaking of all procurement and contracting activity.

### 3.4 **Joint procurement**

3.4.1 The Strategic Procurement Team, on behalf of the Council's Monitoring Officer shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the Council as part of the Procurement Gateway Process for Category A Procurements.

3.4.2 The Monitoring Officer, in consultation with the Strategic Procurement Board shall approve any joint procurement arrangements with other local authorities or public bodies including membership or use of purchasing consortia prior to the commencement of any procurement on behalf of the

Council as part of the Procurement Gateway Process for Category B Procurements.

- 3.4.3 All joint procurement arrangements shall be compliant with the legislation relating to public sector procurement and shall be open to participation by the Council.
- 3.4.4 Where the Council is entering into a contract as an agent for another public body or government department, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned.
- 3.5 Advertising procurement requirements**
- 3.5.1 All requirements over £100,000.00 must be publicly advertised through at least two of the following methods:
- (a) Publication of an OJEU notice for procurement projects above the EU Threshold for supplies (goods), services and works, where appropriate;
  - (b) Publication on the Council's website;
  - (c) Publication in a dedicated contracts publication approved by The Strategic Procurement Team such as Contrax Weekly;
  - (d) Advertisement in the local press;
  - (e) Advertisement in a relevant trade journal;
  - (f) Publication on the "supply2gov" website (a dedicated web resource for advertising contracts below the EU Threshold).
  - (g) Publication on a Voluntary and Community Sector circulation list or website.
- 3.5.2 All requirements above £100,000.00 must be advertised on the Council's website and in the OJEU in conjunction with the Strategic Procurement Team. Officers must liaise with the Strategic Procurement Team to plan these advertisement requirements into their procurement project plans and adverts should not be placed without prior notification to the Strategic Procurement Team.
- 3.5.3 Once a framework agreement is in place for specific goods, works or services then further global advertising is not needed for those requirements. Opportunities need only be advertised amongst those on the framework list.
- 3.5.4 The Monitoring Officer, in consultation with the Strategic Procurement Board, may elect to not subject a procurement process to a formal advertisement as per 3.5.1 of these Contract Procedure Rules provided that the procurement project is below the EU Threshold for supplies (goods), services and works. In such an instance, Officers will be required to obtain 5 written tenders from contractors of a comparable stature and in accordance with guidance from the Strategic Procurement Team.
- 3.5.5 The Monitoring Officer, in consultation with the Strategic Procurement Board, may elect to subject any Category A or Category B procurement project to the full application of the EU Procurement Regulations where the value is

below the EU Threshold for supplies (goods), services and works and where it is felt that in order to maintain the principles of the regulations, greater competitive advertising is deemed necessary.

### **3.6 Pre-qualification process**

- 3.6.1 Non *EU Notices*, no matter how transacted, must specify a time limit of not less than 10 working days, within which interested parties must express their interest in Tendering.
- 3.6.2 The Council's *Pre-Qualification Questionnaire* must be used for all procurements in relation to Supplies (Goods), Services or Works related requirements and must include high and low level evaluation criteria for selection including financial and technical criteria.
- 3.6.3 Evaluation of the Pre-Qualification Questionnaire must be undertaken in conjunction with Corporate Finance; credit checking must be done on all those expressing an interest. Further financial analysis, dependent on the size/risk of the contract, should be undertaken at this stage to fully test the financial ability of the bidder. Full details of the nature of the financial analysis to be undertaken MUST be included in the Pre-Qualification's Questionnaire's evaluation criteria. A supplier's technical and financial ability to undertake the contract requirements is evaluated at this stage. This cannot be re-tested at the Invitation to Tender stage.
- 3.6.4 After the expiry of the advertised time limit, *Invitations to Tender* should be despatched to the shortlist of interested parties who have satisfied the requirements of the Pre-Qualification's Questionnaire's evaluation criteria.

### **3.7 Pre-tender market research and consultation**

- 3.7.1 Officers may review the market for a proposed procurement through discussions with suppliers and other research but may not:
- (a) Base any specification on one Contractor's offering such as to distort competition;
  - (b) Make any indication or commitment to Contractors that their offer may be preferred by the Council;
  - (c) Suggest any procurement route which is not consistent with these Rules;
  - (d) Enter into negotiations about price where a competitive procurement process has yet to take place.

3.7.2 Any pre-market research undertaken, including discussions with Contractors and others must be fully documented on file.

3.7.3 Any market research must then be proceeded by a compliant procurement process where there is a business case to proceed.

### **3.8 Stakeholder engagement**

3.8.1 Stakeholders have an important part to play in procurement. Their involvement is relevant at each and every stage.

3.8.2 At project commencement it is important to consult with stakeholders to ensure stakeholders needs have been appropriately identified and incorporated into the specification because without this, Officers run the risk of delivering services that are not fit for purpose.

3.8.3 Stakeholders should be considered for membership of project boards and project teams as they have an interest in the selection of the preferred supplier. Similarly consideration should be given to stakeholder involvement in contract implementation discussions and on-going contract management.

3.8.4 For Housing procurement contracts the Commonhold and Leasehold Reform Act (CLRA) may apply. Where applicable, officers must undertake the required consultation with leaseholders. Leaseholders can nominate Contractors for inclusion on a tender list for specific, below EU threshold, procurement projects. Officers must liaise with Housing Leaseholder Services to clarify the requirements under the CLRA before commencing with any procurement likely to affect Leaseholders.

3.8.5 For all other procurements Officers shall ensure that where applicable consultation with stakeholders is undertaken within the appropriate period of the procurement process.

### **3.9 Specifications**

3.9.1 The procurement process begins with the identification of a need or requirement. Having identified the requirement, officers, in consultation with stakeholders, develop the specification by defining the requirement in terms of essential features and desirable features.

3.9.2 Once defined specifications should be documented and included in all pre-qualification and tender documentation as this reduces the scope for misinterpretation and confusion when seeking competitive bids from the market place.

3.9.3 Specifications can be input or output based:

- Input specifications are prescriptive and detailed, defining the vast majority, if not all, of what is required to meet a need. Input specifications are beneficial in that they leave little scope for confusion but leave little scope for supplier ingenuity and innovation and excess prescription can

increase costs.

- Output specifications focus upon defining the required outputs with little attention paid on how to achieve these outputs. For example, if you were procuring an air conditioning system via an output specification, you would be specifying the range of temperatures to be provided for the building in question but if the same were to be procured via an input specification, not only would the temperatures be detailed but also the exact nature of the air conditioning units, ducts etc.

### 3.10 Pre-qualification services

- 3.10.1 Pre-Qualification Services i.e. Kent County Council's Select List, Exor and Constructionline, describes the assessment, by a third party organisation of potential suppliers' generic suitability to contract with a Contracting Authority across a range of requirements (effectively an outsourced pre-qualification process although not specific to any one contract requirement). Pre-qualification results in the formal accreditation of those potential suppliers, which successfully complete the process.
- 3.10.2 Pre-qualification services can be commissioned for vetting of potential suppliers where internal resources are unable to undertake such assessments to assist in the expression of interest process subject to approval by the Strategic Procurement Team.
- 3.10.3. Pre-qualification involves suppliers submitting information specified by the Contracting Authority to facilitate its assessment of suppliers' suitability to tender, below EC thresholds, for tenders relating to *Works* capital projects.
- 3.10.4 These select lists are generally only available for services, works and/or supplies where its estimated value is below the relevant EU threshold value requiring compliance with the procurement Regulations.

### 3.11 The invitation to tender

- 3.11.1 The Council's standard *Invitation to Tender* documentation must be used for all tender exercises involving the procurement of Supplies, (Goods), Services and Works in excess of £100,000.00. The Strategic Procurement Team **must** be notified of all tenders issued, in advance of the date of issue.
- 3.11.2 For those procurement exercises involving the procurement of Works and Works related requirements, the appropriate industry standard Invitation to Tender documentation can be used (e.g. JCT, ICE, NEC) as an alternative to the Council's Invitation To Tender document. Any amendments to the industry standard terms must be included in the tender pack and drawn to the attention of all bidders. The Legal Services Team must be consulted on the correct form of contract.
- 3.11.3 The Chief Finance Officer (or such other officer as he shall designate) must be consulted on the financial and commercial aspects of the tender documents, including the evaluation process.

- 3.11.4 Post advertisement as per **Section 3.5** of these Contract Procedure Rules, subject to the requirements of the Public Contracts Regulations 2006 (as amended) (where applicable) at least 3 Contractors must be invited to Tender, unless there is overriding business or legal justification that this is not required and in these circumstances a Waiver must be sought.
- 3.11.5 The specification and evaluation criteria must take into account the Council's priorities regarding Equality, Sustainable Procurement, Health and Safety and Value for Money.
- 3.11.6 The specification for the requirement must be adequate and fair to allow Tenders to be sought and be fit for purpose.
- 3.11.7 There must be an assessment of the quality of both Tenderers and Tenders by pre determined non-discriminatory evaluation criteria and weightings, including whole life cycle cost where appropriate. The pre-determined evaluation criteria and weightings must be included in the appropriate section of the standard Invitation to Tender document
- 3.11.8 The risks associated with the contract must be assessed and documented on file. Appropriate actions should be taken to ensure that the Council's potential and actual exposure to challenge is minimised.
- 3.11.9 A tender file must be maintained to record all matters associated with the tender exercise.
- 3.11.10A timetable setting out the key stages of the procurement should be set out in the appropriate section of the Council's standard Invitation to Tender documentation.
- 3.11.11The Council's standard Invitation to Tender documentation should include a copy of the relevant *Standard Contract*
- For works related contracts the Council's approved standard industry form of contract must be used.
- The Legal Services Team must be instructed on the form of contract and any amendments. It is important for Officers to consider the form of contract to be used to ensure that it is fit for purpose and affords the Council the appropriate level of protection.
- Where Officers considers that it is not fit for purpose they must liaise with the Legal Services Team with regards to any amendments required to make it fit for purpose.
- 3.11.12 The Invitation to Tender must explain how information provided in the Tender will be treated with regard to statutory requirements.
- 3.11.13 For below EU Threshold procurement projects, Tenderers must be given adequate time to respond, consistent with the level of complexity of the

requirement and, except where the industry norm is otherwise, this should be a minimum of 15 working days.

- 3.11.14 The Invitation to Tender must request that the Tender is submitted in a plain envelope or package bearing the *ITT address label* giving only the tender title and opening date. The ITT address label must not identify the name of the Tenderer. Where the Invitation to Tender is sent electronically to Tenderers, an e-version of the return address label must be included with the Invitation to Tender.
- 3.11.15 Tenderers must be required to hold their Tenders open for acceptance for a minimum of 180 calendar days from the date of opening.
- 3.11.16 Invitations to Tender must include a statement that the Council does not bind itself to accept the lowest Tender or any other Tender.
- 3.11.17 Details of expected Tenders **must** be notified to the Council's Post Room at least 5 calendar days prior to the Tender opening date using the *Tender Control Document*

### **3.12 Receipt of tenders**

- 3.12.1 Every reply to an Invitation to Tender must be addressed to Medway Council using the *ITT address label* and must be clearly identified as being a tender to ensure that they are not inadvertently opened.
- 3.12.2 Tenders submitted by e-mail or other electronic means will not be considered unless specifically instructed by the Council in the Invitation to Tender. (This embargo may be changed in due course with the deployment of e-commerce.)
- 3.12.3 Tender packets or envelopes received must be date stamped/recorded on the Tender Control Document and locked away until the specified time for their opening by the Post Room.

### **3.13 Tender opening**

- 3.13.1 The Officer for the procurement or their nominee and at least two other officers must be present during the opening of the Tenders.
- 3.13.2 A time and date for opening the tenders must be set in advance to ensure that all Tenders are opened at the same time. This time and date must be after the closing time and date for receipt of tenders.
- 3.13.3 A record of the Tenders must be logged on the Tender Control Document.
- 3.13.4 The opened Tenders must be date stamped and signed by the two officers at the time of opening on the Tender Control Document Tenders should be opened within 5 working days of the tender closing date. Tenders must be kept securely and strictly confidential before and after opening.

- 3.13.5 Tenderers must be informed that Tenders received after the closing date or tenders not submitted in accordance with these Contract Procedure Rules will be disqualified from consideration.
- 3.13.6 Late Tenders received after all the other Tenders have been opened may only be considered where the Monitoring Officer's permission is given either directly or via delegation to the Chief Finance Officer or the Strategic Procurement Team. Advice **must** be sought from The Strategic Procurement Team and the Legal Services Team accordingly.
- 3.13.7 Tenders which do not meet the requirements of contract Procedure Rule 3.12.6 may only be considered if:
- (a) The failure to comply is the Council's fault.
  - (b) The Tender is late and it is clear without any contact with the Tenderer that the Tender was sent in such a way that in the normal course of events it would have arrived on time.
  - (c) The Authorised Officer and The Strategic Procurement Team is notified in advance.
- 3.13.8 A record of the Tender opening must be signed and retained by the Authorised Officer responsible for the procurement process.
- 3.13.9 An original version of the accepted Tender (in full) must be sent to the Legal Services Team to be sealed or signed, recorded and retained in the council's Deeds Room for a minimum period of six years from the contract end, for signed contracts, and a minimum of twelve years from the contract end date for contracts made under seal.
- 3.13.10 The formal contract which will include the accepted Tender can only be sealed or signed by authorised officers within the Legal Services Team.

The authorised officer must initial every page of a Bill of Quantities or each page of any Schedule to the Form of Tender prepared by the Tenderer. Where any alteration is made on such pages (e.g. the use of correction fluid or over-written) a note must be made and initialled by the Senior Solicitor. A record of all tenders signed or sealed will be made and kept by the Legal Services Team.

- 3.13.11 Where tenders are not returned, Officers should confirm the reason why a tenderer had decided not to submit a tender. All responses should be kept on file.

### **3.14 Errors in tenders**

- 3.14.1 Following receipt of tenders contractors will normally only be given the opportunity to correct arithmetic errors. The Council can require final tenders, once received and opened, to be clarified, provided that this does not involve changes to the basic features of the tender or call for substantial variations

- to the tender which are likely to distort competition or have a discriminatory effect.
- 3.14.2 An Officer, with the prior approval of the Strategic Procurement Team, may permit a Tenderer to correct an error or omission that, in the opinion of the Officer, is an obvious one. Any such corrections will be recorded on the tender file.
- 3.14.3 Where financial error is identified in a Tender for Works contracts the Tenderer is required to stand by or withdraw their Tender. This is applicable for single stage Tenders or quotes where the evaluation criteria is lowest price. If there appears to be any collusion on pricing between bidders then the Officer must notify the Legal Services Team and The Strategic Procurement Team immediately.
- 3.14.4 All tenders returned must be checked for arithmetical accuracy. Where examination of tenders reveals arithmetical errors which would affect the tender figure in an otherwise compliant tender, the Officer for the Procurement will correct the error and obtain the tenderer's written confirmation of the arithmetically correct figure. In the case of other errors, the tenderer will be given details of such errors and an opportunity of confirming or withdrawing (but not amending) its tender.
- 3.14.5 For building contracts, errors are to be corrected in accordance with Alternate 1 or Alternate 2 of the NJCC Code of Single Stage Selective Tendering (save that all firms submitting valid tenders must be offered the opportunity to correct arithmetical errors that may be discovered).
- 3.14.6 The Authorised Officer for the procurement may contact a tenderer or supplier, after close of tenders or quotations and before the contract is awarded, to clarify the tender or quotation but **must** not negotiate any changes to the tender or quotation prices or submission. Where there are multiple bidders, all bidders must be contacted simultaneously to gain clarification; this must be in writing. The Strategic Procurement and Team and the Legal Services Team must be consulted if this requirement is necessary.
- 3.15 Tender evaluation**
- 3.15.1 Tenders must be assessed in accordance with the pre-determined evaluation criteria and weightings as specified within the Pre-Qualification and Invitation To Tender Documents. All criteria and sub criteria, weightings and scoring system to be used in the evaluation process **must** be set out in the tender advertisement notice and Invitation to Tender documentation.
- 3.15.2 A team of Officers, including Finance, must undertake the evaluation process. If the contract involves TUPE then HR must be advised and asked to join the team. If a consultant leads on the team then a Head of Service or Assistant Director must sign off their findings.
- 3.15.3 The results of the Tender evaluation must be retained on the tender file.

3.15.4 At the Pre-Qualification Questionnaire stage, a Financial Reference should be taken up for all contracts with an anticipated Total Value of over £100,000.00, which are not currently on a Framework Agreement, or are sourced under a joint procurement arrangement as set out in **Section 3.4** of these Contract Procedure Rules.

3.15.5 The Chief Finance Officer or his representative must be consulted on the commercial evaluation of all tenders above £100,000.00. A Finance representative should be on the procurement evaluation panel.

### **3.16 Negotiation**

3.16.1 Officers may only carry out negotiations if:

- (a) A Waiver of these rules has been granted;
- (b) The Tender is to be a single or multiple negotiated Tender (and a Waiver of these rules has been granted);
- (c) The Tender is above the EU Thresholds and is in accordance with the EU requirements for a Negotiated Tender or a Competitive Dialogue (and a Waiver of these Rules has been granted);
- (d) They are post tender negotiations in accordance with the rules set out below.

3.16.2 Where a competitive tender exercise cannot be carried out in accordance with the Council's Contract Procedure Rules, a single or multiple negotiated tender exercise may only be sought if a Waiver of Contract Procedure Rules has been granted first. This only applies to a requirement below the OJEU threshold. This Negotiated Procedure must only be used in exceptional circumstances and must be approved in advance by Council's Monitoring Officer prior to use as part of the Gateway 1 Process for Category B Procurements..

3.16.3 Where the procurement is conducted through either the *Open* or *Restricted Procedures* within the EU Regulations, no negotiations are permitted (including post tender negotiations), which may have the effect of distorting competition (for example fundamental changes to aspects of the contract, including prices changes and variations to the Council's requirements).

3.16.4 The Council may seek clarification from a supplier/contractor on their Tender where appropriate.

3.16.5 Where dialogue with Tenderers is permitted under the Negotiated Procedure or Competitive Dialogue procedures within the EU Regulations, negotiations shall be conducted by a team of at least two officers, at least one of whom shall be from the Strategic Procurement Team unless agreed otherwise in advance by the Strategic Procurement Team.

- 3.16.6 Written records must be made and retained of all negotiations.
- 3.16.7 If an officer is in doubt on any negotiations, they should contact The Strategic Procurement Team and the Legal Services Team for guidance.

### **3.17 Award of contracts**

- 3.17.1 A contract may only be awarded by an Authorised Officer with the requisite delegated authority to award contracts in accordance with **Section 2** of these Contract Procedure Rules.
- 3.17.2 All contracts awarded must be reported to and recorded on the Strategic Procurement Team's Corporate Contract Register by the Authorised Officer. Information relating to each contract awarded must be sent to The Strategic Procurement Team within 7 days of award on the Contract Register Notification Form
- 3.17.3 For contracts subject to the full scope of the EU Regulations, officers must notify all Tenderers of the intended award of contract, using the Tender Regret Letter and must allow a minimum standstill of 10 calendar days between its decision to award the contract its entering into a contractually binding agreement where the notification is sent by electronic means. Where the notification is sent by letter post, the minimum standstill period is 15 calendar days. Officers may not make an award of contract, nor make any commitment to award a contract, until this standstill period has expired. The "Standstill" period must not commence until all internal approvals have been finalised in accordance with the Council's Constitution.
- 3.17.4 Officers must inform any economic operator (i.e. supplier, contractor or service provider) that has submitted an offer, has applied to be amongst those selected to tender for or negotiate the contract, or any economic operator who has applied to be party to a framework agreement, of its decision in relation to:
- the award of the contract; or
  - the conclusion of a framework agreement.
- 3.17.5 The Council must do this in writing by the quickest means available, as soon as possible after the award decision has been made, and include details of:
- the award criteria;
  - where practicable, a full breakdown of the scores obtained by the recipient of the notice, and the score obtained by the tenderer to be awarded the contract or to be part of the framework agreement;
  - the reasons for the decision to award to the successful tenderer (including characteristics and relative advantages of the successful tenderer);
  - the name of the winning tenderer to be awarded the contract, or to be part of the framework agreement;

- A precise statement of when the standstill period will end. – (see Section 3.16.3).

The amended procurement Regulations now oblige the Council to refrain from entering a contract if any proceedings are brought in respect of the award decision and the contract has not already been entered into (or framework concluded).

- 3.17.6 The mandatory standstill period does not generally apply to below threshold procurements or to procurements otherwise outside the full scope of the EU Directives
- 3.17.7 It is worth highlighting that for framework agreements, the mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements.
- 3.17.8 Where a contract exceeding the EU Threshold has been awarded a Contract Award Notice must be published in OJEU no later than 48 days after the date of award of the contract by the Authorised Officer for the Procurement by liaising with the Strategic Procurement Team.
- 3.17.9 For all purchases over £100,000.00, a Formal Contract is to be drawn up by the Legal Services Team. The Contract will incorporate the Conditions of Contract included in the Invitation To Tender documentation and any subsequent variations to this made during the Invitation to Tender procurement process.

Two copies of the contract will be sent to the successful tenderer to duly sign. After signing and returning both copies to the Council, they will both be signed on behalf of the Council. One copy will be retained by Legal Services and one copy will be returned to the successful tenderer for its retention. A copy of the signed contract will be forwarded to the Contract Officer.

Contract Officers must not accept a supplier's terms and conditions without consulting Legal Services and asking them to review the terms and conditions. Please refer to **Sections 2.2.4 (d) and (e), Section 3.11.2, Section 4.2, Section, 4.4 and Section 4.5** of these Contract Procedure Rules.

### 3.18 Debriefing

#### Debriefing after PQQ selection process

- 3.18.1 After the Pre-Qualification Questionnaire selection process a letter must be issued to all participants (Candidates) thanking them for their interest and confirming the outcome. The letter should include an offer to debrief. In other cases a debriefing could be of mutual benefit and it would be best practice to make a similar offer. The offer of a debriefing should set out the scope and likely format and should make clear that the process will not be used to

change the selection decision or reopen the award procedure. The Council's standard *Pre-Qualification unsuccessful letter* must be used at all times.

### **Below EU threshold procurements**

- 3.18.2 The mandatory standstill period does not generally apply to below threshold procurements or to procurements otherwise outside the full scope of the EU Directives.
- 3.18.3 Debriefing unsuccessful potential providers is regarded as good procurement practice and should be offered to those who have expressed an interest and those who have submitted a tender.

### **3.19 Procurement by non-council officers**

- 3.19.1 Where the Council uses non-Council officers to act on its behalf in relation to any procurement, then the Officer responsible for the procurement shall ensure that the third parties carry out any procurement in accordance with these Contract Procedure Rules.
- 3.19.2 All non-Council Officers must sign an agreement not to use information gained during employment with the Council, to gain any commercial or pecuniary advantage in relationship to concurrent or future employment/engagement.
- 3.19.3 No non-Council officer shall make any decision on whether to award a contract or whom a contract should be awarded to unless specifically empowered to do so in writing by an officer or body authorised to confer that power.
- 3.19.4 The responsible Officer shall ensure that the non-Council officer's performance is monitored.
- 3.19.5 Non-Council officers includes, but is not limited to:
- Consultants
  - Main contractors
  - Sub-contractors
  - External advisors

### **3.20 Statistical returns**

- 3.20.1 Each year the Strategic Procurement Team shall make a statistical return to central Government for onward transmission to the European Commission concerning the contracts awarded by the Council during the year under the EU Regulations.
- 3.20.2 The Strategic Procurement Team shall make any other statistical returns as prescribed by the Monitoring Officer and all Officers of the Council will be obliged to assist and provide information in accordance to the direction of the Monitoring Officer.

### **3.21 Contract extension**

- 3.21.1 Any contract which provides for (an) extension(s) may be extended in accordance with its terms subject to a Gateway 5 review at the Strategic Procurement Board.
- 3.21.2 The Strategic Procurement Team and the Legal Services Team must be informed of any intention to extend a contract. The Strategic Procurement will update the Contract Register accordingly.
- 3.21.3 Where the terms of the contract do not expressly provide for an extension, a Waiver is required and is subject to any necessary authorisation within the scheme of delegation. These should only be extended in exceptional circumstances and advice must be sought from The Strategic Procurement Team and the Legal Services Team. The Director must be sure that such an extension would not breach UK/EU law in particular with regards to distorting competition. Any variation that is sufficiently material such as to require a renegotiation of the financial model or other core contract provisions relating to the pricing or charging arrangements or the scope of works or services provided may trigger a fresh requirement to put the contract out to competitive OJEU tender process. Any contract variations agreed in breach of an obligation to conduct a fresh OJEU process would be regarded as "illegal direct awards" under the Public Contracts Regulations 2006 (as amended), leaving them (where the value of the contract is in excess of the relevant EU threshold) vulnerable to be challenged and declared ineffective by the courts.

### **3.22 Termination of contract**

- 3.22.1 Early termination of any contract may be carried out by the Authorised Officer in accordance with the terms of that contract. Advice must be sought from the Strategic Procurement Team and the Legal Services Team, in the first instance, prior to termination. Before a contract can be terminated, a Gateway 5 report must be submitted to the Strategic Procurement Board to make an informed decision.

## SECTION 4 CONTRACT AND OTHER FORMALITIES

### 4.1 Contract documents

- 4.1.1. All Contracts must be in writing using the [*Council's Standard Documents*.. The Council's suite of *Standard Documents* should always be used.
- 4.1.2 Where the contract is for a Total Value of up to £100,000.00, the use of a *Purchase Order* is an acceptable form of contract, which must make reference to the Council's Invitation To Quote documentation incorporating the Standard Conditions for Goods and Services (short-form). These short-form conditions of contract must only be used for requirements below £100,000.00. Please refer to **Section 2.2** of these Contract Procedure Rules.
- 4.1.3 Acceptance of any contract over £100,000.00 would be the subject of the Council's Procurement Gateway Process as prescribed within **Section 2** of these Contract Procedure rules.
- 4.1.4 The formal advice of the Strategic Procurement Team must be sought prior to award for the following contracts:
- (a) Where the Total Value exceeds the EU Threshold;
  - (b) Those involving leasing arrangements;
  - (c) Those which are complex or involve a recognisable risk;
  - (d) Where it is an extension or variation to an existing contract that will bring the overall value over the EU Threshold.
  - (e) Where invoice payments are made to finance or factoring companies
- 4.1.5. Contract documents must be retained in accordance with the Corporate Retention Schedule or for a minimum period of six years from the contract end date and, if under seal, for a period of twelve years from the contract end date. Please refer to Section 4.5 of these Contract Procedure Rules.
- 4.1.6 The Authorised Contract Officer will keep records of all decisions taken and how value for money was obtained. The Contract Officer will keep an electronic Procurement Record, retaining all correspondence and documentation for audit purposes.
- 4.1.7 The Public Contracts (Amendment) Regulations 2009 implemented the EU Remedies Directive and came into force on 20 December 2009. The most significant changes introduced by the Amendment Regulations include:
- the introduction of a new penalty of ineffectiveness, which will enable the Courts to strike down contracts that have been awarded in serious breach of the procurement rules

- the introduction of two new penalties – civil financial penalties and contract shortening – which a Court can use as an alternative to ineffectiveness if it considers that there are important public interest reasons why the contract should continue. The Court has discretion on the size of civil financial penalties
- the automatic suspension of a contract award procedure whenever legal proceedings are started in respect of a contract award decision.

### **Contractual ineffectiveness**

- Ineffectiveness will only be prospective, not retrospective meaning that it will only affect unperformed contractual obligations. Obligations that have been performed by a contractor will not therefore need to be undone
- A civil financial penalty will be imposed at the same time as an ineffectiveness declaration

A declaration of ineffectiveness in respect of a framework agreement does not necessarily make specific contracts under that agreement ineffective. A separate declaration must be made in relation to each contract. However, each contract declared ineffective will not be separately subject to a civil financial penalty.

## **4.2 Contract formalities**

4.2.1. Contracts must be completed as follows:

<b>TOTAL VALUE</b>	<b>METHOD OF COMPLETION</b>	<b>BY</b>
Up to £100,000.00  (Refer to Section 2.2.2 of these Contract Procedure Rules)	Signature Use of Purchase Order/Invitation to Quote Document	Officer with appropriate authority to enter into a contract
£100,000.00 or above (Refer to Section 2.3 of these Contract Procedure Rules)	Signature on Standard Contract & sealed by Legal Services ONLY	Strategic Procurement Team, Monitoring Officer in consultation with the Strategic Procurement Board or Cabinet Approval
Over EU Threshold (See 2.3.2)	Signature on Standard Contract & sealed by Legal Services ONLY	Monitoring Officer in consultation with Strategic Procurement, Strategic Procurement Board or Cabinet Approval

4.2.2. All contracts for the Supplies (Goods), Services and Works must be concluded in writing using the appropriate Standard Contract before the contract commences.

### **4.3 Letters of intent**

- 4.3.1 No letters of intent must ever be issued by any Officer of the Council without prior discussion and approval by the Monitoring Officer or Head of Legal Services.
- 4.3.2 In exceptional circumstances and with the prior approval of the Monitoring Officer, a letter of intent may be issued to allow Supplies (Goods), Services and Works of goods to commence in advance of contract execution.
- 4.3.3 The letter must set out the key contract terms - price, duration, etc., and authorises the contractor to carry out work up to a specified value before the formal agreement is signed.
- 4.3.4 In the case of Works contracts, a letter of intent in a form approved by the Monitoring Officer is acceptable in order to allow work to commence, although the issue of a formal contract must follow without delay.
- 4.3.5 Letters of intent are only binding on the Council and the contracting party where the letter expressly states that their Tender has been accepted and the Council agrees to pay them the tender sum. The letter of intent should normally seek to incorporate the terms and conditions of the relevant Council standard contract or relevant industry standard contract (e.g. JCT, ICE, NEC) indicating the Council's intention to enter into a formal, written contract with the contracting party, to carry out the Works/Services and receive Supplies (Goods) described in the letter, such Works/Services and receipt of Supplies (Goods) to commence on a date specified or at any rate before the parties execute the formal, written contract, until then the contracting parties obligations to the Council shall be governed by the Invitation to Tender documentation.
- 4.3.6 The wording of the letter of intent should be reviewed by Legal Services prior to issue, to ensure the letter is fit for its intended purpose.
- 4.3.7 A letter of intent is not a substitute for a formal agreement but can be used as an interim measure until the formal agreement has been signed. The tendering procedure set out in Section 3 of these Contract Procedure Rules shall apply.

### **4.4 Signature**

- 4.4.1 The only person(s) authorised to formally sign a contract is the Monitoring Officer, Head of Legal Services or their representative within the Legal Services Team and they must ensure that the person signing for the other contracting party has authority to bind it.
- 4.4.2 In the case of contracts for commissioning of care services, including educational placements and emergency accommodation for the homeless where the Total Value of the contract is not known, the Solicitor responsible

for signing must have been granted authority to enter into commissioning contracts by the Monitoring Officer.

- 4.4.3 No other Officer of the Council may formally sign a contract, other than those Officers directly instructed by the Head of Legal Services in consultation with and on behalf of the Monitoring Officer.

#### **4.5 Sealing of contracts**

- 4.5.1 A contract must be sealed where:

- (a) The Council wishes to enforce the contract for more than six years after its end (e.g. for land or construction works); or
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- (c) A Performance Bond is established on behalf of the Contractor(s) or their guarantors; or
- (d) It is required by parties to the contract; or
- (e) The total value of the Supplies (Goods), Services and Works exceeds £250,000.00.

- 4.5.2 Where contracts are completed by each side adding their common seal, the affixing must be attested by or on behalf of the Legal Services Team. The Legal Services Team is responsible for the process of sealing contracts on behalf of the Council's Monitoring Officer.

#### **4.6 Bonds, parent company guarantees and insurance**

- 4.6.1 For all Supplies (Goods), Services and Works contracts, over £250,000.00) a Parent Company Guarantee or Performance Bond shall be required unless agreed otherwise by the Council's Monitoring Officer in conjunction with the Council's Chief Finance Officer and as part of the Procurement Gateway Process for Category B Procurements. In all other cases consideration should be given to the need for security (a Parent Company Guarantee or a Bond) to be given for the proper performance of the contract by the contractor.

- 4.6.2 The Council must never give a bond.

- 4.6.3 For all Works and Services contracts, the appropriate Director or appointed Authorised Officer, must notify in writing the Council's insurance officer giving full details of the nature, duration and value of the Works and Services being undertaken on any particular project.

#### **4.7 Prevention of corruption**

- 4.7.1 The Officer responsible for the contract must comply with the Council Code

of Conduct and the Council's Strategy for the Prevention and Detection of Fraud and Corruption and must not invite or accept any gift or reward in respect of the award or performance of any contract. A breach of this requirement by Council officers is likely to result in disciplinary action and may be gross misconduct.

Officers must not enter into discussions with any tenderer or other interested third party during a procurement process, unless specifically permitted by the procurement process or by the Legal Services Team or the Strategic Procurement Team.

- 4.7.2 All clarification received from bidders during a procurement process must be put in writing to the procurement/Authorised officer. The question and the response must then be sent to ALL bidders in writing (or by email) using the council's standard *Bulletin Letter*
- 4.7.3 All contracts must contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the Prevention of Corruption Acts.
- 4.7.4 The Council participates in anti-fraud and corruption exercises with other public bodies. In order to do this data is exchanged with such organisations. The data exchange is likely to contain information on our contractors.
- 4.7.5 If an Officer becomes aware that any bidder is lobbying a Member or Officer of the Council then they must report this immediately to the Monitoring Officer.

#### **4.8 Declaration of interests**

- 4.8.1. If it comes to the knowledge of a Member or an Officer of the Council that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Council's Monitoring Officer and record it on the register of interests.

## **SECTION 5 PERFORMANCE AND CONTRACT MANAGEMENT**

### **5.1 Performance management**

- 5.1.1 All Category A and Category B Procurements must include a set of performance standards that must be met throughout the contract. Performance management standards must be inserted into the terms and conditions of contract. Key performance indicators or similar benchmarks of quality should be used where available and appropriate.
- 5.1.2 All contracts Category A and Category B Procurements and especially those of a complex nature must have a designated contract manager whose name should be notified to the Contractor. Likewise, the Contractor must have a designated contract manager whose name is notified to the Council. These resources must be identified and agreed before the contract is awarded.
- 5.1.3 Regular contract monitoring meetings should be held with the contractor and minutes of agreed actions taken. The frequency of the meetings to be dictated by the size of the contract and associated risks.
- 5.1.4 Performance against contract standards must be monitored and recorded on a regular basis, proportionate to the risk and value of the contract.
- 5.1.5 Where service improvements are enshrined in the contract these must be evidenced for the annual audit inspection and for any Gateway 5 review as prescribed by the Council's Strategic Procurement Board.

## **SECTION 6 RISK MANAGEMENT**

- 6.1 A full risk assessment should be undertaken on all procurement options available to the Council. These should be documented and owners assigned once an option is selected.
- 6.2 A risk log should be created at the start of the procurement project and managed by the responsible Officer, in the case of High Value/Risk procurements. Risks should be reviewed regularly and appropriate actions taken to manage them. The Director should be kept aware of all risks and provided with a regular report on their status.
  - 6.2.1 The Risk Management section should be consulted on all high value/risk procurement projects at the commencement of the project.

## **SECTION 7 ENVIRONMENT/SUSTAINABILITY**

- 7.1 The Council is committed to making Medway Council a greener and more environmentally friendly place to live and work.
- 7.2 The Council is committed to working towards a 'greener' future, by:
- Taking practical action to reduce, as far as possible, the effect the Council's activities have on the environment.
  - Improving the quality of the local environment; and
  - Encouraging the people of Medway to live and work in ways that reduce the borough's effect on worldwide environmental problems, to improve the environment now and protect the future.
- 7.3 The Council's green procurement rules are based on the following principles:
- (a) Banning products that damage the environment when an alternative is available.
  - (b) Promoting products that damage the environment the least.
  - (c) Understanding that buying environmentally friendly goods and services is part of a process of continuous improvement.
  - (d) Considering costs such as energy and maintenance when we consider tenders.
  - (e) Engaging with suppliers who can actively contribute to the reduction in energy use as part of their Contract with the Council.
  - (f) That all contractors and suppliers can demonstrate commitment to carbon reduction in their operations (insofar as they relate to the particular commission)
  - (g) That all contractors and suppliers undertake to supply relevant data to the Council to enable the carbon impact to be monitored

## **SECTION 8 EQUALITIES**

- 8.1 Before starting any procurement, Council Officers must make sure that they consider equality issues by liaising with the Corporate Equalities Team and completing a Diversity Impact Assessment. This is essential if the procurement outcome will be a service or product that affects the staff or residents of Medway Council. The Equalities Impact Assessment will inform the detail of the contract specification.

- 8.2 Companies must adhere to current equalities legislation at all times whilst performing a contract on behalf of the Council.

## **SECTION 9 WHISTLE BLOWING**

- 9.1 The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment, it encourages employees and others with serious concerns about any aspect of the Councils' work to come forward and voice those concerns.
- 9.2 The Councils *whistle blowing policy* encourages our employees to raise concerns in respect of any conduct of officers of the council that:
- May be unlawful.
  - That may be contrary to the council's policies.
  - That falls below established standards or practice or that may amount to improper conduct
  - The Councils *whistle blowing policy* policy is intended to encourage and enable staff to raise serious concerns within the council rather than overlooking a problem or blowing the whistle outside. The policy recognises that certain cases will have to proceed on a confidential basis and makes it clear that our staff can raise issues without fear of reprisals.
- 9.3 The council is anxious to ensure that the employees of its contractors are similarly encouraged and enabled to raise concerns in respect of any misconduct of officers of the council.
- 9.4 Contractors are also encouraged to introduce similar provisions to apply in the case of any similar misconduct of the contractors staff when involved in work for the Council.

## **SECTION 10 CRIMINAL RECORDS BUREAU CHECKS**

- 10.1 The Council requires all people who, through the delivery of services to the Council, come into contact with the elderly, disabled and children, to have up to date satisfactory Criminal Records Bureau reports prior to award of any contract. The Council should also require such contractors' personnel to be registered with the Independent Safeguarding Authority (ISA) if and when such registration becomes necessary.

**APPENDIX A - GLOSSARY OF TERMS**

Contract	A contract that has been created in accordance with the Contract Procedure Rules for call off or use by the Council. A list of contracts can be found on the Contract Register available via the Strategic Procurement Intranet site. If in doubt whether a contract is approved or not contact the Strategic Procurement Team (see also Framework Agreement)
Approved Standard Terms	Includes industry standard terms and terms included within the Council's Standard Contracts
Officer/ Authorised Officer	A person with appropriate delegated authority to act on the Council's behalf within their respective Directorate.
Best Value	Under Best Value, each local authority has a duty to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness' as set out in the Local Government Act 1999. This takes into consideration the 4Cs of Challenge, Compare, Consult and Compete.
Code of Conduct	The code regulating conduct of Officers contained within the Council's Constitution
Competitive Dialogue	A procedure leading to the award of a contract whereby the Council produces a shortlist through a dialogue with those tenderers who are considered to have appropriate capacity. Based on the solutions discussed, final tenders are sought from the short listed contractors This procedure is most appropriate for complex procurements where significant input is required from the market to inform the drafting of the specification.
Contract Register	A register located on the Strategic Procurement Intranet containing details of all contracts entered into by the Council.
Strategic Procurement Board	A Cabinet Advisory Group chaired by the Deputy Leader of the Council or Member as appointed by the Leader of the Council, with representation from across the Council charged with the duty of developing and reviewing procurement and contractual issues. For the avoidance of doubt, the Strategic Procurement Board is a Cabinet Advisory Group and has no formal decision making powers.

Contractor	Any person or body of persons providing, or seeking to provide, Supplies (Goods), Services or Works to the Council.
Council's Procurement Strategy	Defines the overall approach to procurement related activity for the Council.
EU Negotiated Procedure	A procedure leading to the award of a contract whereby the Council negotiates the terms of the contract with one or more persons selected by it. The procedure is a complex set of rules, and it is extremely difficult for contracting authorities to meet the requirements to allow the use of this procedure.
EU Notice	Notice posted in the Supplement to the Official Journal of the European Union (OJEU). Includes a Prior Indicative Notice (PIN), a Tender Notice or an Award Notice.
EU Open Procedure	A procedure leading to the award of a contract whereby all interested persons may tender for the contract, duly advertised by notice, i.e. there is no limit on the number of Tenders received nor may the Council consider the suitability of interested tenderers prior to submission of Tenders.
EU Regulations	The EC public procurement directives implemented into UK legislation by virtue of the Public Contracts Regulations 2006 (amended).
EU Restricted Procedure	A procedure leading to the award of a contract whereby only persons selected by the Council may submit Tenders for the contract, duly advertised by notice, i.e. the contract is advertised, where prospective Tenderers are screened before being invited to tender ("selective tendering").
EU Threshold	The financial threshold at which EC public procurement directives must be applied if expected to be exceeded by the Total Value. Current EU thresholds are: <ul style="list-style-type: none"> <li>• Works - £3,927,260</li> <li>• Services - £156,442</li> <li>• Supplies (Goods) - £156,442</li> </ul>
Exemption	A formal request in writing made by a Director to exempt the proposed requirement from the Contract Procedure Rules in exceptional circumstances.

Financial Reference	A financial risk assessment of the finances of a company, parent or group of organisations in order to establish their liquidity, profitability, stability and capability to support a contract of the value required. This service is available through a credit reference agency such as Dunn and Bradstreet – please refer to The Strategic Procurement for advice.
Chief Finance Officer	The Chief Finance Officer or a senior officer representing the Chief Finance Officer designated by him to provide financial advice to the Council's Authorised Officers.
Financial Regulations/Finance Procedure Rules	The Financial Regulations contained within the Constitution
Framework Agreement	An agreement with suppliers whose purpose is to establish the terms governing contracts to be awarded during a given period, in particular with regard price and quality. It allows the Council to make specific purchases (call-offs) from a supplier to provide goods, services or works in accordance with the terms of that agreement.
Invitation To Quote	A formal written invitation to at least 3 suppliers to provide written quotations for goods, services or works on the Council's standard terms for requirements between £15,000.00 and £100,000.00
Invitation to Tender	A formal written invitation to a minimum number of suppliers to provide sealed bid offers for goods, services or works on the Council's standard terms for requirements over £100,000.00
Officer	Council employee as defined in the Constitution
OJEU	Official Journal of the European Union
Parent Company Guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead or for the parent of the subsidiary company to pay the Council's reasonable costs/losses (including damages) for the Council having to procure a third party to meet the promises under the Contract with the Council.

Performance Bond	An insurance guarantee policy: If the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the Bond (often 10% of the contract value). A Bond is intended to protect the Council against a level of cost arising from the supplier's failure.
Pre-qualification	A process to determine a shortlist of potential suppliers on the basis of general economic and technical criteria in accordance with the EU regulations on the use of the restricted procedure. The evaluation must be limited to that of the technical/financial ability of the bidder and must not include evaluation of tender related matters.
Official Purchase Order	An order placed through the Integra Finance System (Web Req)
The Strategic Procurement Team	The Strategic Procurement Team is part of the Housing & Corporate Services Department and is responsible for supporting the Council in its Strategic Procurement activity on behalf of the Council's Monitoring Officer.
The Council	Medway Council.
Tenderers	Suppliers/contractors who have been invited to submit a tender to the Council.
Total Value	<p>The whole of the value or estimated value (in money or equivalent value) over the contract term for a group of similar commodities or services, in accordance with Best Value:</p> <ul style="list-style-type: none"> <li>• whether or not it comprises several lots or stages across the Council as a whole</li> <li>• whether or not it is to be paid or received by the Council as a whole or separate departments within the Council</li> </ul>
Value for Money	The optimum combination of through life cycle cost and quality (or fitness for purpose) to meet the user's requirement.
Written Quotation	Must be the council's Invitation to Quote standard document and must be addressed personally, containing pricing information and delivery details for requirements between £1,000.00 and £100,000.00 Printouts of catalogues are not written quotations.

**REVISED PROCUREMENT GATEWAY PROCESS v0.5 30.09.10**

OFFICERS MUST CONSULT IN LINE WITH THEIR SCHEME OF DELEGATION AS PRESCRIBED BY THEIR ASSISTANT DIRECTOR AND/ OR DMT BEFORE UNDERTAKING EITHER A CATEGORY A OR CATEGORY B PROCUREMENT PROCESS

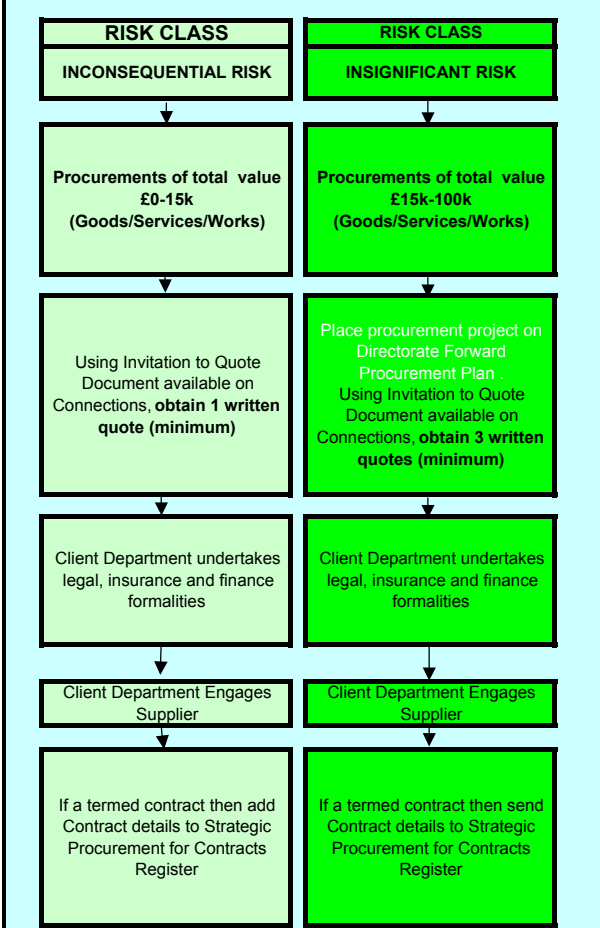
DMT CAN MAKE A RECOMMENDATION TO STRATEGIC PROCUREMENT TO UPSCALE A CLASS 3 LOW RISK PROCUREMENT TO EITHER A CLASS 4 MEDIUM RISK OR A CLASS 5 HIGH RISK PROCUREMENT WHERE IT IS FELT THAT DESPITE BEING LOW VALUE, THE PROJECT SHOULD BE BROUGHT TO THE ATTENTION OF EITHER THE PROCUREMENT BOARD AND / OR CABINET

DMT CAN MAKE A RECOMMENDATION TO THE STRATEGIC PROCUREMENT BOARD TO DESCALATE A CLASS 4 MEDIUM RISK PROCUREMENT TO A CLASS 3 LOW RISK PROCUREMENT EITHER AS A WHOLE OR AT A SPECIFIC STAGE, WHERE IT IS FELT THAT THERE ARE NO MAJOR RISKS OTHER THAN PROCUREMENT VALUE

THE MONITORING OFFICER, IN CONSULTATION WITH THE STRATEGIC PROCUREMENT BOARD AND / OR CABINET WILL, WITH GUIDANCE FROM STRATEGIC PROCUREMENT, REVIEW DMT RECOMMENDATIONS AND WILL MAKE THE FINAL DECISION IN RELATION TO RISK CATEGORISATION. ANY SUCH FINAL DECISION BY THE MONITORING OFFICER IN CONSULTATION WITH THE STRATEGIC PROCUREMENT BOARD AND / OR CABINET WILL BE FINAL AND BINDING. UPON OFFICERS AND THEIR CONTRACTS/PROJECTS

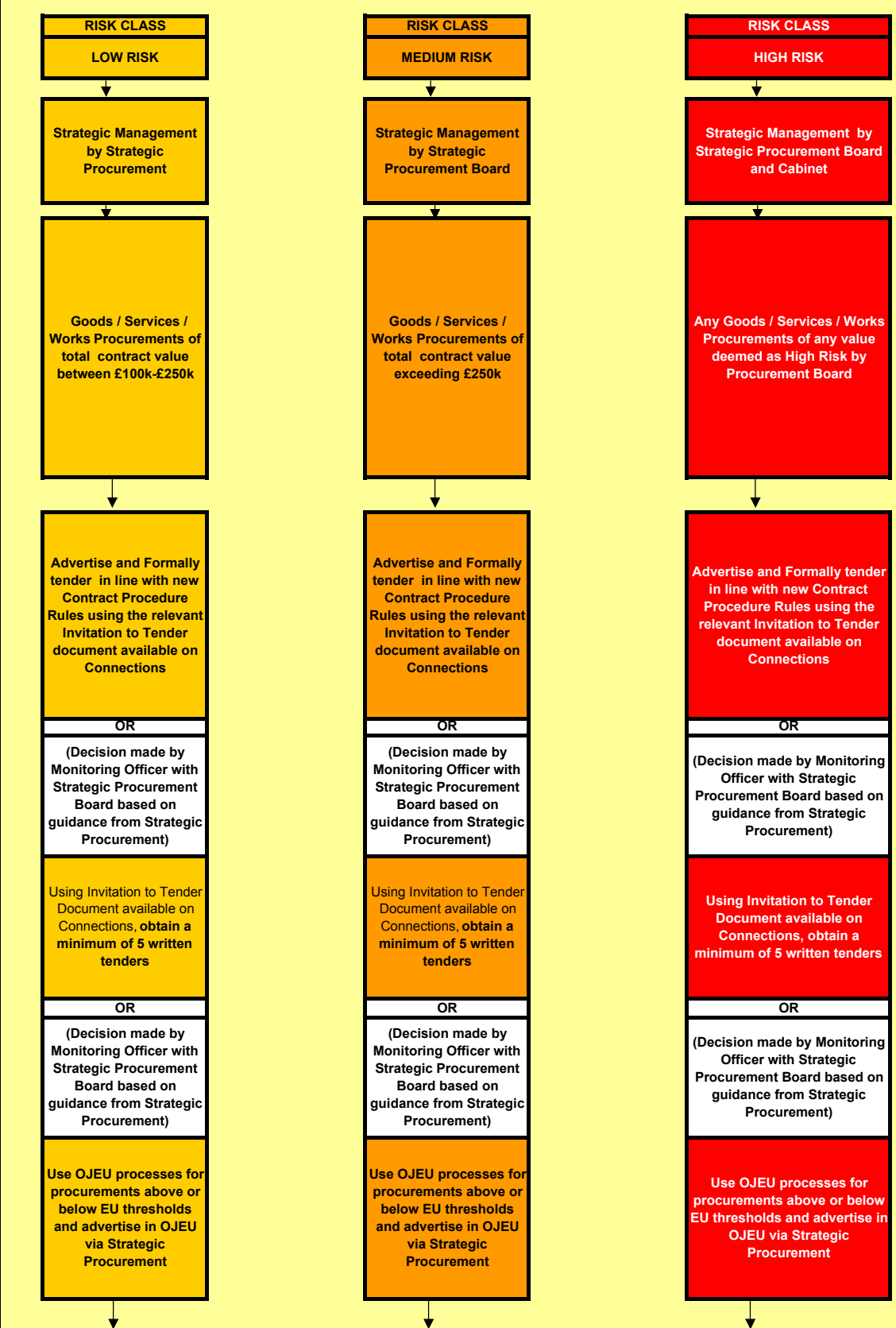
**CATEGORY A PROCUREMENTS BELOW £100K (GOODS / SERVICES / WORKS)**

Managed by Client Department based upon Strategic Procurement's guidance and Contract Procedure Rules



**CATEGORY B PROCUREMENTS ABOVE £100K (GOODS/SERVICES/WORKS) - OFFICERS MUST SUBJECT CONTRACTS/PROJECTS TO THE PROCUREMENT GATEWAY PROCESS AND MUST PLACE PROCUREMENT PROJECT ON DIRECTORATE FORWARD PROCUREMENT PLANS**

Strategic Management by Strategic Procurement, Strategic Procurement Board and Cabinet and Operational Management by Client Department



**Strategic Procurement Board / Cabinet Decision Point for each stage of the GATEWAY process**

