

# Contract Procedure Rules (CPRs)

September 2020

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## **CONTRACT PROCEDURE RULES**

### **1. Introduction**

- 1.1 These Contract Procedure Rules (CPRs) are the standing orders required by the Local Government Act 1972. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and councillors for making contracts on behalf of the Council. The purpose of these CPRs is to set clear rules for the procurement of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these CPRs must be followed for **all** contracts (but excluding the categories listed in Rule 6.2, grants and land contracts which are dealt with under different rules) for:
- the supply of goods to the Council;
  - the supply of services to the Council; and
  - the execution of works for the Council.
- 1.2 The Council has a Procurement Strategy, setting out how the Council intends to go about procuring works, goods and services. Conformity to these CPRs, and the Council's Employee Code of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy and any associated User Guides and Procedures*.
- 1.3 The Council is subject also to the Public Contracts Regulations 2015 (SI 2015/102), the legislation which reflects the EU Public Procurement Directives. This legislation requires contract letting procedures to be open, fair and transparent. These CPRs provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with the legislation.

## 2. Summary of CPRs – Governance Process

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Financial Value (per Contract) for Governance	Approval to Procure	Process	Contract Terms	Opening of tenders	Authority to Award Contract	Contract Signing
£1,000,000 and above	<b>Procurement Board</b>  <b>In addition, Cabinet, where the Contract Value (not estimated framework agreement value) is £1,000,000 and above on a Per annum basis</b>	Competitive tenders in compliance with Public Contract Regulations 2015 (Note 1 below)	Standard or Bespoke Form of Contract. Where contracts are in the form of Deeds, they must be executed by Legal Services. Contracts over £1,000,000 will need to be in the form of a Deed	Electronic tenders via CSW- JETS	If within approved tolerance agreed at Column 2, e.g. <10% above estimated price, or report back to relevant body in Column 2 for approval	Head of Legal Services or authorised deputy
£100,000 and up to £999,999	Procurement Panel		Standard or Bespoke Form of Contract. Where contracts are in the form of Deeds, they must be executed by Legal Services.			Director and/or Head of Service
£10,000 up to £99,999	Director approval or delegated authority to budget holder (Copies of Quotations MUST be forwarded to Procurement & Commissioning Services for the order to be approved)	Minimum of 3 written or oral quotations (see 3 below for thresholds). Where appropriate, a minimum of 2 should be from local suppliers or social enterprises	Official order form or Standard Form of Contract	Officers are encouraged to use the electronic Quotations Pack via In-tend for contract values £25,000 - £99,999	Director or authorised deputy	Endorsed/ Signed by Director or authorised deputy
Below £10,000	Budget holder	Use of corporate contract or demonstrable value for money	Official order form (or Council Procurement Card)	N/A	Authorised by Budget Holder	Authorised by Budget Holder

**Note 1 – Where PCR 2015 thresholds are not exceeded, a minimum of 3 competitive tenders must be sought with the tender advertised on Contracts Finder**

**Note 2 – Framework agreements need approval by the relevant Procurement Panel or Procurement Board only, based on the total estimated/potential expenditure. Cabinet Approval will also be required for each individual Contract placed against a framework agreement where the annual value is £1,000,000 or over.**

### 3. Financial Thresholds for Procedure

<b>Contract Procedure Rules (CPRs)</b> <b>Quick Reference Guide Table – Financial Thresholds</b>	
<b>Above PCR 2015 thresholds (Note 2 below)</b>	
£4,733,252+	Competitive tenders in compliance with the Public Contracts Regulations 2015 required for Works and Concession contracts.
£663,540	Competitive tenders in compliance with the Public Contracts Regulations 2015 required for Supplies and Services contracts that are subject to Regulation 74 (Light Touch Regime) for Health and Social Care contracts.
£189,330	Competitive tenders in compliance with the Public Contracts Regulations 2015 required for Supplies and Services contracts.
<b>Form of Contract:</b>	
Contracts for £999,999 or less in value can be signed for and on behalf of the Council under hand by Directors and Heads of Service.	
As a general rule, any works contract and high value contract with a value equal to or exceeding £1,000,000 which are to be expressed to be executed as deeds must either be:	
<ul style="list-style-type: none"> <li>• made under the Council’s seal attested by the City Solicitor or authorised signatory; or</li> <li>• signed by at least two officers of Legal Services duly authorised by the City Solicitor</li> </ul>	
<b>Below PCR 2015 thresholds</b>	

£100,000 – up to PCR thresholds as listed above (relevant to spend type, e.g. Works, Supplies or Services)	At least three potential contractors should be invited to tender. Where appropriate those invited to tender should include at least two local suppliers i.e. Head Office located within CV1-CV6 postcodes.  MUST be advertised on Contracts Finder.
£10,000 - £99,999	MUST use corporate contracts where one exists. Competitive quotations: £10,000 and up to £24,999 - Oral quotations (which MUST be confirmed by email) can be sought - quotation pack use is optional. Over £25,000 – a minimum of 3 quotations MUST be requested in writing using quotation pack (preferably via In-tend with option to publish on Contracts Finder). Where appropriate those invited to tender should include at least two local suppliers i.e. Head Office located within CV1-CV6 postcodes.
Below £10,000	MUST use corporate contracts where one exists or show value for money.
<b>Note 3: PCR Thresholds</b>	<b>PCR Thresholds are revised every 2 years on 1<sup>st</sup> January. Figures quoted above for Works and Concessions (£4,733,252), Light Touch Regime Services (£663,540) and Supplies and Services (£189,330) are applicable from 1<sup>st</sup> January 2020 – 31<sup>st</sup> December 2022.</b>

- 3.1 The Director responsible for Procurement & Commissioning Services and the Chief Finance Officer (if they are not the same officer) or his/or her authorised deputy, subject to conditions, may authorise a contract as an exception to the CPRs if the works or goods/services are below PCR thresholds. An exception cannot be granted where a breach of any UK legislation would be incurred.

#### 4. Objectives

- 4.1 The CPRs exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management and not as a hindrance***. Followed properly they provide protection for Officers against criticism and support good procurement practice.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:

- ✓ ensure value for money is obtained;
- ✓ ensure probity in the award of Council contracts;
- ✓ ensure fairness, equity, openness and transparency in the treatment of contractors/suppliers;

- ✓ ensure that procedures for placing contracts/orders comply with legislation;
- ✓ ensure records are kept which demonstrate compliance with Rules for Contracts.

## 5. **Scope of CPRs**

5.1 All purchases and contracts made in the name of and binding the Council must comply with these CPRs and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is owned or controlled by the Council or is funded by public money. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules. This includes contracts for:

- (a) buying and selling goods;
- (b) any work being carried out;
- (c) services (including financial and consultancy services);
- (d) hire, rental or lease (of goods)
- (e) concession agreements

5.2 To receive and deal with expressions of interest (through the Procurement Board or the Panels as appropriate) from relevant bodies in providing or assisting in providing a relevant service on behalf of the Council in accordance with Part 5, Chapter 2 of the Localism Act 2011 and to consult with the relevant Cabinet member on each expression of interest that is received.

## 6. **Compliance**

6.1 Every contract entered into on behalf of the Council must comply with these CPRs and all relevant UK legislation.

6.2 The only areas excluded from these rules are:

- (a) Internally recharged services;
- (b) Schemes where the Council has delegated a function to a third party to perform and where a contract makes separate provision for procurement rules
- (c) Test purchasing in the course of an Officer's duty. (e.g. Trading Standards).
- (d) Land transactions
- (d) Grants

6.3 All contracts must be in writing. Whenever possible, contracts under

£100,000 in value must be made on an official Council order form or standard form of contract, as appropriate, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the NEC, JCT or ICE forms may be appropriate. The Procurement & Commissioning Services Team, in consultation with Legal Services, will advise on other suitable forms of contract.

6.4 Responsibility for compliance with CPRs remains at all times with Council officers. Directors and the Head of Procurement will be responsible for monitoring compliance against these rules, aided by internal or external audits or inspections which will be carried out as appropriate.

6.5 See Rule 8 regarding approvals required before a Relevant Procedure (as defined in Rule 8.1.1) may be commenced.

## 7. **Justification of Need**

7.1 Before any Relevant Procedure (as defined in Rule 8.1.1) is commenced consideration must be given to:

- (a) whether the expenditure is really necessary;
- (b) whether a critical review has been carried out to identify if the requirement can be met from within existing resources or whether it is being funded through grants or other approved income sources;
- (c) the revenue consequences of any capital investment; and
- (d) in any case, whether the necessary approvals in Rule 8 have been obtained.

## 8. **Approvals Required before certain Relevant Procedures are Commenced**

8.1 Rule 8 applies to any Relevant Procedure:

8.1.1 *Relevant Procedure*: means any procedure conducted by or on behalf of the Council for the genuine purpose of the Council (alone or with others) entering into a contract for the purchase of goods, services and/or works, subject to the following:

- (a) This shall include (without limitation), the seeking of quotations, the conduct of any tender exercise, the conduct of any mini-competition exercised under a framework agreement, the making of a purchase under a dynamic purchasing system or off an approved list (or the like), and the conduct of a negotiated procedure by or on behalf of the Council.
- (b) This shall not include any genuine exercise to research market



conditions (including without limitation, any soft market testing or benchmarking exercise) which is not in itself genuinely intended to directly result in the Council entering into a contract for the purchase of goods, services and/or works.

8.1.2 This Rule 8 only applies to conduct involving Council members and its officers and does not apply as between the Council and the public at large. Accordingly (and without limiting the implications of this), non-compliance by the Council or by any of its members or officers with all or any part of this Rule 8 shall not in itself result in any of the following:

- (a) Any act by or on behalf of the Council resulting from that non-compliance being invalid for any reason (including without limitation, any assertion that the Council has acted beyond its powers).
- (b) Any member of the public (including any person who takes part in a Relevant Procedure which is conducted in breach of this Rule 8) having any claim of any kind whatsoever against the Council, including any claim for compensation.

8.2 *Requirements before a Relevant Procedure may be commenced:*

All of the following, to the extent relevant, and without limiting other requirements elsewhere in the Council's Constitution but subject to the exceptions in Rule 8.5 must be completed before a Relevant Procedure may be commenced:

- (a) The expenditure must be within approved budget and policy framework which has been approved by Members.
- (b) The use of expenditure must have been approved by the Procurement Board (or on the Procurement Board's behalf by the Procurement Panel where relevant) in accordance with Rule 8.3.
- (c) Where the Relevant Procedure is a sensitive matter (see Rule 8.4), the Procurement Board shall consider and give its approval or delegate the approval to the Procurement Panel.

8.3 *Delegation by the Procurement Board of the task of considering whether to approve a prospective Relevant Procedure for the purposes of Rule 8.2(b).*

The Procurement Board may (but shall not be obliged to) delegate that task to Procurement Panel (or any other relevant subcommittees the Procurement Board has in place from time to time), **but only if both of the following conditions** apply to the prospective Relevant Procedure under consideration:

- (a) The reasonably estimated total value of the contract or contracts for goods, services and/or works expected to be entered by the Council at the conclusion of the Relevant Procedure (whether

under a single contract, as aggregated under a framework agreement across its full term, across two (2) or more lots contained in the same Relevant Procedure, or as aggregated under a series of reasonably connected contracts) is **less than** £1,000,000 (one million pounds). Where there is reasonable doubt about whether the value is to exceed that figure, there shall be a presumption for the purposes of this Rule 8.3 (a) that it does exceed that figure; **and**

(b) The Relevant Procedure is **not** a sensitive matter (see Rule 8.4).

8.4 Any of the following may constitute a 'sensitive matter' for the purposes of this Rule 8 but the Procurement Board or Procurement Panel will make the decision.

(a) There is a significant risk (on a reasonable view) that the Relevant Procedure (and/or any purchase of goods, services and/or works resulting from it) will create serious adverse publicity for the Council.

(b) Under the proposed contract for the purchase of goods, services and/or works expected to result from the Relevant Procedure, the Council would be required to deal with a particular supplier or provider on an exclusive basis.

8.5 *Exceptions to obtaining any of the approvals required in Rule 8: only with the written consent of the Director responsible for Procurement & Commissioning Services and the Chief Finance Officer (if they are not the same person).*

## 9. **The Procurement Board and Procurement Panel**

9.1. Composition of the Procurement Board:

(a) *Appointment and removal of Procurement Board members:* from time to time in accordance with its approved terms of reference and its members must include the Chief Finance Officer, a minimum of three Directors and the Head of Procurement & Commissioning Services.

(b) *How the Procurement Board is to conduct itself:* as determined by the Procurement Board from time to time, acting reasonably and in good faith, and in any case, lawfully.

(c) *The Procurement Panel shall include:* Directors, Heads of Function and other officers of the Council appointed or removed in accordance with its approved terms of reference.

9.2 The Procurement Board shall have the following powers:

(a) To determine whether to approve or refuse any proposed Relevant Procedures which it has not otherwise delegated according to Rule

8.3;

- (b) To monitor compliance with contract rules and monitor spend and contracts; to achieve savings;
- (c) The status of the Procurement Panel in place from time to time shall be as a sub-committee of the Procurement Board;
- (d) To establish and dissolve the Procurement Panel or similar sub-committee;
- (e) To establish the composition of members of the Procurement Panel or similar sub-committee, including appointment and removal of members, including any alternates;
- (f) The conduct of the proceedings of the Procurement Panel or similar sub-committee from time to time;
- (g) Any act of the Procurement Panel or similar sub-committee (including any approval or refusal of a Relevant Procedure) shall be regarded as if it were the direct act of the Procurement Board itself;
- (h) To deal with expressions of interest from a relevant body exercising the right to challenge for a relevant service under Part 5, Chapter 2 of the Localism Act 2011;
- (i) To provide an annual report on the activities of the Procurement Board and Procurement Panel to Cabinet Member Portfolio Holder; and
- (j) The Chief Finance Officer has the power to vary the terms of reference of the Procurement Board and Procurement Panel.

9.3 The Procurement Panel shall have the following powers:

- (a) (b) (d) (e) (g) (h) and (i) detailed in Rule 9.2.

## 10. **Exceptions to CPRs**

10.1 An exception to the CPRs is a permission to let a contract without complying with one or more of the Rules. An exception to the CPRs may be granted subject to conditions. An exception cannot be granted where a breach of any UK legislation would be incurred.

10.2 Any Director may grant an exception to these CPRs where the value is below £100,000. Any exception to the CPRs of £100,000 and above (and up to PCR thresholds) will need the approval of the Director responsible for Procurement & Commissioning Services or his/her authorised deputy who may grant an exception to these CPRs. Applications for exceptions must be made in writing to the appropriate Director and include the exception that is requested and the justification

for the exception. All Directors granting an exception or exceptions will notify Procurement & Commissioning Services of all exceptions granted at a frequency to be determined by the Director responsible for Procurement & Commissioning Services.

- 10.3 The Director responsible for the Procurement & Commissioning Service will keep a register of all exceptions to the CPRs, which shall be available by appointment for inspection by members of the Council and the public. An annual report on exceptions granted in the previous financial year will be presented to the Procurement Board.
- 10.4 An application for an exception to CPRs to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to CPRs. If an application is granted, the Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- 10.5 Where an exception has been granted in line with these rules, a further exception must be sought if the value of the original exception has been exceeded or the time period granted for the exception has elapsed.
- 10.6 An exception to the requirements to follow the tender or quotation procedure **may** be granted in the following circumstances:
- (a) an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, goods or services are required more urgently than would be possible if the tender or quotation procedure were followed;
  - (b) for justifiable technical reasons, the works, goods or services can be obtained from only one supplier;
  - (c) acquiring goods or services from a different supplier would result in incompatibility with existing goods or service or disproportionate technical difficulties;
  - (d) the proposed contract is an extension to, or variation of, the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required PCR threshold, *unless* the existing contract provides for an extension;
  - (e) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
  - (f) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
  - (g) when a grant from a public body includes a recommendation as to

the supplier or is time limited;

- (i) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- (g) if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another Contract Procedure Rule;

10.7 An exception to Contract Procedure Rules is granted and separate authorisation is not required in the following circumstances:

- (a) placing an order against a contract/framework agreement let by another Public Body where contracts have been let to allow collaboration, e.g. Eastern Shires Purchasing Organisation (ESPO), Central Buying Consortium (CBC, Buying Solutions, etc.), where the value is below £100,000. If £100,000 or above, approval should be sought via the Procurement Panel or Procurement Board;
- (b) as part of a partnering contract that contemplates a series of contracts with a single supplier;
- (c) legislation requires the Council to let a contract differently from these Contract Procedure Rules;
- (d) value for money can be achieved by the purchase of second hand/used vehicles, plant or materials
- (e) the purchase of works of art, museum artefacts, manuscripts, archive collection items or the services of artistic and cultural performers;
- (f) Residential Placements for an individual with a registered care provider of their choice under the Care Act 2014; and
- (g) for decision making on utilities contracts. Due to the volatile nature of utilities markets and the need for expedient decision making, authority has been delegated through the approval of these rules to the Director responsible for Procurement & Commissioning Services in consultation with the Chief Finance Officer. If the Chief Finance Officer is also the Director responsible for Procurement & Commissioning Services, then the decision will be made by the Chief Finance Officer in consultation with the Chief Executive or his nominated representative. All utilities contracts will be let through Procurement & Commissioning Services and in line with the procedures dictated by the Head of Procurement & Commissioning Services.

## 11. Valuation of Contracts and Aggregation of Requirements

11.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.

11.2 The total value of the contract is the total amount that the Council expects to pay for the contract, either in a single sum or periodically over time and should be calculated in accordance with the most appropriate of the following:

(a) Capital and fixed term contracts – the total price which is expected to be paid during the whole life of the contract period, including all extension options and contingency allowance

(b) Where the contract period is uncertain, multiply the price estimated to be paid each month by 48

(c) If the purchase is one of a series of regular transactions for the same type of item, the 'Total Value' is the expected aggregate value of all of those transactions over a 12-month period

(d) For feasibility studies, it is the value of the scheme or contracts which may be awarded as a result

11.3 Contracts for the same works, goods or services must not be split into smaller, separate contracts to avoid compliance with these CPRs or the Public Contracts Regulations 2015.

## 12. **Duties of Directors and the Head of Procurement & Commissioning**

12.1 The Director is responsible for ensuring that all expenditure involving procurement activity complies with the CPRs and is responsible for ensuring that contracts within his/her division are managed and operated within the terms of the contracts themselves.

12.2 The Head of Procurement is responsible for maintaining a register of contracts and for providing an up-to-date copy of the register. Contracts for less than £25,000 need not be recorded in the register. The contracts register is to be published on the Council's website in accordance with the Local Government Transparency Code. Directors responsible for entering into contracts for £25,000 or more must notify the Director responsible for Procurement & Commissioning Services of contracts entered into at a frequency determined by the Director responsible for the Procurement & Commissioning Services.

12.3 As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the Head of Procurement & Commissioning Services of all contracts (including their values) that his/her division plans to enter into during the following financial year.

12.4 The Director must use corporate contracts, where they are in place. To

do otherwise would be unlikely to give value for money for the Council and may be in breach of the Public Contract Regulations 2015.

- 12.5 If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications (e.g. TUPE implications and/or redundancies for directly employed staff), must be considered as part of the best value assessment.

### 13. **Selection of Procurement Route**

- 13.1 When selecting the most appropriate procurement route to secure value for money, the Director, in consultation with the Head of Procurement & Commissioning Services, shall adhere to the following principles:

- (a) All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most economically advantageous bid.
- (b) The scope of contract packages should take into account cross-cutting themes and outcomes identified by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards and specifications and investigation of the market undertaken. Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.
- (c) The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- (d) Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services.

### 14. **Authority to Enter into a Contract**

- 14.1 Officers may only enter into a contract if authority is delegated to them or by specific decision of the Council, the Cabinet or Cabinet Member or Procurement Board or Procurement Panel.
- 14.2 Unless an officer has been given authority to enter into a contract, all contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member.
- 14.3 Unless an officer has been given authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a

specific item in the approved revenue budget for the relevant year. A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.

- 14.4 All contracts will be let with the involvement of Procurement & Commissioning Services in consultation with service users and technical experts.

**See Appendix 1 for Governance Flowchart**

## 15. **Specifications**

- 15.1 The Director, in conjunction with the Head of Procurement & Commissioning Services, must ensure that an appropriate specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, goods or services to be supplied.

- 15.2 All works, goods and services must be specified by reference to European or national standards where appropriate.

- 15.3 Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the contract to be monitored and managed and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances.

- 15.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.

- 15.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the tender documents should, if the contractor has assured confidentiality of personal information, include all relevant information relating to those employees.

- 15.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants or other third parties who assist in the preparation of a specification must not be invited to tender or quote for the contract.

## 16. **Contract Procedures**

- 16.1 If a corporate contract is in place for the supply of any works, goods or services, the Director must place orders under that contract. Procurement & Commissioning Services publishes data to enable Directors to order from corporate contracts.

- 16.2 The Director, in conjunction with the Head of Procurement & Commissioning Services, must establish whether the public procurement legislation applies to a proposed contract. If in doubt,



Legal Services will advise whether the legislation applies. When public procurement legislation does apply, the Director/Head of Procurement & Commissioning Services must use the open or restricted procedure unless Legal Services agrees the use of competitive dialogue or the negotiated procedure. Whenever possible, a competitive procedure must be adopted.

16.3 The Head of Procurement & Commissioning Services will place all notices relating to contracts in Find a Tender and will provide the statutory annual returns to HM Treasury of contracts let by the Council.

16.4 The Director need not obtain competitive quotations for contracts of less than £10,000 in value but must demonstrate in any event that the Council is receiving value for money

## 17. **Invitation to Formal Tender**

17.1 If the public procurement legislation applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation.

17.2 If the public procurement legislation does not apply, and the estimated contract value is £100,000 or more, at least three potential contractors should be invited to tender. Where appropriate those invited to tender should include at least two local suppliers. The number of contractors invited to tender should ensure full competition is achieved. Potential contractors should be selected in the following way:

- Placing an advertisement on the Council's website or in one or more newspapers circulating in the West Midlands or in one or more newspapers or journals circulating among persons who undertake such contracts or sub-contracts.
- The placing of the advertisement should aim to achieve maximum interest amongst contractors.

17.3 Companies expressing an interest in being invited to tender in response to an advertisement, must satisfy the Council as to their legal, financial and technical capacity (including their Health & Safety and Equal Opportunities policies) to undertake the contract by completing a standard questionnaire (where relevant), or tender document where the open procedure of the Public Contract Regulations is used, in a form approved by the Head of Procurement & Commissioning Services.

17.4 The Head of Procurement & Commissioning Services shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

## 18 **Opening Formal Tenders**

18.1 The information obtained at the opening of tenders is confidential to

those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained, and any breach reported to the Monitoring Officer.

18.2 The Council uses an *electronic tendering platform*. The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.

## 19. The Quotation Procedure

19.1 For contracts of under £100,000 in value, suppliers to be invited to quote may be selected from an appropriate approved list, advertised on the Council's website or otherwise sought as appropriate. Where the contract value is £10,000 and up to £24,999, oral quotations (which should be confirmed by email) can be sought and the use of the quotation pack is optional. Where the contract value is £25,000 up to £99,999, a minimum of 3 quotations MUST be requested in writing using the quotation pack.

19.2 The Authorising Officer must satisfy him/herself as to the legal, financial and technical capacity of suppliers invited to quote to undertake the contract for the Council, through seeking appropriate in-house professional advice, and that they will provide value for money.

19.3 Three or more suppliers must be invited to quote to ensure genuine competition. If it is only possible to invite two suppliers to quote, authorisation must be sought from the relevant Director.

19.4 The Head of Procurement & Commissioning Services shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

## 20. Acceptance of Formal Tenders and Quotations

20.1 Where expenditure has been approved through the budget setting process, the Procurement Panel or Board has given approval to proceed and these CPRs have been followed, the Procurement Board or Procurement Panel shall receive notification of the contract award.

20.2 For contracts of £100,000 or more, contracts are to be awarded under the "most economically advantageous" criterion (see Rule 20.3). The Procurement Panel/Board shall receive a written report of the contract award from the responsible officer, seeking approval for such award where outside of the delegated authority granted at the approval to proceed stage. In extreme urgency, the Head of Procurement & Commissioning Services may agree to an oral report from the responsible officer with a written report being presented to Procurement Panel/Board within a calendar month. All papers/electronic files will be stored in line with the document retention policy.

- 20.3 Tenders or quotations must be evaluated on the basis of which is most economically advantageous to the Council. When using the Public Contracts Regulations 2015, the criteria for evaluation must be set out in the invitation to tender or equivalent document depending on which procedure is used, in descending order of priority, with the weightings to be given to them. The criteria may also be set out in Find a Tender and public notices. Whole life and environmental costs may be included in criteria for evaluation.

## 21. **Electronic Tendering and Quotations**

The Head of Procurement & Commissioning Services is responsible for the procedure for these processes.

- (a) tenders and quotations may be invited electronically, provided paper copies of any documents that cannot be sent on-line are sent by post and paper copies of all documents are sent to suppliers who do not specify an e-mail address for receipt of tenders or quotations. In selecting suppliers to be invited to tender or quote, the Head of Procurement & Commissioning Services must not discriminate against suppliers who do not have facilities for receiving invitations by e-mail. Where the e tendering system is the only process being used support must be found for suppliers in this category.
- (b) invitations to tender and quotes may be submitted electronically through the approved e tendering system. Where electronic submissions are made outside of the approved system, submissions must be made before the official opening deadline,
- (c) the procedure will also include arrangements for e-auctions.

## 22. **Amendments and Alterations to Tenders and Quotations**

- 22.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be clearly headed "Tender Amendment" or "Quotation Amendment" as appropriate and sent to all suppliers who have been invited to tender or quote. If there is more than one amendment, they should be numbered consecutively. Amendments should be sent out in sufficient time to allow suppliers to adjust their tenders or quotations as appropriate.
- 22.2 A supplier's tender or quotation is his offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted, alterations will only be accepted through formal clarifications under the restricted procedure; or negotiations under the Competitive Dialogue process of the Public Contracts Regulations 2015.
- 22.3 In all other situations, if a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an

obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.

- 22.4 Where performance specifications are used, a tender or quotation that is expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract, may be treated as non-compliant and rejected. This does not prevent the Council inviting variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed). If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.
- 22.5 Where outcome-based specifications are used it will be for the bidder to decide the method of service delivery. Tenders or quotations will be evaluated fairly against published evaluation criteria.
- 22.6 A properly approved and PCR-compliant competitive dialogue process or negotiated procedure will normally result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.

## 23. **Contract Extensions**

- 23.1 Where extensions to contracts have been included in the original advert, tender documentation and contract, subject to Panel/Procurement Board approval, the extensions may be agreed; where performance is satisfactory and the original contract terms are to continue (including price variations in line with the original contract) through the issuing of a contract change note. The contract change note must be kept with the original contract in line with the document retention policy and must be signed by the officer who signed the original contract, or in their absence for whatever reason, by another officer authorised to sign the original contract.

23.2 For Contracts of £100,000 in value and over, these will be approved by Procurement Panel/Board as set out in Appendix 2.

## 24. **Contract Variations**

- 24.1 For contracts of £100,000 in value and over, if a contract variation is proposed where the terms and conditions of the original contract will be changed; the relevant Panel/Board shall require a written report from the responsible officer requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In extreme urgency the Head of Procurement & Commissioning Services may

agree to an oral report from the responsible officer, with a written report being signed off by the Panel/Board within a calendar month of this meeting. Once approval is received, a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy. If a contract is executed as a deed, a short supplemental deed may be drafted and this will be dealt with on request to Legal Services.

## 25. Form of Contract

25.1 Legal Services will decide whether a contract is to be executed as a deed or under hand as a simple contract. As a general rule, any works contracts and high value contracts with a value equal to or exceeding £1,000,000 and which are expressed to be executed as deeds must either be:

25.1 made under the Council's seal attested by the City Solicitor or authorised signatory; or

25.2 signed by at least two officers of Legal Services duly authorised by the City Solicitor

25.2 All contracts created as deeds must be made in accordance with the provisions of paragraph 25.1 above, witnessed in accordance with the relevant provision of the Scheme of Functions Delegated to Employees by an Officer authorised to do so.

25.3 A contract executed as a deed is retained for twelve years to enable any action to be taken under it, if required

25.4 Contracts up to £999,999 in value can be signed under hand by Directors and Heads of Service or an authorised signatory.

25.5 Any contracts entered into on behalf of the Council which are being executed by electronic means (using an electronic execution software tool) shall be undertaken in accordance with the process set out in the Electronic Execution Procedure Rules.

## 26. Social Value

26.1 The Public Services (Social Value) Act 2012 requires the Council to consider delivering Social Value through contracts for services. However, the Council encourages consideration of social value outcomes in all contracts above the PCR thresholds, where it can be evidenced that it is relevant to the subject matter of the contract.

26.2 For those contracts that fall below the threshold, the approach should be to maximise outcomes where possible.

26.3 In order to ensure that the Council adheres to the Act, the social value sought from a contract must be relevant and proportionate in respect of the proposed contract

**27. Contract Administration and Management**

27.1 The Head of Procurement & Commissioning Services shall arrange for publication of a contract award notice, no later than 45 days after contract award, if appropriate, and shall keep a register of the notified information, which shall be available for inspection by appointment by any Member of the Council, internal and external auditors and any member of the public.

27.2 The Head of Procurement & Commissioning Services shall be responsible for ensuring that a procedure on "Contract Administration and Management" is made available to all officers and partners managing contracts on the Council's behalf. This will include guidance on managing partnering or partnership contracts explaining techniques such as target costing and "open book".

**28. Prevention of Fraud and Corruption**

28.1 All purchases, contracts and income covered by these rules must be let in line with the Council's Anti-fraud and Corruption Policy and Strategy.

28.2 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1972 register the interest with the Monitoring Officer and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion.

28.3 If an officer of the Council has a personal or non-pecuniary interest in a contract or proposed contract, he/she must declare that interest to their Deputy Chief Executive or Director, as appropriate, as required by the Council's Code of Conduct for Employees.

28.4 If a Member of the Council has a disclosable pecuniary interest or other relevant interest in a contract as defined in the Code of Conduct for Elected and Co-opted Members, the member must take such action as is required by that Code.

28.5 A contract must be terminated immediately, and any losses to the Council arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf:

- (a) offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract; or
- (b) commits any offence under the Bribery Act 2010 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

28.6 The attention of officers is drawn to the Council's Code of Conduct for Elected and Co-opted Members, Whistleblowing policy, Disciplinary Policy and Procedures and the Code of Conduct for Employees. Non-compliance with these CPRs constitutes grounds for disciplinary action.

28.7 All of the requirements in Rule 27.1 to 27.6 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representatives on evaluation panels.

## 29. **Freedom of Information Act 2000**

29.1 When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

29.2 When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Information Commissioner, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.

29.3 The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Information Commissioner indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence actionable by that, or any other person.

29.4 It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to

avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

29.5 The Head of Procurement & Commissioning Services will be responsible for advising on the application of the Freedom of Information Act and contracts, in conjunction with the Council's Head of Information Governance, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.

### 30. **Management of Risk in Contracts**

For contracts of strategic importance, a risk register will be drawn up for the contract letting process. Once the contract is awarded, a risk register to cover the implementation and successful ongoing management of the contract will be drawn up by the Head of Service or authorised deputy. This risk register will be monitored in line with the corporate guidance on risk throughout the life of the contract.

### 31. **Impact of Other Legislation**

In addition to what has already been mentioned in these Rules, there is other legislation that may impact on the supplies, services and works required when following a contract tender or quotation procedure such as Health & Safety, Safeguarding, Modern Slavery, to name but a few. This legislation must be incorporated where relevant and appropriate. In particular, the Director must consider whether the contract needs to include, or be subject to, a Data Sharing Agreement where the nature of the contract services is such that personal data is likely to be shared.

### 32. **Definitions**

In these Contract Procedure Rules (CPRs):

*Authorising Officer* means: an officer authorised to approve the placement of orders or invoices for payment.

*Cabinet* means: the Leader of the Council and the other members of the Council's Executive.

*Chief Finance Officer* means: the officer appointed under section 151 of the Local Government Act 1972.

*Contract* means: the agreement between the Council and a contractor/supplier/provider for the supply of works, goods or services, or for any activity that generates income for the Council.

*Contractor* means: a supplier or provider of works, goods or services to the Council.



*Contract change note* means: the document that describes changes to the original contract which have been agreed by both parties.

*Contract package* means: the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value.

*Corporate contract* means: a contract or framework agreement for the supply of works, goods or services to the Council e.g. for computer consumables, stationery, legal and financial services.

*Decision making body* means: the body responsible for decisions in the described situation under the Council's Constitution.

*Director(s)* means: a member(s) of the Council's Corporate Leadership Team or Strategic Management Board.

*Framework Agreement* means: an agreement between the Council and a contractor for the provision of estimated quantities of goods or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.

*Head of Procurement & Commissioning Services* means: the Head of Procurement & Commissioning Services or his or her authorised representative.

*Monitoring Officer* means: the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or her deputy.

*Outcome based specifications* means: a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third-party provider.

*Panels* means: Procurement Panel.

*Performance Specifications* means: a specification that provides details of the methods to be adopted when delivering the requirements.

*Procurement Board* means: the officer board responsible for all procurement decisions.

*Procurement & Commissioning Services* means: the centralised Procurement & Commissioning Service for Coventry City Council.

*Public procurement legislation* means: The Public Contracts Regulations 2015, the EU Directives from which they are derived, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.

*Quotation* means: an offer to undertake a contract of £10,000 or more

but less than £100,000 in value.

*Right to challenge* means: the right to challenge for services under Part 5 of the Localism Act 2011.

*Services contract* means: a contract or framework agreement for the provision of services to the Council.

*Supplies contract* means: a contract or framework agreement for the sale or hire of goods to the Council and includes, where appropriate, installation of goods.

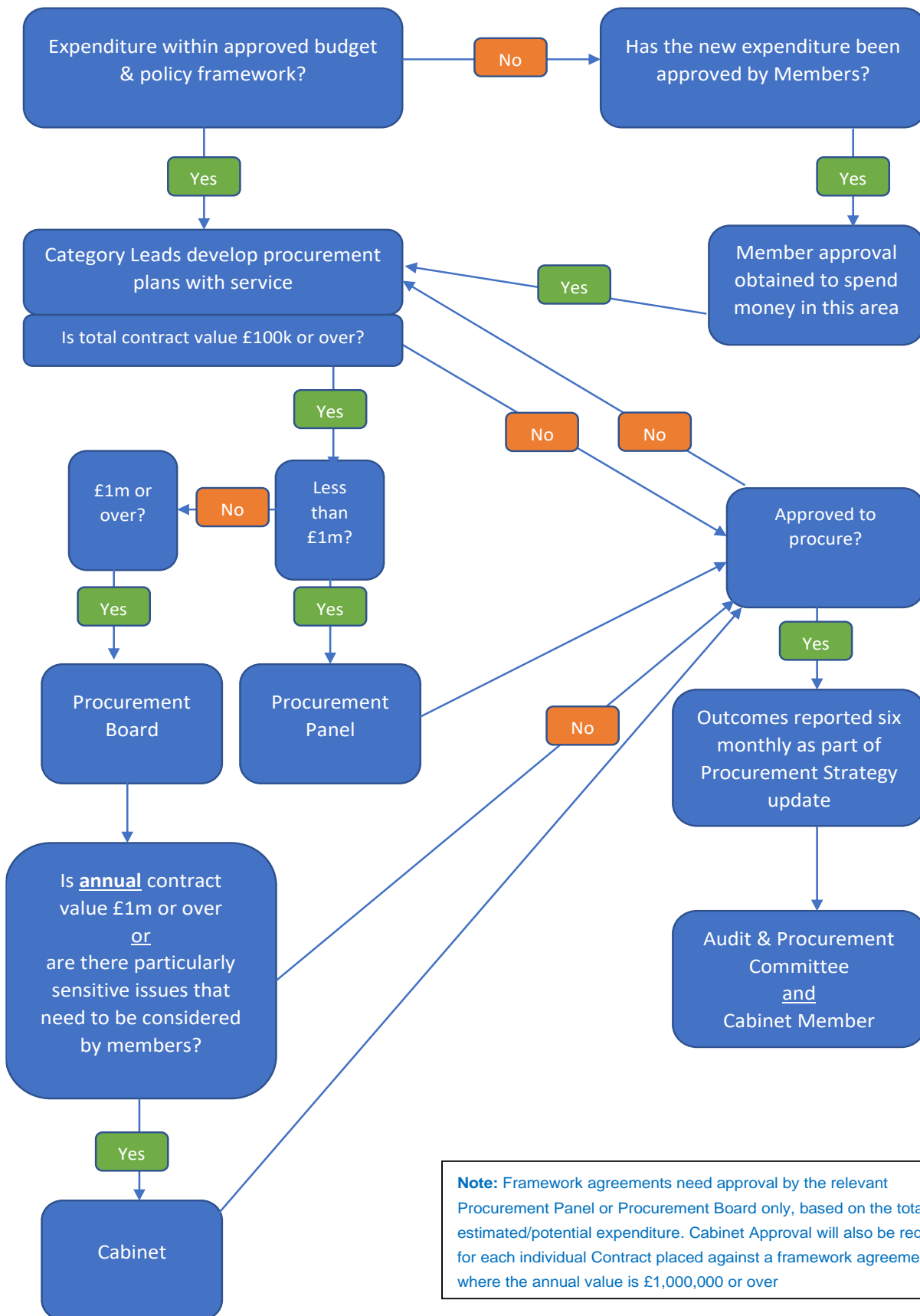
*Tender* means: an offer to undertake a contract of £100,000 or more in value.

*TUPE Regulations* means: the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of the same.

*Works contract* means: a contract for the construction, repair or maintenance of a physical asset not defined as Services in the Public Contracts Regulations.

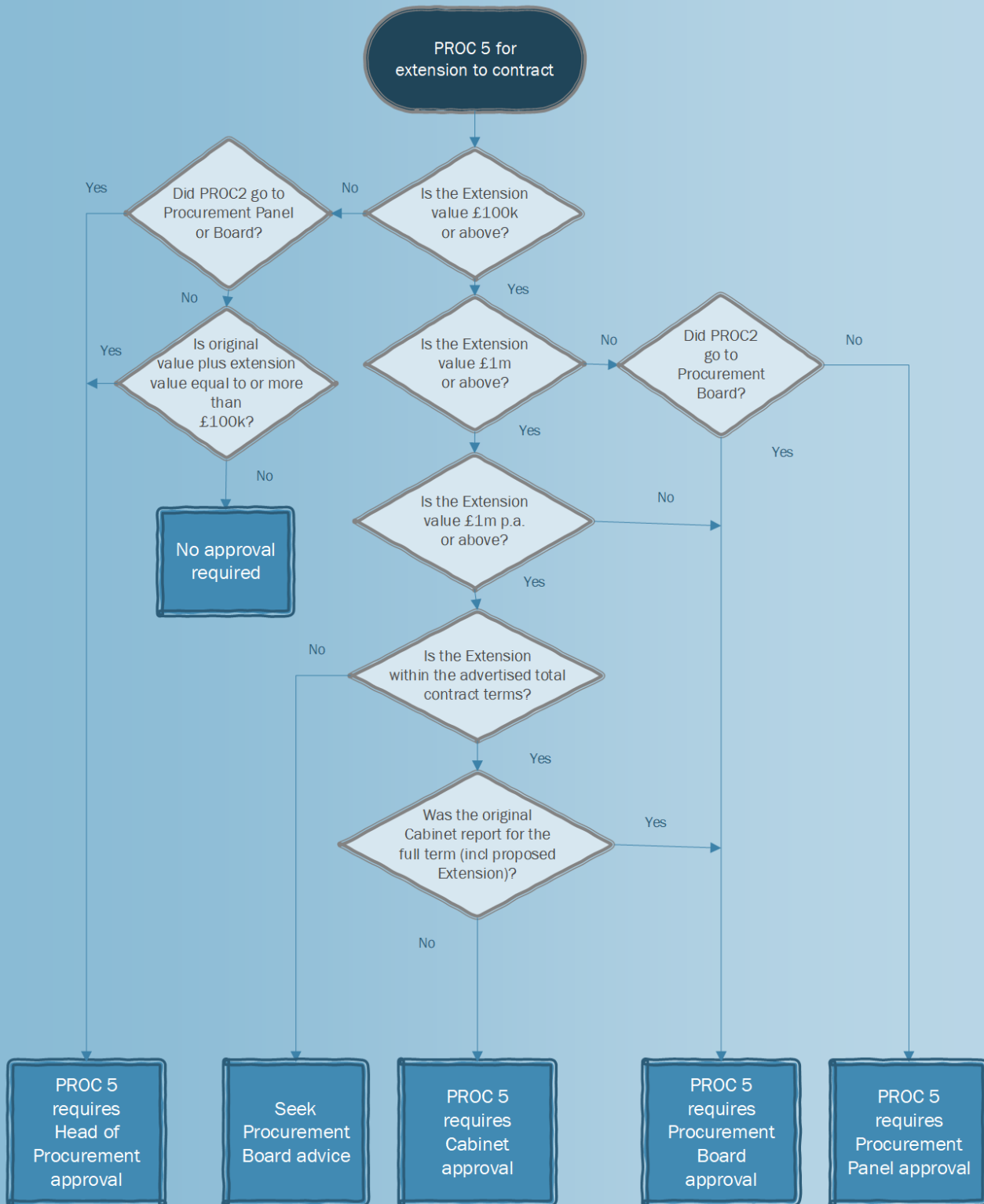
**Appendix 1**

PROCUREMENT GOVERNANCE



**Note:** Framework agreements need approval by the relevant Procurement Panel or Procurement Board only, based on the total estimated/potential expenditure. Cabinet Approval will also be required for each individual Contract placed against a framework agreement where the annual value is £1,000,000 or over

# Approval Process for Contract Extensions



**Note:**  
 PROC 2 Document - Request for Permission to Procure  
 PROC 5 Document - Request for Permission to Extend a Contract