

# Procurement and Contract Procedure Rules



**Version 1 – October 2018**

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## Appendices

A – Glossary

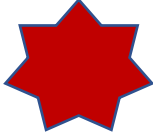
B – Procurement Guiding Principles

C – Route to Market Options

D – Guide to determine the appropriate type of legal agreement

E – EU Procurement Thresholds

## 1. Introduction

- 1.1 These Rules set out the approach that the Council uses for procurement and entering into legal agreements. They are the Rules that the Council will follow to adhere to its Procurement Guiding Principles as set out in [Appendix B](#).
- 1.2 These Rules apply to the buying of goods, works and services, entering into contracts and agreements and entering into income generating arrangements. However, the generic term *purchase* will be used and should be interpreted as meaning any of these things. 
- 1.3 These Rules apply to all procurement decisions, regardless of the source of funding.
- 1.4 A glossary of terms used in this document is attached as [Appendix A](#). All monetary values referred to in these Rules are the total purchase value with a supplier, not annual values, and exclude VAT unless otherwise stated.

## 2. Compliance

- 2.1 Every Member, employee of the Council and anyone acting on the Council's behalf must comply with these Rules.
- 2.2 Where work is carried out in partnership or collaboration then the Rules of the 'lead' authority should be followed, unless it is agreed by all parties that the Rules of one of the partners prevails.
- 2.3 Failure to comply with these Rules is a breach of the Council's Disciplinary Code of Practice and will generally result in the application of the Council's disciplinary procedures.
- 2.4 These Rules can only be waived in exceptional circumstances and must be agreed by the Statutory Chief Finance Officer in consultation with the Monitoring Officer.
- 2.5 Approval is needed from only one of the Statutory Officers if the waiver would protect the Council's interests in an emergency, as defined in the glossary.
- 2.6 Any waiver approved should be included in the monthly newsletter to members.

### 3. Overriding Principle

The overriding procurement principle in these Rules is to think:



### 4. General Rules

- 4.1 **Comply with Legislation:** Every purchase must be made in compliance with all applicable legal requirements. *Examples are:*
- [Public Contract Regulations 2015 \(for OJEU requirements only\)](#)
  - [Construction \(Design and Management\) Regulations 2015](#)
  - [The Concession Contracts Regulations 2016](#)
  - [Anti-Bribery Act 2010](#)
  - [Public Services \(Social Value\) Act 2012](#)
- 4.2 Where there is a conflict between legislation and these Rules the legislation will prevail.
- 4.3 Where the estimated purchase value exceeds the relevant EU public procurement threshold, as set out in [Appendix E](#), the procurement must be compliant with the relevant legal requirements, as well as these Rules.
- 4.4 **Avoid Bias:** Employees must avoid any bias or perception of bias in their buying decisions. In particular:
- No purchase can be wholly awarded or managed by an employee or member who has other interests in the supplier. Any interests must be declared to the appropriate manager (employees) and Monitoring Officer (members) who should act to avoid any conflicts of interest.
  - No gifts or hospitality, other than simple refreshments, can be accepted by employees or members from any bidders to any contract being let by the Council.

- 4.5 **Know your Spend:** Heads of Service must be aware of what suppliers their service uses, the purpose of the purchase and the level of spend with them. This information should be shared with the relevant buyers in the service to ensure these Rules are being complied with.
- 4.6 **Justify Your Spend:** Buyers must act in the best interest of the tax payer and the Council at all times when making purchases. They should therefore be able to justify that:
- a) There is a valid reason for making the purchase.
  - b) The purchase meets the needs of the customer/service and is fit for purpose.
  - c) The purchase is affordable and use of a budget for this purpose will be approved.
  - d) The purchase meets the due diligence requirements of the Council. ([see below](#))
  - e) Value for money is achieved at the point of purchase.
  - f) There has been no artificial splitting of the purchase to avoid these Rules or reduce the potential for fair and open competition.
  - g) Consideration is given to the whole life costs of the purchase.
- 4.7 **Due Diligence:** The due diligence requirements of the Council are that the appropriate risks and mitigations have been considered, where applicable to the purchase; such as:
- a) Health and Safety arrangements
  - b) Right to work in the UK
  - c) Insurance cover (as stipulated in Financial Regulation 10)
  - d) Professional Accreditation
  - e) General Data Protection Regulation (GDPR) compliance
  - f) Safeguarding arrangements
  - g) Financial stability
  - h) Discretionary or mandatory exclusions (e.g. criminal records)

## 5. Significant Purchases

5.1 Early conversations must be held with the Council's advisors when planning a 'Significant Purchase'. These are purchases which:

- a) are a new and complex purchase for the service;
- b) or, are organisationally sensitive;
- c) or, are over the "**Significant Value Threshold**" which is defined as:
  - any single purchase greater than or equal to **£100k**;
  - or any continuous spend with a supplier expected to be greater than or equal to **£25k** each year;
  - the spend with the supplier all falls under one Head of Service.

The 'Significant Purchase' process can also be followed for any purchase where additional support is needed.

5.2 The conversations should involve the buyer, a member of the Procurement Team, the relevant finance business partner, and other relevant experts.

5.3 The outcomes of the conversations are to agree and record:

- a) the justification of the purchase;
- b) the sources to be used to fund the purchase and any approvals needed to agree the use of funds for that purpose;
- c) the appropriate route to market; ([See Section 7](#))
- d) due diligence requirements; ([See Section 4.7](#))
- e) the best form of tender documentation to be used, if relevant, to maximise engagement with the market;
- f) who will approve the award of the contract to a supplier and any key decision notifications needed; ([See Section 12](#))
- g) the type of legal agreement needed, if any. ([See Section 13](#))

5.4 **Escalation:** Where agreement cannot be reached the proposal should be escalated and where necessary an officer panel will be convened, consisting of 2 of the following: Head of Paid Service, Section 151 Officer, Monitoring Officer, Solicitor to the Council, Head of Finance and Audit, and Head of Democratic Services.

## 6. Understanding the Market and Possible Solutions

6.1 Research should be carried out before making a purchase to ascertain:

- a) The availability of what is required and/or other solutions available in the market to achieve the required outcome.
- b) Suppliers in the market place who can provide what is required.

The level of research carried out should be proportionate to the risks associated with the purchase, such as the value, types of good and service, and sensitivity.

6.2 **Local Businesses and SMEs:** The Council's policy is to support local businesses, where there is no detriment to the provision of Council services, as a way of assisting the local economy recognised by the Public Services (Social Value) Act 2012.

6.3 We also aim to support local Small and Medium-sized Enterprises where possible and are signed up to the Federation of Small Businesses '[Small Business Engagement Accord](#)'. The accord is a voluntary code of practice for local authorities in the South East which seeks to encourage a more proactive approach to engaging with local businesses.

6.4 We should therefore aim to invite at least one local SME to compete for a purchase, where possible. See [Appendix A](#) for definitions of local and SME.

## 7. Routes to Market

7.1 The appropriate route to market to be used should be considered on a case by case basis. Examples of different routes that could be considered are summarised in [Appendix C](#). This list is not exhaustive and alternatives may be used where it is in the interests of the Council.

7.2 **Negotiations:** Negotiation with preferred suppliers is permitted as a route to market and during the procurement process to get the best deal for the Council, where relevant and when legally permissible (e.g. not allowed if OJEU restricted or open procedure route being used).

7.3 **Tendering:** The route to market chosen should be one of the tender options if any of the following apply:

- a) we are seeking better knowledge of what is available in the market;
- b) there are likely to be a few suppliers interested;
- c) we have clearly specified what we are wishing to purchase;

- d) we are looking for innovative solutions;
- e) the purchase is organisationally sensitive or deemed high risk;
- f) it is believed that better value may be achieved through competition.

7.4 Assistance from the Procurement Team must be sought if using a tender route.

## 8. Preparation of Tender Documentation

8.1 Templates of appropriate documentation for use during tenders should be maintained by the Procurement Team and adapted to maximise engagement with the market.

8.2 The use of alternative tender documentation should be approved by the Procurement Team.

## 9. Advertising Opportunities

9.1 Where the Council decides that the route to market needs to be advertised, the opportunities should be advertised on the Council's Business Portal (the South - East Business Portal) to seek expressions of interest from suitably qualified suppliers.

9.2 Any opportunity which is advertised, where the purchase value is expected to be **£25,000 or more**, must also be advertised on the Government's Contract Finder site.

## 10. Submission and Opening of Tenders

10.1 All invitations to tender must specify requirements for their submission. Such requirements should include a time by which tenders must be received by the Council. Any decisions to change the tender deadline must be agreed by the Procurement Team and lead buyer and recorded and publicised.

10.2 All tenders should be managed through the South-East Business Portal (SEBP). Support from the Procurement Team should be provided to assist suppliers requesting help with electronic tendering.

10.3 All procurement submissions that have used the tender route should be electronically unsealed by a member of Procurement Team after the tender deadline date. The functionality of the South-East Business Portal will be used to maintain the audit trail of the tender submissions and opening.



## 11. Tender Evaluation and Selection

- 11.1 An evaluation matrix should be prepared by the Procurement Team (including the appropriate weightings against the Cost/Service/Quality elements) as part of the initial tender documentation.
- 11.2 A completed evaluation/scoring matrix must be produced to support the selection decision in a level of detail that will allow meaningful feedback to bidders.

## 12. Approval and Award of Contract

- 12.1 Approval must be sought from the appropriate authoriser to award the contract to the highest scoring tenderer, in accordance with the following table below:

| Total Purchase Value  | Authoriser                          |
|---|-------------------------------------|
| <b>Up to £100,000</b>   | Head of Service                     |
| <b>£100,001 to £250,000</b>                                     | Director or Chief Executive Officer |
| <b>£250,001 to £500,000</b>                                     | Individual Executive Member         |
| <b>Over £500,000</b> within Council budget and policy framework | Executive Committee or Full Council |
| <b>Over £500,000</b>  | Full Council                        |

- 12.2 **Other Member Consultation:** If spend involves one of the following, purchasers should consult with the relevant Executive Portfolio holder before awarding the contract:
- Significant assistance to deliver a corporate priority.
  - Purchase relates to a regulatory responsibility e.g. gas servicing.
  - Organisationally or politically sensitive.
  - There are any potential officer conflicts of interest.
  - A possible adverse reaction in the market place leading to challenge.
- 12.3 All awards made over **£250,000** constitute a key decision and should be formally recorded and reported to the next meeting of the Executive or Full Council.
- 12.4 **Feedback to Tenderers:** There should be communications with the unsuccessful tenderers to explain why they were unsuccessful in a tender exercise.

## 13. Type and Content of Legal Agreement

13.1 The type of legal agreement to be used for a purchase must be decided before engaging with the market. This should include consideration of the following:

- **Document Type:** What is the appropriate type of document to use for that contract? (e.g. Purchase Order, JCT, call-off agreement, services agreement)
- **Contract versus Deed:** Are the value or risks of the contract such that we want the added protection of a deed?

13.2 The guide in [Appendix D](#) should be used to aid this consideration.

## 14. Signing and/or Sealing Contracts and Agreements

14.1 **Signing an Agreement or Contract:** Only Heads of Service and above can sign a contract or agreement on behalf of the Council in accordance with the following table:

| Total Agreement Value | Signatory                           |
|-----------------------|-------------------------------------|
| Up to £100,000        | Head of Service                     |
| £100,001 or more      | Director or Chief Executive Officer |

14.2 This Rule includes:

- agreements which tie the Council into expenditure (e.g. maintenance);
- agreements which tie the Council into a set of terms and conditions (e.g. grant award);
- contracts awarded through a tender process.

Purchase orders are excluded and can be authorised in accordance with Financial Regulation 4.

14.3 **Sealing a Deed:** Any contract to be entered into as a deed should be sealed. The officers authorised to sign the seal are identified in part 1 Chapter 13 of the Constitution.

14.4 In exceptional circumstances where the seal is not available the deed can be signed by 2 officers who are authorised to sign the seal.

## 15. Contract Records

- 15.1 **Central Register:** The Council must maintain a Central Register of all contracts that it has entered into. The following types of contract are exempt from this requirement and will be managed by lead services: Purchase Orders, Employee Contracts, Tenancy Agreements and Tree Preservation Orders.
- 15.2 All original and signed copies of a contract, must be held in a secure location for the term of the contract (including any agreed extension periods), plus the statutory limitation period (6 years for contracts under hand, 12 years for deeds) plus two years. They must be marked in a way that they can be cross-referenced back to the entry record on the Central Register.
- 15.3 **Service Contract Records:** Heads of Service must be aware of what contracts their service has in place and where the documentation is held.
- 15.4 Heads of Service are responsible for ensuring that:
- ✓ summary details of any contract that has been entered into, that binds the Council to the terms and conditions of the contract, have been entered on the Central Register;
  - ✓ the original signed/sealed contract and any subsequent signed/sealed variations, have been stored in a secure location, and can be referenced back to the Central Register;
  - ✓ an electronic copy of the contract and any subsequent variations to the contract that are entered into during its term are stored in their service's filing areas.
- 15.5 **Right of Access to Documents:** At any stage of a contract the Statutory Chief Finance Officer or their representatives have the right to examine contract records and be entitled to make all enquiries and receive such information and explanation as they may require to confirm the accuracy of the records.
- 15.6 Non-employees employed to supervise and manage contracts on the Council's behalf should be required to provide documents relating to the contract for inspection by the Council, when required. On completion of the contract all such records should be transferred to an appropriate Council manager.
- 15.7 **Document Retention:** All tender and contract documentation should be retained in accordance with the Council's [retention policy](#).

## 16. Contract Management

16.1 **Contract Payments:** The Council has signed up to the [Prompt Payment Code](#). The Prompt Payment Code signatories undertake to:

- ✓ Pay suppliers on time within the terms agreed at the outset of the contract and without changing payment terms retrospectively and without changing the length of payment for smaller companies on unreasonable grounds.
- ✓ Give clear guidance to suppliers by providing clear and easily accessible guidance on payment procedures ensuring there is a system for dealing with complaints and disputes and advising them promptly if there is any reason why an invoice will not be paid to the agreed terms.
- ✓ Encourage good practice by requesting lead suppliers to adopt the code throughout their own supply chains.

16.2 **Payment in Instalments and Retentions:** Payments for works made in instalments can only be made on an official certificate, the format of which has been approved by the Statutory Chief Finance Officer. These should be issued by the officer(s) named in the contract.

16.3 The certificate should clearly show the total contract sum, any variations, cumulative total and payments and VAT paid to date, any retention sums kept and amount due for payment on that instalment.

16.4 **Variation Orders:** Each variation to the original contract should be priced or have an estimated price and a record kept. They should be confirmed and authorised in writing by the contract manager or their deputy.

16.5 Where one or more variation orders cause the contract sum to increase by the greater of 10% or **£50,000** or more, they should be reported in the next report to the Executive.

16.6 **Contractor Claims:** Financial claims from contractors in respect of matters not clearly within the terms of an existing contract should be referred to Legal Services for consideration of the Council's legal liability and to Financial Services to assess the extent of any financial liability.

16.7 **Extending Contracts:** Contracts can only be extended in accordance with the terms of the original contract, and generally should not be extended for more than 2 consecutive occasions without reconsidering the market and assessing the associated risks.

16.8 **Extension to a Call-off Agreement:** This is only possible when the terms and conditions of the call-off provides for such an extension.

## 17. Oversight of these Rules

17.1 **General:** The Procurement Team and Finance Business Partners will provide general oversight of adherence to these Rules and should log all Significant Purchase opportunities that they have been notified of.

17.2 **Transparency to Members:** Any 'Significant Purchase' award that has been made by officers should be published within a month to members.

17.3 **Audits:** In addition, testing by the internal audit team of a sample of suppliers above and below the **Significant Value Threshold** will be carried out each year.

17.4 **Annual Report:** An annual report should be presented to the Chief Executive's Management Team providing information on how these Rules have been implemented in the preceding year.

17.5 This should include a summary of the different routes to market used for significant purchases and the results of the audit testing.

17.6 This report will also serve as a source of assurance to the Chief Executive's Assurance Group and the Annual Governance Statement presented to the Audit and Governance Committee.

**APPENDIX A****GLOSSARY****BAFO**

Best and Final Offer applies to the final of a multi stage (negotiated) procurement process whereby the contracting authority is seeking each bidder's best and final offer on which the contract will be ultimately awarded.

**Call-Off Agreements**

A call-off agreement can be let from a framework either by direct award or through a mini-competition process. It is an individual contract under a framework agreement which benefits from being treated as if the full procedural steps prescribed by public procurement law have already been fulfilled. The call-off contract may technically be longer than four years and may extend beyond the expiry date of the framework itself albeit that there would need to be clear justification for that.

**Concession**

See income generating arrangements.

**Contracts**

A contract relates to an agreement between at least two parties and consists of an offer, acceptance and consideration creating reciprocal rights and obligations between those parties. A purchase order is included in the definition of a contract.

**Emergency**

Major threat to life, property, security or the environment, or significant damage to the running of any of the Authority's functions or services.

**Framework Agreement**

A Framework Agreement is an agreement between one or more contracting authorities and one or more potential suppliers for the supply of goods, services or works which forms a pre-procured arrangement from which the contracting authority can purchase those goods, services or works, either directly from a framework supplier or following a mini-competition between the framework suppliers. The maximum duration for a Framework Agreement is 4 years (except in certain specified circumstances). Framework Agreements may be structured as single supplier or multi-supplier agreements.

A Framework Agreement does not guarantee that contracting authorities will place any specific £value or volume of business with the awarded framework suppliers. However, where operational demand exists you are encouraged to use available framework suppliers.

Framework Agreements are commonly used in the case of repetitive purchases where the contracting authority knows it will have a requirement but does not know the precise quantity or quantities which it will require. It therefore establishes a pre-existing procured arrangement under which suppliers will, when the time comes, be able to meet the Council's needs.

Framework Agreements may be set up by Central Purchasing Bodies (e.g. Government Procurement Service (GPS), Pro5 procurement organisations, regional buying consortiums) to allow other contracting authorities to benefit from using them.

## Goods / Supplies



These contracts relate to the purchase, hire, siting or installation of goods, but not their maintenance.

**For example: equipment, clothing, vehicles & spare parts, office stationery, consumables, gas.**

## Income Generating Arrangements



There are a number of different types of contract relating to arrangements where the contractor bears a significant part of the risk of being rewarded for the works, goods and services which it provides rather than involving an obligation on the Council to pay the contractor for them. It could involve a right for the Council to receive income in relation to or generated by the provision of the works, goods and services provided by the contractor. Examples include:

- **Concession** – Operator for Leisure Centre (management fees are received on a regular basis to the Council from the operator having gone through a formal procurement process)
- **Licence/Consent** – Agreement to allow car washing franchises to operate from our car parks. Whilst there is no obligation to perform the services the way that operators are selected does fall within the procurement regime.

## Local Businesses

Local Businesses are for the purpose of these Rules regarded as suppliers which are geographically situated within the Solent Local Enterprise Partnership (LEP) economic area comprising of the Isle of Wight, the two cities of Portsmouth and Southampton, the M27 corridor and the Solent waterway.

## Off-The-Shelf

Something readily available from a range of suppliers which is not designed or built specifically for that purchaser's own needs.

## Public Contracts Regulations 2015

The Public Contracts Regulations 2015 (“PCR 2015”) implement in England and Wales the latest EU Directive 2014/24/EU on public sector procurement and set out the current rules governing public procurement activity. They came into force on 26 February 2015.



### Purchase

Includes all the following:

- ✓ buying goods, works and services;
- ✓ entering into contracts and agreements
- ✓ entering into income generating arrangements.



### Services



These contracts relate to the provision by a person or other entity to provide services.

**For example: consultancy agreements, provision of maintenance services, provision of professional services, cleaning services.**

### Significant Purchase

These are purchases which:

- are a new and complex purchase for the service;
- or, are organisationally sensitive;
- or, are over the “Significant Value Threshold”:

### Significant Value Threshold (SVT)

- any single purchase greater than or equal to **£100k**
- or any continuous spend with a supplier expected to be greater than or equal to **£25k** each year
- the spend with the supplier all falls under one Head of Service.

### SMEs

All the following are defined as Small and Medium-Sized Enterprises.

- Micro Business = less than 9 employees & annual turnover under £1.6m
- Small Business = less than 49 employees & annual turnover under £8.3m
- Medium Business = less than 249 employees & annual turnover under £41m



**If both parts cannot be satisfied, the turnover value will prescribe if the supplier is a micro, small or medium sized business**



## South East Business Portal (SEBP)

A joint procurement portal used by many Local Authorities in the south-east region to advertise forthcoming contract opportunities and as a register of awarded contracts. The portal is used to bring buyers and suppliers together electronically making it easier to communicate opportunities for the local economies. <https://sebp.due-north.com/>

## Statutory Officer

Officers of the Council who are assigned in the Council's Constitution to perform these 3 statutory roles:

- Section 151 Officer (Finance)
- Monitoring Officer
- Head of Paid Service (usually the Chief Executive Officer)

## Tender

See table of options in Appendix C that fall under this definition in these Rules.

## Total purchase value with a supplier



The total purchase value with a supplier would typically cover **4 years spend** with that supplier, excluding VAT.

## Works



These contracts relate to construction, demolition, building and civil engineering work and completion work such as joinery, plastering and decoration. It includes major repairs or complete refurbishment.

**For example: building a sports pavilion, resurfacing a road, repairing a roof, installing a heating system.**

**APPENDIX B****PROCUREMENT GUIDING PRINCIPLES****1. Be clear about what you want and why you need it**

- How will the purchase benefit your customers?
- Do you know what you want?
- Do you know the market?
- Is this the best deal for the Council?
- Can you afford it within your budget?
- Is this the best solution or is there another way to achieve the desired outcome?

**2. Be able to justify your thinking to the person on the street who pays council tax**

- Treat the spend as if it is your own money
- Be ready to assist in evidencing the thinking/rationale for your approach
- Comply with the Council's Anti-Bribery Policy - and know that you can rely upon it

**3. Pull in the Experts early**

- Have conversations with the Procurement Team and your Finance Business Partner to help agree the right approach.
- Ask for and accept critical friend challenge
  - Be ready to answer - do you know your market, do you have the money, how does this spend help your customer or internal stakeholder, is this spend the most economical way to achieve that outcome

**4. Anything over OJEU limit = must go out tender (non-negotiable)**

- Heads of Service to authorise orders and invoices over this value
- Need mechanism to tell people what the limit is when it changes - HoS and FBPs told - also SID page with thresholds.
- Advertise on Contracts Finder and other means

**5. Get the best deal for the Council you can**

- Not always the cheapest
- What does good look like when you're buying something?
- Consider service implications and quality
- Take into consideration whole life costs
- This Council encourages negotiation with preferred suppliers, where relevant and when permissible (not if OJEU restricted or open procedure routes)

**6. Engage with local SMEs (principles of FSB Engagement Accord)**

- Don't close the door on SME businesses – help them to work with us
- Meet the buyer events

**7. Buyer beware**

- Remember the risk is on the buyer
- Checks on the supplier need to be carried out – supply vetting

## Appendix C

## Route to Market Options

This list is not exhaustive and alternatives may be used where it is in the interests of the Council

| ROUTE   | Examples of Use  |
|---|--|
| <b>Non-Tender Routes</b>                            |  |
| <b>Electronic Catalogues</b>                        | Use of pre-agreed arrangements the Council has with a supplier. Examples include stationery & protective clothing online catalogues for purchasing goods via virtual credit card arrangements.   |
| <b>In-house provision</b>                           | Use of other parts of the Council able to provide the service.   |
| <b>Corporate Contracts</b>                          | Purchasing from a contract the Council already has in place which can accommodate that additional need.<br>e.g. Tree maintenance services, cleaning contract, legal partnership  |
| <b>Direct approach</b>                              | Direct engagement of a known supplier who is capable of meeting the Council's needs and provides value for money for the tax payer.<br>This route must NOT be used where a conflict of interests exists with the supplier or where a competitive process is required.  |
| <b>Contracts with controlled entities</b>           | Under PCR 2015 a contracting authority (such as a council) can directly award a contract to another body (such as a local authority company) if all the following conditions are met: <ul style="list-style-type: none"> <li>✓ The contracting authority exercises control over that body which is similar to the control it exercises over its own departments.</li> <li>✓ More than 80% of the activities of the controlled body are carried out performing tasks entrusted to it by the controlling contracting authority</li> <li>✓ There is no direct private capital participation in the controlled body</li> </ul>   |
| <b>Shared Service with another public authority</b> | Under PCR 2015 Regulation 12(7) two or more contracting authorities can enter into a shared service agreement if the following conditions are met: <ul style="list-style-type: none"> <li>✓ the contract establishes or implements a co-operation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common;</li> <li>✓ the implementation of that co-operation must also be governed solely by considerations relating to the public interest (which includes meaning that it should not be a means to generate profits);</li> <li>✓ and the participating contracting authorities perform on the open market less than 20% of the activities concerned by the co-operation.</li> </ul> |
| <b>Soft market testing</b>                          | Pre-tender research into suppliers and their prices. E.g. web searches, phoning suppliers, peer recommendations. It includes testing commercial market capabilities of meeting a set of requirements such as identifying whether there are enough interested suppliers to maintain competitive pressures.  |
| <b>Obtaining 3 Quotes</b>                           | May be used following soft market testing exercise whereby suitably qualified and capable suppliers may provide a quotation direct to the service.   |
| <b>Auctions</b>                                     | Procurement through auctions is only permissible in exceptional circumstances. In these cases, the Council's policy and procedures for auctions as set out in Financial Regulations Support Document 5 must be followed.   |

| <b>Tender Options – Non-OJEU only</b>                      |  |
|--|--|
| <b>Framework Agreement – direct call off from existing</b> | Direct award from a pre-existing framework in accordance with the process for doing so set out in that framework. The framework's terms and conditions will apply to each such call-off.   |
| <b>Framework Agreement – mini competition</b>              | A closed competition between the suppliers on a framework conducted in accordance with the process outlined in that framework.   |
| <b>eRequest for Quote</b>                                  | Opportunity advertised on the South-East Business Portal and managed independently by the Procurement Team. Lightweight tender and usually of a lower contract value.  |
| <b>Closed Tender</b>                                       | This is the process when selected organisations are invited to submit a tender following soft market testing, or using the knowledge of the sourcing officer of the suppliers available in the market. This route to market must be approved by the Procurement Team and is not available for procurements under PCR 2015. |
| <b>Tender Options – Any</b>                                |  |
| <b>Occasional Joint Procurement</b>                        | For example, HIOWPP (Hampshire & Isle of Wight Purchasing Partnership) frameworks available to all members.  |
| <b>Open Procedure Tender</b>                               | One stage regime. Generally used if the purchase is for something which is readily available from a range of suppliers and whose characteristics are simple to evaluate or where there is a very limited number of potential suppliers.  |
| <b>Competitive procedure with Negotiation</b>              | A multi-stage procurement procedure for more complicated needs involving a gradual reduction of participating bidders and interactive sessions with participating bidders to help shape their final proposals.   |
| <b>Competitive Dialogue</b>                                | A procedure which is very similar to the Competitive Procedure with Negotiation but without flexibility to potentially accept an initial bid submission.   |
| <b>Innovation Partnership</b>                              | A relatively new type of procurement procedure involving multiple stages and geared towards developing an ongoing relationship to develop innovative solutions.  |
| <b>Dynamic Purchasing System (DPS)</b>                     | For commonly used purchases and open to any economic operator who satisfies the selection criteria to join at any time. Involves a lot of supplier management as each advertised need requires a full submission which needs evaluation.   |
| <b>Tender Options (OJEU Only)</b>                          |  |
| <b>Restricted Tender – Goods and Services</b>              | Two stage pre-qualification and tender regime.<br>The restricted process for Goods and Services must only be used for over OJEU threshold tenders.   |
| <b>Restricted Tender - Works</b>                           | Two stage pre-qualification and tender regime.<br>For <b>works contracts above the services and goods threshold</b> , you can use a pre-qualification stage. Otherwise the restricted process for Works must only be used for over OJEU thresholds.  |

## APPENDIX D

## Guide to Determine the Appropriate Type of Legal Agreement

### Decision 1 - Document Type

| Nature of the Purchase                                     | Examples of Options   |
|--|---|
| <p><b>Goods</b><br/>not using a framework agreement</p>    | <ul style="list-style-type: none"> <li>• <b>Purchase Order</b> standard terms &amp; conditions – typically used for lower value arrangements</li> <li>• <b>Supply of Goods Agreement</b> (valued below £100,000)</li> <li>• <b>Standard Supply of Goods Agreement</b> (valued above £100,000)</li> </ul>  |
| <p><b>Services</b><br/>not using a framework agreement</p> | <ul style="list-style-type: none"> <li>• <b>Purchase Order</b> standard terms &amp; conditions – typically used for lower value arrangements</li> <li>• <b>Services Agreement</b> (valued below £100,000)</li> <li>• <b>Standard Services Agreement</b> (valued above £100,000)</li> </ul>  |
| <p><b>Works</b><br/>not using a framework agreement</p>    | <ul style="list-style-type: none"> <li>• <b>Purchase Order</b> standard terms &amp; conditions typically used for lower value arrangements</li> <li>• <b>JCT Minor Works</b> with associated Standard schedule of amendments where the works are technically straightforward and there is no design input from the contractor (valued below £50,000)</li> <li>• <b>JCT Minor Works with Design</b> with associated standard schedule of amendments where the works are technically straightforward and there is some design input from the contractor (valued below £50,000)</li> <li>• <b>JCT Design and Build</b> with associated standard schedule of amendments where the works are designed by the contractor based upon outline requirements provided by the Council</li> <li>• <b>JCT Measured Term</b> with associated standard schedule of amendments where there is a regular flow of maintenance and minor works (including improvements) to be carried out by a single</li> </ul> |

| Nature of the Purchase  | Examples of Options   |
|---|---|
|   | <p>contractor over a specified period of time under a single contract where the work is to be instructed from time to time (each instruction being an order) and measured and valued on the basis of an agreed schedule of rates.</p> <p>Note: Where the nature of the works is more complicated and /or of high value then more detailed JCT contract forms should be used for example, JCT Intermediate Building Contract or JCT Standard Building Contract (either with or without some contractor design as appropriate).</p> <p>Where the works involve the installation of a system then the NEC3/NEC4 Engineering and Construction Contract or the MF/1 General Conditions of Contract should be used.</p> |
| <p><b>Setting up your own framework</b></p>                         | <ul style="list-style-type: none"> <li>• <b>Standard Framework Agreement</b> – contains a pro forma call-off agreement. This is a services-based template being the most likely need.</li> </ul>  |
| <p><b>Calling off from a third party pre-existing framework</b></p> | <ul style="list-style-type: none"> <li>• Utilise the <b>form of the call-off</b> contained in the framework</li> <li>• Where the framework does not contain a form of call-off use the <b>Standard Call-Off</b> (tailored as necessary)</li> </ul>  |

## Decision 2 - Contract or Deed

|                                  |   |
|----------------------------------|---|
| <p><b>When to use a Deed</b></p> | <p>When there is a risk that there might be no consideration (i.e. a unilateral promise without giving something in return)</p> <p>AND / OR</p> <p>When you want the period of potential liability (applying to both parties) for breach of contract to last for 12 years rather than 6 years.</p> <p><b>Works contracts</b> should ordinarily be made by deed.</p> |
|----------------------------------|---|

**APPENDIX E****EU Public Procurement Thresholds**

Start date of Thresholds = 1 January 2018 (subject to revision on 1 January 2020)

|  |                                |
|--|--------------------------------|
| Goods / Services   | <b>Greater than £181,302</b>   |
| Goods / Services – Social and Other Specific Services subject to the <b>Light Touch Regime</b> . | <b>Greater than £615,278</b>   |
| Works  | <b>Greater than £4,551,413</b> |
| Concessions  | <b>Greater than £4,551,413</b> |