

# EXETER CITY COUNCIL

## Procurement and Contract Procedures



Date of Creation: 21.03.2018  
Last Review Date: 16.09.2019  
VERSION: Final

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# **PART A**

## **SECTION 1:**

### **The Role and Purpose**

- 1.1. The Procurement and Contract Procedures (“the Procedures”) form part of the Council’s Financial Regulations (see part 4(c) of the Constitution) and apply to all Officers employed by Exeter City Council (“the Council”) and should be complied with in all cases when the Council expects to spend money with external third party suppliers in order to provide value for Supplies, Works or Services.
- 1.2. The purpose of the Procedures is to:
  - i. Ensure the Council complies with all relevant legal requirements, including but not limited to domestic legislation, UK Public Contracts Regulations 2015 (“the Regulations”), the European Union Procurement Directives, and Treaty of the Functioning of the European Union Treaty (also referred as the Treaty of Rome).
  - ii. Provide appropriate safeguards and due diligence to support the Council in how it undertakes procurement and commercial activities.
  - iii. Provide accountability, probity and transparency in the Council’s dealings within such activities.
  - iv. Provide clear direction in how procurement and commercial dealings with third party suppliers are to be made.
  - v. Support the policy framework and budget procedures of the Council.
  - vi. Support compliance with the Council’s Constitution, the Employee and Members Codes of Conduct.
  - vii. Promote Value for Money in both how Tendering is undertaken and resulting contracts are managed.
- 1.3. In addition to the Procedures there are supporting Procedural Notes which shall also be adhered to in relation to third party spend.

## SECTION 2:

### When do the Procedures apply?

#### Inclusions

- 2.1 The Procedures shall apply to both capital and revenue expenditure and cover contracts for Supplies, Works or Services.
- 2.2 Spending includes expenditure incurred by the Council where it is in receipt of and acting as lead organisation funded by external Grants (this includes funding requests or applications) and where expenditure is expected to be made to a third party. In the case of external Grants the Council shall ensure that in addition to the Procedures it complies with any specific Grant funding conditions as outlined by the funding partner, and / or State Aid / General Block Exemption Regulations.

#### Exclusions

- 2.3 The Procedures apply in respect of commercial dealings of the Council with third party organisations. However, there are certain situations where it would not be necessary to apply the requirements of the Procedures. For example, exclusions apply in the following situations:
- i. Appointments outside of the control of the Council, e.g. appointment of external auditors;
  - ii. Subscriptions to national organisations;
  - iii. Specific licensing requirements (e.g. TV / Public Entertainment);
  - iv. Planning and Highway Agreements (such as S.106, 278 and 38);
  - v. Grant payments from the Council to third parties;
  - vi. Loan payments or loans from the Council to third parties provided on market terms (otherwise State Aid considerations may apply);
  - vii. Disposal of surplus Goods / Supplies;
  - viii. Financial dealings by the Section 151 Officer;
  - ix. Employment contracts;
  - x. Acquisition, purchase, leases (and / or disposal) in relation to land matters, existing buildings or immovable property, provided on market terms.
  - xi. Acquisitions for museum collections; collections related material; the work of specific artist(s) or themed exhibitions, all having unique qualities or attributes.
- 2.4 In cases where these Procedures do not apply, other rules and legislation are likely to apply. The Responsible Officer shall ensure that they adhere to any relevant rules and legislation, and if in doubt seek advice on those other relevant rules and legislative regulations.

#### Exemptions

- 2.5 Wherever practically possible the Procedures should be followed and consistently applied. However, it is noted that there may be situations where it is necessary to seek Exemptions to the Procedures. In cases where Exemptions are sought then the Procedural Note: Exemptions to the Procedures shall apply, considering the following:
- i. Arrangements above £10k shall require formal authorisation as set out within the Exemption Procedure.
  - ii. Exemptions shall be completed in advance of committing spend. If this is not undertaken, then a justification shall be made as to why this was not the case.
  - iii. The Procurement Team shall be engaged prior to the decision to apply any Exemption to ensure that there is consideration given to the appropriateness of an Exemption and / or alternative courses of actions.
  - iv. A formal Exemption does not forgo the other formal requirements or due diligence, for example, to ensure a formal contract is put in place / contract variation, proportionate

- contract management is undertaken or the obtaining of any formal decision to award the contract.
- v. Any Exemption granted over the Official Journal of the European Union (OJEU) Threshold approves only the anticipated non-compliance with the Council's Procedures and does not mitigate the risks associated with non-compliance with the Regulations or the European Union (EU) Procurement Directive as applicable.
  - vi. Exemptions shall be in line with the supporting Procedural Note: Exemptions to the Procedures and Delegation to Officers and Deputies as detailed in the Councils Constitution.

#### Breaches and non-compliance

- 2.6 The Procedures are an essential part of the overall Constitution of the Council. Those with responsibility for fulfilling their duties in line with these Procedures are required to maintain ongoing knowledge and awareness to ensure compliance with the Procedures.
- 2.7 In addition, it will be the responsibility of Responsible Officers (including those with line management responsibilities) to address non-compliance swiftly and in the most appropriate way according to the circumstances. Any potential misuse or non-compliance of the Procedures will be reported to the Service Lead – Commercial and Procurement.
- 2.8 Non-compliance with the Procedures may result in the Council's Disciplinary and Capability Procedure being invoked. In respect of willful, negligent, repeated or other serious breaches this could result in significant sanctions and even dismissal.
- 2.9 Means of reporting concerns can also be raised anonymously in line with the Council's Whistleblowing Policy.  
[http://committees.exeter.gov.uk/documents/s70103/ECC%20Whistle\\_blowing%20Policy%20Feb%202016v4.pdf](http://committees.exeter.gov.uk/documents/s70103/ECC%20Whistle_blowing%20Policy%20Feb%202016v4.pdf)
- 2.10 The Procedures do not negate the requirement to follow the Council's formal decision making process, "Delegation to Officers and Deputies" as set out in the Constitution and specific processes enforced by an individual Department or Service.

## SECTION 3:

### Guiding Principles

- 3.1 This section sets out guiding principles on what is expected in incurring expenditure on behalf of the Council with third party suppliers is made, and should be applied wherever possible:
- i. To be accountable in how procurement and contract management is undertaken;
  - ii. Seek Value for Money through competition;
  - iii. Act in a joined-up manner consistent with considering category spend requirements across the whole Council and not in isolation,;
  - iv. Seek to obtaining Value for Money and benefit through collaborative arrangements;
  - v. Be fair, non-discriminatory and consistent with suppliers or others in the process and avoid unnecessary burdens or constraints;
  - vi. Be efficient in how processes are applied;
  - vii. Procurement processes should be carried out as cost effectively as possible;
  - viii. Maintain and protect commercial confidentiality where required;
  - ix. Act legally, conforming to the principles of public sector procurement (non-discrimination; equality of treatment; openness and transparency; mutual recognition; proportionality) and with integrity ensuring avoidance of fraud, corruption or collusion in dealings with suppliers or others and third parties;
  - x. Apply an appropriate balance and proportional levels of due diligence to safeguard risks;
  - xi. Ensure required levels of authorisation and governance are applied to enable informed decision making;
  - xii. Procurement decisions are duly planned, consider ongoing costs and contract management arrangements;
  - xiii. Comply with the expectations of procuring in the public sector;
  - xiv. Maintain the reputation and standards expected of the Council and Public Sector.
- 3.2 The expectation is that these principles are diligently and consistently applied and unless there are clear and evidenced reasons to the contrary. For those with responsibilities in applying the Procedures as intended, they should do so in an informed manner which supports and upholds the guiding principles as set out.

## SECTION 4:

### Roles and responsibilities

#### Specific responsibilities.

4.1 Specific responsibilities as follows:

Person	Description
Chief Finance Officer / Section 151	Ensuring overall probity in respect of related financial matters, through relevant controls and monitoring.
City Solicitor / Monitoring Officer	Acting as the ultimate point of escalation in respect of breaches or non-compliance with the Procedures.  Ultimate point of authorisation in respect of contract signatory and execution.  Applying the requirements of the Monitoring Officer role diligently in consideration of matters concerning the Procedures.
Corporate Manager/ Director	Authorisation in line with levels as set out in the Authorisation Process and Scheme of Delegation as set out in the Constitution.  Ensuring awareness and compliance within their respective areas of responsibility.  Escalation point to investigate and / or action breaches and non-compliance within the respective area of responsibility and, where necessary, onward escalation to Director / Monitoring Officer.
Service Lead – Commercial and Procurement	Overall ownership of the Procedures and ensuring that the overall framework for commercial considerations is complied with robustly and effectively.  Ensuring compliance with the Council's overarching decision-making responsibilities and providing related guidance. On occasions will also have the same responsibilities as outlined in the Responsible Officer definition.
Elected Members	Ensuring compliance with the Members' Code of Conduct, including in relation to any interests they may have, and any specific responsibilities they have in relation to the Procedures themselves.  Make such decisions as are referred to them for determination in relation to these Rules.
Legal Services	Leading on the overall ownership of commercial matters related to Contract Terms and Conditions.  Point of escalation in relation to formal challenges within procurement or contract matters.
Portfolio Holder	Maintaining an ongoing awareness of exempted spend.  Ensuring accountability is maintained by those Officers with responsibilities for delivery of the Procedures.

Person	Description
Procurement Team	Acting as primary advisory service in relation to public sector procurement, commercial and contract management matters.
Responsible Officer	<p>This will include Service Leads and those with responsibilities in any of the following activities, including:</p> <p>Quoting, Tendering or contract renewals in line with the Procedures</p> <p>Seeking additional advice where these Procedures do not apply.</p> <p>Ensuring there is a genuine and legitimate business requirement for the spend and an approved budget and acting with the authority of the budget holder.</p> <p>Ensuring that the appropriate Authorisations have been received in respect of committing spend.</p> <p>Drafting fit for purpose specifications for each procurement which meet the requirements of the procurement.</p> <p>Providing justification for any deviation from the approved Sourcing Strategy.</p> <p>Accurately estimating the total contract value at the start of each procurement.</p> <p>Conducting sourcing / procurement in line with the Authorisation Process.</p> <p>Diligently applying Exemptions process where relevant.</p> <p>Diligent contract management for contracts which are within their jurisdiction.</p> <p>Reporting matters of breach or non-compliance.</p> <p>Engaging the Corporate Procurement Team where the project / Tender is in excess of £50k</p>
Senior Management Board	<p>Maintaining a strategic overview of compliance with the Procedures and overall accountability for non-compliance with the Procedures in their respective areas of responsibility.</p> <p>Instructing relevant changes to ensure compliance and controls remain effective.</p> <p>Authorisation in line with levels as set out in the Authorisation Process.</p>

## PART B

### SECTION 5:

#### Sourcing Strategy

##### General

5.1 The following Sourcing Strategy is based on the assumption that there is a proven need and requirement for the Supplier, Works or Services. The Sourcing Strategy shall be applied when considering how to fulfil a proven need and requirement, and done in the following order of priority:

**Step 1:** Consideration for the Council to self-deliver the requirements direct by the Council or through a Council formed Teckal Company;

**Step 2:** Purchasing via established compliant Value for Money Council contract, Council framework or alternative Council compliant arrangement (e.g. Dynamic Purchasing arrangement);

**Step 3:** Undertaking new procurement process – including Procurement via established alternative Public Sector compliant Value for Money contract, framework or alternative compliant arrangement (e.g. Dynamic Purchasing arrangement);

5.2 In considering the Sourcing Strategy and route to market, benefits of collaboration opportunities should be considered, along with overall Value for Money.

5.3 Formal option appraisal to be used on arrangements above £50k

5.4 Consideration of these steps should be captured within the Commercial Endorsement Form.

##### **Step 1: Self-delivery or Purchase**

5.5 Where no current arrangements exist for the provision of the Supplies, Works or Services, a decision shall be taken as to whether the Council should look to self-deliver the requirements, ahead of looking to formally make any arrangements to purchase via a third party supplier(s).

5.6 To aid decision making as to whether a procurement process and ultimately a contract with a third party supplier is required, consideration shall in the first instance be given as to whether the Council has the skills, capacity, competency and experience to self-deliver the Supplies, Works or Services and if so, whether this can be done in a cost effective manner which ensures Value for Money.

5.7 The decision around self-delivery, for example delivery direct by the Council or Council's Teckal company or purchasing via a third-party supplier relationship, shall be taken prior to undertaking a formal procurement process.

5.8 The decision around self-delivery or not to shall be proportional to the nature of the anticipated spend and supported by consideration of Value for Money. Typical examples where consideration of direct award may be applied are:

- i. The Council has established a Teckal Company delivering in that similar space.
- ii. Consideration is taken to establish a new service provision.
- iii. Provision of Services and Works, less likely the provision of Supplies.

5.9 Where a decision is taken to self-deliver the Supplier, Works or Services, through one of the Council's Companies (either established or new) then this should be supported by an appropriate and proportionate Service Level Agreement to ensure Value for Money is delivered in any arrangement. The reasons around any decisions should be captured for audit and accountability reasons.

**Step 2:** Purchasing via Council contract, framework or alternative compliant arrangement (e.g. Dynamic Purchasing arrangement or Neutral Vendor arrangement)

- 5.10 In the event where a decision is to purchase or call off from existing compliant Council arrangements, then due regard shall be taken to ensure the purchase / call off conditions under that arrangement are duly applied.
- 5.11 Authorisation levels for the spend are to be in line with the Assurance and Authorisation process as outlined in Procedural Note: Commercial Assurance and Authorisation.
- 5.12 Where it is known, or likely to be known that, the total level of spend is of a certain value, then the approvals should be for the upper estimate for the purchases. It will not be deemed appropriate to place smaller values of spend to circumvent the Authorisation Process, which would likely adversely impact value to be obtained from an aggregated spend approach and also be in breach of the wider procurement directives.
- 5.13 In consideration of use of existing Council contracts or framework agreement it will be important to understand the implications any additional requirements may have on the contract such as exclusivity clauses, locked in volume discounts, guaranteed minimum values, block payments or framework rebates and to consider the materiality of any additional spend placed through that contract.

**Step 3:** Undertaking new procurement process

- 5.14 Commencing a new formal procurement process shall be undertaken where the Council is not deemed to be able to deliver the requirement themselves by making the Supplies, Works or Services, and that the Council does not have any existing commercial arrangements which would otherwise fulfill the requirements.
- 5.15 Undertaking a new procurement will include either the Council conducting and running a new procurement process themselves (e.g. advertising the requirements, supplier engagement, evaluations, award, and contract), or procurement via established alternative Public Sector contract, Framework Agreement or alternative compliant arrangement (e.g. Dynamic Purchasing arrangement or neutral vendor arrangement).

Other considerations.

- 5.16 Where there is external funding (e.g. external Grant funding) care should be taken to ensure that funding conditions in how spend is made are followed to avoid risks around reclaiming of Grant monies from the funder.

## **SECTION 6:**

### **Financial levels / thresholds**

- 6.1 When estimating the total contract value the estimate shall be:
- i. For the whole life term of any anticipated contract, for example, if the value is £50,000 per annum for two years, then the total value of the contract is estimated at £100,000. If the length of a contract is uncertain and the value cannot be reasonably estimated, the total contract value will be its total value over 4 years;
  - ii. Net of Value Added Tax (VAT);
  - iii. The value of any non-monetary consideration or benefit the Council is giving e.g. Concession elements;
  - iv. The value of anything the Council is getting for free as part of the contract;
  - v. Any amount that could be paid by extending the contract (if it is possible to extend it);
  - vi. In the event of Works procurement, it shall be for the total estimated value of the Works themselves.
- 6.2 A single contract must not be undervalued or split into smaller contracts to circumvent these Authorisation levels as set out in the Procedures, undermine aggregated spend considerations or the Regulations.
- 6.3 Where the proposed procurement for Supplies, Works or Services may result in the requirement being split into Lots, the value shall be based upon the value of all Lots.
- 6.4 Where the initial estimate of the contract value is within 10% below the relevant OJEU Threshold, consideration should then be taken as to apply formal OJEU considerations as defined by the Regulations. Furthermore detailed calculation shall be conducted in accordance with Regulation 6 of the Regulations.

**FIGURE 1 Value Thresholds for New Procurement Arrangements**

Value range	Minimum activity required	Minimum means of advertising	Terms
Less than £10k	Min 1 Quotation (3 preferred)	Direct approach to supplier(s)	Purchase Order and standard T&Cs
Between £10k and £50k	Min 3 Quotations	Direct approach and / or advertising	Purchase Order and standard T&Cs
Between £50k and OJEU	Formal Tenders	Advertising via Contracts Finder	Purchase Order and standard T&Cs
OJEU and above	Formal Tenders	Advertising Contract Finder and OJEU	Purchase Order and standard T&Cs

**NOTE:** 1. Latest OJEU Thresholds for Supplies, Services and Works can be accessed via the following link to the Official EU site – see: <https://www.ojeu.eu/thresholds.aspx> 2. For the purposes of Quotation it is deemed an estimate as opposed to Tender when it is deemed as a formal offer requiring acceptance.

- 6.5 In the event where the Council’s preferred route to market is via an established public sector contract, Framework Agreement or alternative compliant arrangement (e.g. Dynamic Purchasing arrangement or Neutral Vendor agreement) there would not be the requirement to advertise the requirements. Any call offs and contracting via such routes to market shall be in accordance with the public sector contract or Framework Agreement’s terms and conditions.
- 6.6 Where permissible, this will include considerations of direct awards and further competition under the contract or Framework Agreement.

**TABLE 1 Authorisation Levels**

Authorisation Levels - Supplies, Works and Services	Authorisation Points
<b>Total Contract Value</b> Below £50,000	The Responsible Officer with budget responsibilities in the Service area with the requirement will be responsible for taking a proportional approach to justifying the spend and holding all supporting documentation for audit and reporting purposes.  For contracts in excess of £5k the Responsible Officer must provide details of the contract as required in the Contracts Register Entry form to the Procurement Team so that these can be published in line with transparency legislation.
£50,000 to Official Journal of European Union (OJEU) for Services Threshold	Appropriate Corporate Manager / SMB Member in conjunction with Service Lead – Commercial and Procurement
Above OJEU Threshold for Services up to £1 million	SMB Member and Portfolio holder authorisation
Over £1million (key decision)	Executive Committee and Full Council

- 6.7 The Authorisation Process shall be applied at the following stages:
  - i. Confirmation of business case / Options Appraisal – Authorisation at this stage provides authority to commence with the purchase / procurement process in line with the agreed business case, options appraisal and route to market.

- ii. Confirmation of Award – Authorisation at this stage provides authority to enter into the contractual agreement with the preferred supplier as a result of the outcomes from the approved purchase / procurement approach.
- iii. Confirmation of Benefits Realisation (above OJEU Level for Services)

6.8 Records of authorisation approvals shall be captured on the Commercial Endorsement Form.

Contract Signature

6.9 Formalising contracts and execution (signing or sealing) shall be completed in line with Table 2 below.

**TABLE 2 Contract signature and sealing summary**

Total Value	Method of Completion	By Whom
Below £50,000	Purchase Order or standard terms	The Responsible Officer in line with the Scheme of Delegation approved at a Service level
Above £50,000 - below £1million	Signature*	The person authorised under the Scheme of Delegation or with the appropriate responsibilities approved at a Service level
£1million and above or a Key Decision	Sealing	Service Director – Assurance and Monitoring Officer or delegated nominee

\*unless Seal required in line with 6.11 below

6.10 Sealing: The Council's seal shall be witnessed by the relevant Director, Monitoring Officer or delegated nominee(s). Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal shall not be affixed without the authority of the *Executive* or other appropriate decision-maker in accordance with the Council's formal decision-making requirements including the Scheme of Delegation.

6.11 A contract shall be sealed where:

- i. the Council may wish to enforce the contract more than six years after its end; or
- ii. the price paid or received under the contract is a nominal price and does not reflect the value of the Supplies, Services or Works; or
- iii. the total value exceeds £1,000,000; or
- iv. in any other circumstances where it is considered appropriate to do so in consultation with Legal Services

6.12 Deeds: The City Solicitor, Chief Legal Executive, the Litigation Solicitor or, in their absence, the Chief Executive & Growth Director must attest the Council's seal. The appropriate Director or Corporate Manager is also authorised to sign contracts on behalf of the Council. Execution of a contract will be by applying the Council's common seal or by signing.

6.13 Contracts must be signed by both parties prior to the commencement of the Supply, Work or provision of the Services.

## SECTION 7:

### Overall approach to be applied

- 7.1 Adequate consideration must be given to the timescales required for any procurement exercise to take place. Where the procurement is to re-Tender this is essential to ensure continual service. Any re-Tendering exercise must comply with the Procedures and the Regulations.
- 7.2 The Councils Electronic Tendering System, shall be used for all Quotations and Tenders over £50k where actions can be tracked for accounting and audit purposes, and benefits from the relevant encryption and security that comes with the Electronic Tendering System. This shall include:
- i. Issuing Quotations / Tenders
  - ii. Receiving, and opening quotations / Tender submissions
  - iii. Confirming Quotation / Tender intention to award decisions
  - iv. Supplier clarifications and responses.

### Preliminary Market Engagement

- 7.3 Provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency, where necessary preliminary market engagement may be conducted to better understand the nature of the market and how the market place may respond, help shape the understanding on what shape the requirements may take, gather proportionate market intelligence with the aim to inform any resulting procurement process.
- 7.4 Care must be taken not to jeopardise any formal procurement that may follow. Where any preliminary market engagement / consultation has taken place details of this should be captured and findings made available as part of any formal procurement that may follow.
- 7.5 The principles of the Regulations shall apply, in particular see:
- <http://www.legislation.gov.uk/ukxi/2015/102/regulation/18/made> (and acting in line with the principles of public sector procurement)
- <http://www.legislation.gov.uk/ukxi/2015/102/regulation/40/made> (empowering Contracting Authorities in being able to undertake preliminary consultation)
- <http://www.legislation.gov.uk/ukxi/2015/102/regulation/41/made> (requiring contracting authority take appropriate measures to ensure that competition is not distorted by the participation of that candidate or Tenderer).

### Due Diligence

- 7.6 Relevant subject matter experts (e.g. service area teams, Legal Services, Finance, etc.) are to be consulted at appropriate times during the procurement process. (Reference should also be made in relation to the Procedural Note: Assurance and Authorisation and the Commercial Assurance Summary).

### Advertising

- 7.7 The advertising stage is the formal notification of commencement of the procurement, to make potential suppliers and third parties aware of the procurement opportunity. In the event where the route to market is via a formal quotation / procurement then primary means of advertising shall be via:

- i. Contracts Finder (above £50k) – More information can be accessed at <http://www.legislation.gov.uk/ukxi/2015/102/regulation/106/made> which details the requirement to publish at a National level and the information to be provided.
- ii. OJEU (above relevant Thresholds) - <http://ted.europa.eu/TED/main/HomePage.do> which provides the link to the OJEU Portal.
- iii. Both of the above means of advertising will be delivered via the Councils E-Tendering portal which automatically punches out the adverts to the required external system as required for the threshold of that contract.

- 7.8 Consideration shall also be made to the use of the Council's website and social media, plus where relevant other outlets to ensure the opportunities are suitably publicised.
- 7.9 All documents related to the procurement shall be complete and ready as a formal Tender pack for suppliers at the time of advertising.
- 7.10 Where a decision is taken to purchase or formally procure via an established framework agreement, then there is no requirement to advertise.

#### Clarification during the process

- 7.11 Clarifications regarding procurement documentation which are received from a Tenderer are to be received and replied to via the Councils E-Tendering portal. Any response to clarification questions raised by Tenderers during the procurement process shall be shared with all Tenderers for the purposes of openness and transparency.
- 7.12 In the event where the clarification and / or the response is commercially confidential to the organisation raising the clarification then the clarification / response should not be shared. In such cases care shall be taken not to adversely advantage or disadvantage any parties.
- 7.13 It should be noted that discussions with Tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-Tender negotiations) shall not be undertaken. Advice should be sought from the Procurement Team in the event of single Quotation / Tender submissions.

#### Submissions and openings

- 7.14 As noted in 7.2 above all Quotations and Tenders for contracts above £50k shall be managed through the Councils Electronic Tendering system, and it is optional to use the Electronic Tendering System for contract below £50k.
- 7.15 All Quotations and Tenders shall be submitted in accordance with requirements set out within in the ITT.
- 7.16 All Quotations / Tenders received must be opened together at one time in a suitable place in line with the Authorisation Levels.
- 7.17 Upon opening the Quotations / Tenders received they must be registered and recorded to confirm the following information:
- i. name and address of company submitting Tender;
  - ii. Tender value;
  - iii. date and time of opening;
  - iv. names of the officer present at the time of opening.
- 4.17.1 Within the Electronic Tendering System the opening of the tenders is known as verification. In all cases of Tenders in excess of £50k, a representative from Internal Audit will carry out the verification process within the Electronic Tendering System.

### Missing, Omitted or late information

- 7.18 If there appears to be an error in the information submitted by the Tenderer, including missing or omitted material, then Procedural Note: Missing and Omitted Materials from a Quotation or Tender shall be followed, and / or Procedural Note: Late Submission as may apply.

### Evaluations

- 7.19 All award criteria, including sub-criteria, shall be established at the outset of any process and made clear in the Tender documents and referenced within the advertisement.
- 7.20 Evaluations and any resulting award decisions shall be made against the award criteria published at the time of advertisement. In exceptional circumstances award criteria and sub-criteria may need to be varied during the procurement process and where this occurs all potential bidders will be notified of the variations prior to the deadline for the submission of Quotations / Tenders. Consideration shall be given to extending the submission deadline and / or whether it is appropriate to continue with the process or cancel and recommence as appropriate. Award criteria shall:
- i. Clearly disclose how scores are to be awarded to responses
  - ii. Clearly disclose whether and how sub-criteria are to be used
  - iii. Be relevant and proportionate to the subject matter of the contract
  - iv. Be non-discriminatory
- 7.21 The award criteria shall be based on the principles of the Most Economically Advantageous Tender (MEAT). Formal award decisions shall be in accordance with these Rules and the Council's decision-making requirements.
- 7.22 Any commercial information such as prices shall not be shared with the evaluation team until the final scores for all other elements have been collated.
- 7.23 For further information on conducting an Evaluation refer to Procedural Note: Evaluation.
- 7.24 The award process to be followed will depend on the total contract value.

Award (Above £50k to below OJEU Threshold)

- 7.25 The principles of the Regulations shall be considered and applied as appropriate including:
- i. Informing unsuccessful applicant(s) and preferred applicant(s) of the outcomes of the evaluation.
  - ii. Informing the unsuccessful applicant(s) of the relative characteristics of the preferred applicant to their bid.
  - iii. Confirming what the Council will be doing to conclude contractual matters with the preferred Tenderer.
- 7.26 Details around the award of all contracts above £25k shall be provided via Contracts Finder in line with Public Contract Regulations 2015 – Chapter 8  
<http://www.legislation.gov.uk/ukxi/2015/102/part/4/chapter/8/made>
- 7.27 Proportional consideration shall be applied in arrangement below £50k.

Award (OJEU Threshold and above)

- 7.28 Contract Award Notices shall be published in accordance with the requirements of the Public Contract Regulations and will be complied with, in particular application of Chapter 7 -  
<http://www.legislation.gov.uk/ukxi/2015/102/part/4/chapter/7/made>
- 7.29 In the event of OJEU award, a Mandatory Standstill period shall apply prior to concluding any formal contract, in line with the Public Contract Regulations, Regulation 87 -  
<http://www.legislation.gov.uk/ukxi/2015/102/regulation/87/made> (detailing the requirement to provide details of preferred supplier and debrief unsuccessful suppliers ahead of any formal contract).
- 7.30 Voluntary standstill may be applied to below OJEU procurements.
- 7.31 The Contract Award Notice shall be published:
- i. in OJEU no later than 30 days after the date of award of the contract (if relevant);
  - ii. on the Council's website;
  - iii. on Contracts Finder for contracts over £25,000.

Contract matters

- 7.32 All Contracts will be in writing or other approved electronic format and will specify:
- i. the work, service, Supplies or materials to be supplied;
  - ii. the price, or the basis for determining the price to be paid;
  - iii. all discounts or other deductions;
  - iv. the time or times or performance.
- 7.33 No contract will provide for payment by the Council in advance of satisfactory performance or delivery unless with the express approval of the Responsible Officer in consultation with the Chief Finance Officer.
- 7.34 Contracts entered into must be on the Council's terms and conditions, or where procured under a Framework Agreement the Terms as set out under that agreed Framework Agreement, which must be included with each Invitation to Tender (ITT). Exceptions to this rule must be approved by the City Solicitor via negotiation with the Supplier.
- 7.35 The Responsible Officer must ensure that a job title and suitable person is named as the Contract Manager for all new contracts. All contracts must have a named Contract Manager for the entirety of the contract and this person is responsible for ensuring that performance is monitored and the terms of the contract are delivered. The appointed Contract Manager should have the necessary skills and knowledge to manage the contract.

- 7.36 Any contract may be extended or varied if the terms of the contract allow, and the extension or variation is within the parameters of the terms of contract. Where a modification to the contract or framework is not expressly provided for in the initial procurement documents and the contract or framework agreement, the involvement of both City Solicitor and Procurement Team is required to assess the commercial and legal implications of any such modification. All modifications shall be in writing and in accordance with the terms of the relevant contract or framework agreement.
- 7.37 Contracts may only be terminated after seeking advice from the Procurement Team and the City Solicitor.
- 7.38 Once the contractual formalities have been completed all original signed copies of contracts over £50k must be sent to the Council's Property Records for safekeeping with the second copy being sent to the supplier. This will be done by Legal Services where the contract has been sealed and by Procurement where the contract has been signed. A copy of the contract must be held by the named Contract Manager and a scanned copy must also be sent to the Procurement Team. This shall apply also for formal changes, variations and extensions as may apply to the Contract. All formal changes, variation and extensions must be signed off by Legal.
- 7.39 Contracts must be kept for at least six years from their end date if they were signed; and for at least 12 years from their end date if they were sealed.
- 7.40 The Procurement Team will maintain a central register of all contracts over £5k awarded, with the contract register will be published in accordance with the Local Government Transparency Code 2015 requirements.

## SECTION 8:

### Other Matters

- 8.1 The Procedures as set out are aimed to cover the majority of events and circumstances which may arise in the general dealings of the Council, principally procurement and contract matters below the European Thresholds and the more conventional procedures referenced in the Regulations.
- 8.2 In the event of the following specific matters, then further advice should be sought where these either apply or are being considered as suitable solutions:
- i. **Concessions Arrangements**, including reference to the Procedural Note: Concessions; <http://www.legislation.gov.uk/ukxi/2016/273/contents/made>
  - ii. **Competitive Procedure with Negotiation** (formal process set out in the Regulations which enables multiple rounds of negotiation to be built into the process – see <http://www.legislation.gov.uk/ukxi/2015/102/regulation/29>)
  - iii. **Competitive Dialogue** (formal process set out in the Regulations which seeks to identify the right solution and preferred bidder in a structure competitive dialogue process – see <http://www.legislation.gov.uk/ukxi/2015/102/regulation/30/made> );
  - iv. **Innovation Partnerships** (The aim of the innovation partnership being to develop 'an innovative product, service or works' and to subsequently purchase 'the resulting supplies, works or services – see <http://www.legislation.gov.uk/ukxi/2015/102/regulation/30/made>);
  - v. **State Aid** (Consideration of matters that may provide advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU); <https://www.gov.uk/guidance/state-aid>)
  - vi. **Reserved Contracts - Sheltered Workshops** (Cases where Contracting Authorities may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators, e.g. whose main aims are social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers <http://www.legislation.gov.uk/ukxi/2015/102/regulation/20/made> );
  - vii. **Reserved Contracts** (VCSE – Light Touch)

## **SECTION 9:**

### **Strategic**

9.1 The following Procedural Notes are considered to be strategic and generally apply in application of the Procedures and therefore need to be considered in all situations:

Procedural Note	Commercial Assurance and Authorisation
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### **Operational**

9.2 The following Procedural Notes apply in specific operational situations or circumstances and would need to be applied if / when such situations arise:

Procedural Note	Exemptions
Procedural Note	Late Quotation / Tender Submissions
Procedural Note	Missing and Omitted Materials from a Tender
Procedural Note	Evaluation
Procedural Note	Concessions

## Key defined terms

<b>Term</b>	<b>Description</b>
<b>Authorisation Process</b>	<i>For the purpose of this document shall mean the formal process as set out in the Procedural Note: Commercial Assurance and Authorisation, and further referred to within these Procedures</i>
<b>City Solicitor</b>	<i>Shall mean the Council's postholder within the role as detailed</i>
<b>Commercial Assurance Form</b>	<i>Shall mean the form referenced within the actual Procedural Note: Commercial Assurance and Authorisation.</i>
<b>Concession Arrangement</b>	<i>Meaning where the provision and the management of services or the execution of works is entrusted to one or more economic operators, the consideration of which consists either solely in the right to exploit the services or works that are the subject of the contract or in that right together with payment. Note: In the event of applying a Concession the Council's Procedural Note: Concessions shall be applied.</i>
<b>Constitution</b>	<i>The Council's formal constituted governance arrangements which can be found here: <a href="http://committees.exeter.gov.uk/ieListMeetings.aspx?CId=382&amp;info=1">Http://committees.exeter.gov.uk/ieListMeetings.aspx?CId=382&amp;info=1</a></i>
<b>Contract Award Notice</b>	<i>means a contract award notice referred to the Regulation (50 or 75(3)) detailing information around outcomes of successful Tenderer and the specific details of the Tender itself.</i>
<b>Contracts Finder</b>	<i>means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015 by or on behalf of the Cabinet Office</i>
<b>Council</b>	<i>means Exeter City Council and any subsidiary parts</i>
<b>Dynamic Purchasing System (DPS) / Agreement</b>	<i>As defined under the Public Contract Regulations 2015 (Regulation 34), and shall mean a system shall be operated as a completely electronic process, which remains open to any economic operator throughout the period of validity of the purchasing system that satisfies the selection criteria.</i>
<b>Electronic Tendering System</b>	<i>Formal recognised dedicated electronic Tendering system for all communication and information exchanges in relation to public sector Tendering with third party suppliers and organisations, including electronic submission and means of communication in accordance with the requirements of the Regulations</i>
<b>European Threshold</b>	<i>The public procurement thresholds which define certain requirements on public sector organisations in how public sector procurement is to be conducted. Details of the thresholds can be found via the Official EU site <a href="https://www.ojeu.eu/thresholds.aspx">https://www.ojeu.eu/thresholds.aspx</a></i>
<b>Framework Agreement</b>	<i>As defined under the Public Contract Regulations 2015 (Regulation 33) and shall mean an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period.</i>
<b>Grants</b>	<i>For the purpose of this document external Grants shall mean a payment to help the recipient (e.g. charity). In return, the grant funder (e.g. the Council) gets no services delivered directly. A grant is usually provided subject to conditions that state how the grant shall be used (for example to support the wider objectives of the public body in promoting the social, economic or environmental well-being of their area). Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how this is to be achieved, for example, that children need to be kept entertained by taking them on excursions and have sporting activities.</i>
<b>Invitation to Tender (ITT)</b>	<i>Means the documentation providing details about the Tender that is issued to organisations (contractors &amp; Suppliers) invited to Tender for a contract, for the provision of goods, services or works</i>
<b>Lots</b>	<i>Term used to describe splitting of main contract into smaller defined elements, for example to enable smaller suppliers to bid for defined elements of the contract.</i>
<b>Most Economically Advantageous Tender (MEAT)</b>	<i>As defined under the Public Contract Regulations, contracts to be awarded on the basis of a revised definition of Most Economically Advantageous Tender (MEAT), considering price and quality but permits, amongst other things, the awarding of contracts on the basis of lowest price.</i>

<b>Term</b>	<b>Description</b>
<b>Monitoring Officer</b>	Legally appointed officer (City Solicitor) in line with the Local Government Act 2000, as defined in the Council's constitution. The monitoring officer has the specific duty to ensure that the Council (Officers and its elected Members) maintain the highest standard of conduct, the main roles being: to report on matters believed to be, or are likely to be, illegal or amount to maladministration; to be responsible for matters relating to the conduct of Officers and elected Members; and to be responsible for the operation of the council's constitution.
<b>Official Journal of the European Union (OJEU)</b>	Is the publication in which all Tenders from the public sector which are valued above a certain financial threshold according to EU legislation, must be published – see: <a href="https://www.ojeu.eu/">https://www.ojeu.eu/</a>
<b>Officers</b>	Those employed members of staff (permanent or interim) representing the Council in official capacity.
<b>Procedures</b>	Shall mean the Procurement and Contract Procedure themselves (encompassing the supporting Procedural Notes)
<b>Public Contract Regulations 2015 (The "Regulations")</b>	The UK Public Contracts Regulations 2015 as amended. Where this reference is made within these Procedures, then the Regulations need to be referred to and complied with.  <a href="http://www.legislation.gov.uk/uksi/2015/102/contents/made">http://www.legislation.gov.uk/uksi/2015/102/contents/made</a>
<b>Quotation</b>	For the purposes of Quotation is deemed an estimate as opposed to Tender when it is deemed as a formal offer requiring acceptance.
<b>Responsible Officer:</b>	Means the Officer within the Council who is the budget holder and who has direct responsibilities from an operational / client perspective for the goods, works and services.
<b>Scheme of Delegation (Delegation to Officers &amp; Deputies)</b>	Delegated authorities as defined under the Council's Constitution, and in particular part 3(d) the Delegation to Officers and Deputies; (No.3d) <a href="http://committees.exeter.gov.uk/ie/ListDocuments.aspx?CId=382&amp;MId=6404&amp;Ver=4&amp;Info=1">http://committees.exeter.gov.uk/ie/ListDocuments.aspx?CId=382&amp;MId=6404&amp;Ver=4&amp;Info=1</a>
<b>Senior Management Board (SMB)</b>	The overall Senior Management Team for the Council, including the Chief Executive and Directors.
<b>Services</b>	Contracts, or Tenders for contracts, which have as their object the provision of services.
<b>Service Level Agreement</b>	An agreement setting out expectations on service levels and responsibilities between the Council and one of its "own" stand alone service providers such as Teckal company
<b>Sourcing Strategy</b>	The Sourcing Strategy relates to the approach to be applied in relation to whether a procurement is to be carried out or not, as detailed in Section 5 of these Procedures.
<b>Standstill / Mandatory Standstill</b>	As defined under the Public Contract Regulations 2015 (Regulation 87) and shall mean the time period where for OJEU Threshold Tenders an intention to award notification has to be made outlining the preferred bidder, ahead of formally concluding a contract.
<b>Supplies</b>	Contracts, or Tenders for contracts, which have as their object the provision of supply of goods.
<b>Supplier:</b>	Independent third party organisations to the Council who are either providing supplies, works or services to the Council via contracts, or who would have interest in doing so.
<b>Tender</b>	Formal process in which the Council seeks the supply of supplies, works or services from third party suppliers (inc. voluntary organisations)
<b>Teckal</b>	Teckal" being a company which within certain parameters benefits from contracts for works, services or supply from its controlling Contracting Authority, e.g. the Council, without having to go through a competitive Tender process).
<b>Tenderer</b>	A third party supplier who is engaged in providing a response to the Council's requirements via a Quotation / Tender process.
<b>Value for Money</b>	National Audit Office (NAO) uses three criteria to assess the value for money i.e. the optimal use of resources to achieve the intended outcomes: <ul style="list-style-type: none"> <li>• Economy: minimising the cost of resources used or required (inputs) – spending less;</li> </ul>

<b>Term</b>	<i>Description</i>
	<ul style="list-style-type: none"> <li>• <i>Efficiency: the relationship between the output from goods or services and the resources to produce them – spending well; and</i></li> <li>• <i>Effectiveness: the relationship between the intended and actual results of public spending (outcomes) – spending wisely.</i></li> </ul>
<b>Works</b>	<i>Contracts, or Tenders for contracts, which have as their object the provision of Works (e.g. construction / demolition).</i>