

## HARBOROUGH DISTRICT COUNCIL STATEMENT OF REQUIRED PRACTICE FOR PROCUREMENT ('The SORP')

### Introduction.

1. Whenever work, goods, services or materials are procured by, or on behalf of, the Council the procedure followed must comply with the Council's constitution and rules as defined by the SORP, UK law, including the current Public Contract Regulations, any relevant financial regulations, and the Scheme of Delegations. The SORP will be updated from time to time and the current version will be available on the Harborough District council website. European Union (EU) Procurement Directive (as implemented in the UK through the Public Contract Regulations 2015, [PCR2015] must also be followed where applicable. The Service Manager, Commissioning and/or the ~~Chief Officer Governance and Monitoring Officer Head of Legal & Democratic Services~~ will give or procure advice on procurement and entering into contracts.
2. The rules of the SORP must be read in conjunction with the Financial Procedure Rules and Contract Procedure Rules.
3. All decisions relating to procurement and the reasons for those decisions must be recorded and kept in an electronic form suitable for audit purposes; the Service Manager, Commissioning will be responsible for ensuring that a suitable electronic system is available for use by the Council. .
4. If approval by the Council ~~Executive Cabinet~~ is required before procuring goods, works or services, the report should recommend that authority is delegated to the relevant member of Corporate Management Team CMT and the relevant Portfolio Holder in consultation with the relevant portfolio holder to procure, negotiate and award the necessary contract.
  - 4.1. The ~~Cabinet~~Executive may reserve final approval so that a further report is submitted indicating the preferred provider before completion; however, officers and members should be mindful of the risk of legal challenge if a decision identifying a preferred provider were to be overturned.

4.2. It is important that members are involved in key commissioning and procurement decisions: in some cases, this involvement may consist of determining the service specification, criteria for evaluation and weighting et cetera. In certain circumstances, it may be appropriate and valuable for members to participate in the assessment of a tender as members of the evaluation panel.

5. Where the Council is procuring through a partnership, shared service or delegation arrangement, it may be possible to apply the Procurement Rules of the Lead Authority; however officers must seek guidance from the Service Manager, Commissioning and/or the [Chief Officer Governance and Monitoring Officer](#)~~Head of Legal & Democratic Services~~ to ensure that any conflict with Harborough District Council's Procurement SORP is acknowledged and managed appropriately.
6. Where the value of a proposed contract is in excess of any threshold prescribed in any of the EU Public Contracts Directive and the PCR 2015 applicable to a contract of that type, then the award of the contract shall be carried out in all respects in accordance with such regulations. The provisions of the SORP shall continue to apply to such contracts only to the extent that they do not conflict with the provisions of the Public Procurement Regulations.

#### **Exemptions from the SORP rules**

7. In certain circumstances, it may be necessary to disregard the requirements of the SORP. The following exceptions may only be invoked after consultation between the officer responsible for the procurement ('the Lead Officer') and the Service Manager, Commissioning and/or the [Chief Officer Governance and Monitoring Officer](#)~~Head of Legal & Democratic Services~~. The member of the Corporate Management Team (CMT) who has strategic responsibility for the Service must also be consulted and the decision must be recorded using the 'Exemption from Procurement Rules' form [\(as appended to the Procurement Plan\)](#)

- 7.1. **Absence of competition.** Contracts need not be let in accordance with the SORP where:
- 7.1.1. The goods are proprietary articles, or are sold only at the same fixed price irrespective of the seller ~~is~~ so that no reasonably satisfactory alternative is available;
  - 7.1.2. The work to be executed or the goods or materials to be supplied consist of repairs, replacement or maintenance (including the supply of parts) of existing proprietary machinery or plant;
  - 7.1.3. A warranty is in force in relation to systems or equipment which would be invalidated if a supplier other than the incumbent was procured.
  - 7.1.4. The service to be procured consists of maintenance of equipment, software or works; and the original supplier is uniquely able to provide the service satisfactorily or economically.
  - 7.1.5. The Council is procuring a licence to use software, or purchasing software modules, or access to software provided externally ('Cloud' or 'Software as a Service') for ICT services or products that it has already procured; and a change of provider would be impractical because of the implications for the Council's ICT infrastructure and potential disruption of service.
  - 7.1.6. The prices of the goods or materials are wholly controlled by trade organisations or government order, and no reasonably satisfactory alternative is available;
  - 7.1.7. The work to be executed is of such a specialist nature that there would be no genuine competition; or the particular reputation or personal and professional expertise or experience of the contractor is of central importance to the contract (for example, an expert witness, specialist consultant or advocate). This may also apply if

work previously undertaken by the provider means that they are clearly and uniquely best equipped to carry out the new work.

7.1.8. For other reasons, there would be no genuine competition;

7.2. **Emergencies.** Contracts need not be let in accordance with the SORP where goods and services are required in an emergency, or where the operational need means that insufficient time exists to use a competitive procedure.

7.2.1. The Lead Officer shall certify why the requirement was urgent and seek the agreement of the Corporate Management Team or a relevant member of CMT. The decision must be reported to the ~~Cabinet Executive~~ or Portfolio Holder at the first available opportunity.

**Commented [JW1]:** OPTIONAL CHANGE: This would allow the PF to agree procurement in an emergency without reporting to Cabinet. It could be limited to procurement of contracts of <£10,000 in value.

7.3. **Consortium and joint procurement** Contracts need not be let in accordance with these rules where:

7.3.1. The Council has joined other bodies in a consortium to make one joint contracting party, or is undertaking a joint procurement led by another authority. The adopted practices or regulations for awarding contracts of the consortium or those of another authority may be followed subject to the agreement of the Service Manager, Commissioning and/or the ~~Chief Officer Governance and Monitoring Officer~~ Head of Legal & Democratic Services, who must be satisfied that they secure fair competition and value for money and comply with relevant legislation relating to public contracts.

7.4. **Contract extensions.** Contracts need not be let in accordance with these rules where goods or services constitute a variation or an extension of an existing contract, subject to the following:

- 7.4.1. Extensions are permissible if the original contract specifies that it may be extended; such extensions must comply with the terms and conditions of the contract.
- 7.4.2. Extensions to contracts (other than extensions which are already facilitated as an integral part of that contract) shall not be made more than twice; the value of any single extension must not exceed the original total contract price (the aggregate value across the original term of the contract); and any amendment to the contract rates must be agreed by variation. Any extension is subject to adequate budgetary provision being available prior to agreeing the extension;
- 7.4.3. All contract extensions shall be reported to the relevant ~~member of CMT~~Chief Officer prior to the extension being formally agreed, together with details of the additional costs involved and budget arrangements;
- 7.4.4. Variations which increase the Contract Price by more than the original total, or which involve substantial changes in the character of the works/ goods/ services involved may also be reported by the relevant member of CMT to the ~~Cabinet Executive~~ for approval prior to agreeing the extension with the contractor or supplier, if this is considered appropriate. Alternatively, such extensions may be approved by the relevant member of CMT in consultation with the Portfolio Holder.
- 7.4.5. If a decision to award a contract is made by the ~~Cabinet Executive~~, it may determine that any future extensions or variations are referred to it for approval.
- 7.4.6. The Public Contract Regulations 2015 (Section 6, 72.) include provisions governing the extension of contracts to which the Regulations apply; any decision of Council Officers must comply with these provisions.

Commented [JW2]: This is purely for clarification.

**8. Exemptions; general.** All exemptions from these rules made on the grounds listed in section 7, above, must be recorded by the Service Manager Commissioning for audit purposes using the 'Exemption from Procurement Rules'. Where a contract worth more than £10,000 is exempt from the tendering procedure, the contract and the exemption relied upon shall be reported to CMT ~~and the relevant Portfolio Holder~~ for information. At the discretion of CMT, in consultation with the Service Manager, Commissioning, any exemption may be reported to the Council Executive for approval if there are grounds for believing that scrutiny of the decision is desirable or necessary.

**Commented [JW3]:** OPTIONAL AMENDMENT: The current wording means that exemptions to relatively low value contracts should, in theory, be reported to the Portfolio Holder).

8.1. If the exemptions listed in section 7, above, do not apply, exceptions to these rules may only be made by the ~~Executive Cabinet~~ or Council where it has received a report by the appropriate Manager, in consultation with the relevant Portfolio Holder(s), ~~Chief Officer - Finance / S151~~~~Head of Finance and Assets~~, and ~~Chief Officer Governance and Monitoring Officer~~~~Head of Legal & Democratic Services~~. The ~~Executive Cabinet~~ or Council must be satisfied that special circumstances exist to justify departure from them; the special circumstances shall be recorded in the minutes of the ~~Executive Cabinet~~ or Council meeting.

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8.2. Exemptions from the SORP will not be permitted if as a consequence the Council would breach the European Union (EU) Public Contracts Directive, PCR 2015 or other statutory or regulatory requirements.

### **Determining Procurement methods**

**9.** A number of considerations will determine the appropriate method of procurement: first, the Lead Officer must decide in consultation with the Service Manager, Commissioning whether the thresholds defined by European Union (EU) Public Contracts Directive and the PCR 2015 apply. If the regulations are relevant, the procurement must comply with them to protect the Council from the possibility of legal challenge.

10. If the EU ~~Procurement Regulations Directive~~ and PCR 2015 do not apply, the Lead Officer must follow the Council's own rules as defined in the SORP in determining the method of procurement.
11. The value of the contract to be awarded is of prime importance in determining which approach to procurement is to be used. Whenever a contract is proposed, the Lead Officer should estimate its anticipated value; the estimated value should be based on previous prices obtained or quotes given during informal market testing. It should be noted in a form that complies with audit requirements before tendering begins.
12. The value of the contract for procurement purposes is its total value across the whole of the contract term, including the maximum period(s) of extension. In determining the estimated value of a proposed contract, a series of connected contracts (including service and maintenance contracts) must be aggregated.
13. If a contract is for hire or lease (as opposed to outright purchase) then its estimated value is:
  - 13.1. In the case of a fixed term period (barring termination for breach of contract etc.) the total price payable over that term;
  - or
  - 13.2. In a case where it can be terminated at will, on notice, the total price payable over the anticipated period of hire.
14. When determining methods of procurement achieving value for money (which refers to both quality and price), the availability time and staff resources and the importance of allowing potential providers fair access to Council contract opportunities must also be considered.
15. **The European Union (EU) Public Contracts Directive.** The EU Public Contracts Directive and PCR 2015 require competition for contracts above certain threshold values and prescribe detailed advertising and tendering

procedures for purchasers. The use of specifications, standards, and selection and criteria for award is also regulated.

15.1. **Spend Thresholds;** The spend thresholds to which the full EU Directive and PCR 2015 apply at the time of publication are as follows:

	<b>Services/supplies</b>	<b>Works</b>
Sub-central contracting authorities (Local Authorities)	£181,302	£4,551,413

These thresholds are altered from time to time to reflect exchange rate variations; the Service Manager, Commissioning will advise on the current thresholds.

15.2. These amounts are based on the **total value of the contract to be awarded**; they include any maintenance or associated expenses. If the contract is for services that will be provided for a period longer than one year the total value is the calculation of all annual payments (including potential extensions) and **not** the annual value. If the goods or services are required on an on going basis in general the value should be calculated over the anticipated contract period. If the procurement includes a combination of Goods, Works and Services, the provisions of PCR 2015 (Section 1, 4.) should be consulted.

**Commented [JW4]:** Added for clarification.

15.3. **Principles that underpin the EU Procurement Regulations:** The following principles for procurement apply regardless of value of spend.

15.3.1. Equal treatment of Economic Operators (providers)

15.3.2. Non-discrimination



15.3.3. Proportionality

15.3.4. Transparency

15.4. **Services exempt from the European Union Directive and the PCR 2015.** Certain types of service are exempt from the EU Directive and PCR or subject to a different procurement regime; the EU directive 2014 and PCR 2015 remove the former distinction between Part A and Part B services. However, certain categories of service are exempt from the regulations, including:

15.4.1. Some legal services.

15.4.2. Some public transport services.

15.4.3. Civil defence, civil protection and danger prevention services.

15.4.4. Political campaign services.

15.5. A separate directive governs concessions.

15.6. A new procedure has been established for social services (including benefits services).

15.7. **Conducting Tenders under EU Procurement Directive.** If the EU Procurement Directive applies, it will usually be necessary to conduct a tender. Guidance on conducting tenders under the EU Procurement Directive is available at Annexe 1; the Service Manager, Commissioning will offer advice and support to Lead Officers in this process and will usually manage the tender.

15.8. **Framework agreements.** In some circumstances, it may be possible to use a framework agreement to procure work, goods or services when the EU Procurement Directive

applies. The Service Manager, Commissioning must confirm that the framework agreement to be used complies with the Directive and PCR 2015 and it may be necessary to undertake further competition under the framework agreement to identify a provider. A list of organisations that offer approved framework agreements that have already been approved is available at Annexe 2. See section 30 for the rules governing their use.

**16. Procurement when the EU Procurement Directive does not apply.** If the EU Procurement Directive and PCR 2015 do not apply, the Council's own rules will govern the procurement. They are as follows:

16.1. Where the estimated Value of a Contract is more than £50,000, tenders must be invited in accordance with the Procurement SORP unless the Lead Officer and relevant member of CMT in consultation with the Service Manager, Commissioning have identified and agreed that an appropriate framework agreement should be used.

16.2. When the estimated Value of a Contract is £50,000 or less, the Lead Officer and relevant member of CMT in consultation with the Service Manager, Commissioning may decide to procure using any of the following methods:

16.2.1. a formal tender

16.2.2. an appropriate framework agreement

16.2.3. written quotations. Written quotes should be obtained in cases where the estimated value is in excess of £~~40~~2,000, but is equal to or less than £50,000. The Lead Officer should attempt to obtain three quotations if this is possible.

16.3. When the estimated Value of a Contract is £2,000 or less, the Lead Officer should obtain at least one written quotation and/or evidence to justify procurement from the selected provider. A contract may be

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procured without competition, but the Lead Officer must be able to demonstrate that value for money will be obtained and that the procurement complies with the Council's Financial Procedure Rules and standards of Ethical Governance. The HDC Procurement Plan may be used to record the required evidence and the usual requirements for award and registration of contracts will apply.

**Commented [JW6]:** OPTIONAL AMENDMENT: in effect, this sets a de minimis limit for procurement.

- 16.4. Even though the value of ~~a the contract to be procurement~~ procured may be below the EU Procurement threshold, the requirements of the PCR 2015 may still apply. Officers are responsible for consulting with the Service Manager, Commissioning to ensure that all procurement is fully compliant.

## 17. Other considerations.

- 17.1. The Procurement SORP should be considered when procuring banking or insurance services under the terms of Financial Procedure Rule 16-Q(Banking) and Financial Procedure Rule 21 (Insurance). The Chief Officer - Finance / S151 Section 151 Officer is responsible for taking decisions in relation to the procurement of banking and insurance services

**Commented [JW7]:** POTENTIAL AMENDMENT NECESSARY DEPENDING ON FPR REVISION.

- 17.2. In certain circumstances, grants made by the Council may be subject to EU and UK procurement regulations; in any event, it is important that they are made under formal and appropriate contracts. Officers who award or manage grants should refer to Financial Procedure Rule 23 (Council Grants) and seek advice from the Service Manager, Commissioning to clarify the correct procedure.

- 17.3. Insurance: it is important that contracts awarded by the Council provide adequate protection of its interests and mitigate risk by requiring providers to obtain adequate levels of insurance indemnity. The levels and scope of the indemnity required will vary according to the nature of the contract to be procured. The Lead Officer should consult with the Council's Finance Service and if necessary, its

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insurers if there is any doubt about the appropriate level of insurance. The Council's usual insurance requirements are:

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17.3.1. Employers (Compulsory) liability insurance for a limit of indemnity of not less than £10 million for each and every claim.:

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17.3.2. Public liability insurance in respect for a limit of indemnity of not less than £10million for each and every claim.

17.3.3. Professional indemnity insurance for a limit of indemnity of not less than £5 million for each and every claim. (N.B. Professional indemnity insurance is not required for all types of contract).

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17.3.4. These requirements should be confirmed before procurement commences (i.e. when a tender is published or quotations are sought). If the Council is willing to negotiate alternative levels of indemnity, this should be made clear to all providers before tenders or quotations are submitted. If the Council agrees to changes in levels of indemnity during the procurement process (in response to requests by interested providers), officers must ensure that this is made known to all providers. The Council cannot usually agree to changes to levels of indemnity after evaluation of the tender or quotations is complete as part of contract award negotiations.

Commented [JW8]: CLARIFICATION OF CURRENT PRACTICE.

17.4. **Terms and Conditions:** The terms and conditions of any contract that the Council awards must be approved by the Council's Legal Service in order to ensure adequate protection of its interests and mitigate risk. When a tender is published or quotations for a contract of a value of £10,000 or more are sought, these should be confirmed before procurement commences. Exceptions are as follows:

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17.4.1. It is not usually necessary to enter into a formal contract for purchases of goods of lower values (less than £5,000) or where adequate protection is provided by consumer legislation (The Consumer Rights Act 2015). **N.B. However a formal contract may be necessary if the Council enters into an associated service or maintenance agreement.**

17.4.2. In some circumstances, the provider may require the Council to enter into a licence agreement using its own pre-determined terms and conditions (for example, when purchasing software or web-based services). In these circumstances, advice should be sought from the Council's Legal Service.

17.4.3. In some circumstances, it may be appropriate to indicate that the Council will accept the Provider's usual terms of business as the basis for a contract. However in such cases, the Council's Legal Service must review and approve these terms before a contract is awarded. Providers must be informed before procurement commences (i.e. when a tender is published or quotations are sought) that award of a contract is subject to approval of their terms of business.

**Commented [JW9]:** OPTIONAL: This is intended to clarify the rules to address problems that have occurred on a number of occasions. I'm happy to consider suggested amendments.

## Methods of Procurement

### Tenders

**18.** The rules in this section apply subject to all tenders undertaken by the Council; however, where the EU Procurement Directive and PCR 2015 apply, the se regulations will take precedence over the Council's rules. Guidance on conducting tenders under EU Procurement Regulations is available at Annexe 2. The Service Manager, Commissioning will offer advice and support to Lead Officers in this process and will usually manage the tender. Tender procedures will be undertaken using an appropriate e-tendering system.

**19. Types of tender.** If procurement is to be undertaken through a tender process, the Lead Officer must decide in consultation with the Service Manager, Commissioning which of the following procedures should be employed:

19.1.1. Open procedure (or open tender); a single stage tender where no Standard Selection Questionnaire (SSQ) is used.

- 19.1.2. Restricted procedure; a two stage tender where a SSQ is used to reduce the number of tenders that are fully evaluated. This procedure is not permitted for tenders where the contract value is below EU Procurement Directive thresholds.
- 19.1.3. Competitive Dialogue procedure; a process that allows dialogue during the tender process between the contractor and the providers where the scale and complexity of the tender is significant. This process is unlikely to be appropriate in most cases as it is intended for use when there is very limited detail about the service required and/or the procurement involves complex and inter-related issues such as construction and service provision in conjunction or unusual financial circumstances (such as Private Finance Initiatives).
- 19.1.4. Competitive procedure with negotiation; this procedure is only permissible in specific circumstances and should only be used where other procedures are unsuitable.
- 19.1.5. Innovation partnership; this procedure is relevant only where the purpose is to develop an innovative product or service not currently available on the market.
- 19.2. In most cases, an open procedure is likely to be the best option; the Service Manager, Commissioning will advise on the procedure to be used which must be agreed by the Corporate Management Team and approved by the Council or [Executive Cabinet](#) as appropriate.

**20. Preparing the tender.** Prior to the issue of the tender, the method by which it is to be evaluated must be established. There are a number of ways in which tenders may be evaluated:

- 20.1. Purely on price (where the specification for the goods, works or services to be procured is precise and cannot be amended);

- 20.2. On a combination of price and quality (most economically advantageous tender or 'MEAT') ; or
- 20.3. On quality only (e.g. Fixed Price Contracts).
- 21.** The evaluation methodology to be used must be agreed by the Service Manager Commissioning in consultation with the operational manager or officer responsible for the procurement and will be recorded ~~on~~in the Procurement Plan.
- 22.** ~~The~~Any evaluation documentation should be in such a form that it can be made available to be viewed by contractors after their tender has been submitted.
- 23. The Invitation to Tender** Before advertising the tender the Lead Officer responsible for the tender, in conjunction with the Service Manager, Commissioning must complete an Invitation to Tender Document (ITT). The ITT will include the following:
- 23.1. the service specification;
- 23.2. terms and conditions of the contract to be awarded;
- 23.3. a statement of the procedure the Council will use to deal with any errors in the tender;
- 23.4. a statement that the Council has the right to accept a tender: other than the lowest if spending money; or other than the highest if receiving money; or not to accept any of the tenders.
- 23.5. a statement that unless it says so in a contract, the contractor must not assign or sublet the contract without the prior written approval of the appropriate officer. The Lead Officer must consult with the Service Manager, Commissioning before agreeing to any sub-contracting arrangements.

- 23.6. details of the tender process, including procedures for tender submission, submission of questions for clarification, weighting for price and quality and the evaluation method;
- 23.7. details of the Council's requirements for tenders (including rules to ensure equity and prevent corruption);
- 23.8. details of any aspects of the contract to be negotiated after award (such as key performance indicators) or capacity;
- 23.9. the deadline for submission.
- 23.10. Approval of the Chief Officer Governance and Monitoring Officer ~~Section 151 Officer~~ and ~~Head of Legal & Democratic Services~~ the Chief Officer - Finance / S151 must be obtained if any of these requirements are not to be included.

## 24. Advertising the tender

- 24.1. All tender opportunities (and quotations if advertised publicly) must be advertised on the 'Source Leicestershire' website and the UK Government Contracts Finder portal *even if the value of the contract is below the relevant threshold. It will usually also be appropriate to advertise the tender in the OJEU.* The Service Manager, Commissioning will place the advertisement.
- 24.2. ~~If the EU Procurement Directive is~~ PCR 2015 is applicable, the tender must be advertised in the OJEU.
- 24.3. Additional advertisements in specialist journals or local media may be placed if the Lead Officer and the Service Manager, Commissioning agree that this would lead to greater competition or improve the accessibility of the tender for local small and medium enterprises.

**Commented [JW10]:** This may change after Brexit.

**Commented [JW11]:** This probably won't change after Brexit as revision of the PCR 2015 would be necessary to alter requirements.



24.4. Tender submissions will only be accepted from providers that have replied to an advertisement using the specified procedure. This must be clearly stated in the ITT document and advertisement.

24.5. Tender submissions will not be accepted after the specified deadline.

## **25. Submission of tenders**

25.1. Tenders will be submitted electronically using the e-tendering system adopted by the Council. The system used will meet the Council's requirements as detailed below.

25.2. The ITT must stipulate the process for submission of tenders which must:

25.2.1. Be secure: provision must be made to ensure that only an authorised officer of the Council or approved representative is able to access submissions.

25.2.2. Be fair: no assessment of the submissions should take place except as described in the ITT.

25.2.3. Make consistent and equitable provision for providers to ask questions for clarification; all questions and answers must be made available to all providers that have expressed an interest in the tender, although the anonymity of the provider asking the question must be protected.

25.2.4. Ensure that all submissions are acknowledged as soon as possible.

25.2.5. Allow full records to be kept in a format suitable for audit.

25.3. Tenders received after the deadline must be rejected. The provider submitting the tender must be informed of its rejection without delay.

25.4. **Extensions.** An extension of the tendering period will only be allowed if the Lead Officer, in conjunction with the Service Manager, Commissioning has agreed. The relevant member of CMT must be advised of the extension.

25.4.1. Extensions will be allowed to all providers that have expressed an interest in the tender.

25.4.2. All providers that have expressed an interest in the tender must be told that more time has been allowed.

25.4.3. If tenders have already been submitted, the relevant providers must be offered the option of withdrawing their tender and re-submitting it.

**26. Restricted procedures.** Where a tender is being conducted using a restricted procedure (see 19.1.2), rules 20, 21 and 22 will apply. However, the document initially submitted by providers will be the completed Standard Selection Questionnaire rather than the full tender document.

26.1. The SSQ must be administered in compliance with the EU Procurement Directive and PCR 2015. The standard SSQ template published by the Crown Commercial Service must be used.

26.2. The SSQ will assess:

26.2.1. Financial standing;

26.2.2. Technical competence;

26.2.3. References provided by the applicant;

26.2.4. Any specific requirements such as equalities, health and safety and environmental management standards allowed within the standard SSQ document.

26.3. The SSQs submitted by all providers must be assessed; the assessment must determine their suitability for further consideration.

26.3.1. If five or more providers are considered suitable, at least five must be invited to submit a full tender.

26.3.2. Where fewer than five providers are considered suitable all must be invited to submit a full tender.

26.4. The European Single Procurement Document (ESPD), must be accepted as self-certified evidence that the standard grounds for exclusion included in a SSQ do not apply.

26.5. The full tenders submitted by suitable providers under a restricted procedure must be evaluated in accordance with the SORP in all respects.

**27. Tender evaluation.** All of the tenders submitted shall be evaluated in accordance with the methodology indicated in the ITT regardless of the procedure used.

27.1. The precise details of the evaluation process must be agreed prior to advertisement; the ITT documents should enable providers that tender to understand the process and the weighting allocated to different elements.

27.2. It is important that criteria for scoring are determined before evaluation and are understood by all members of the evaluation panel.

27.3. If there are essential requirements that must be met to satisfy the Council's responsibilities and obligations, these should be tested through 'qualification questions' ('pass/fail' questions) where an unacceptable response will lead to rejection of the tender. This must be made clear in the ITT. Examples might include Health and Safety requirements, insurance, employment policy and safeguarding of children and vulnerable adults.

27.4. The Council may decide to assess qualification after evaluation of price and technical capacity to expedite evaluation.

27.5. The Council may require submission of documents as evidence of qualification after evaluation of price and technical capacity only from the preferred provider, to reduce the burden of tender submission on suppliers.

27.6. A tender must not be accepted if the total cost, including any fees, exceeds the estimated tender value or budget estimate provision by 10 per cent or £50,000 whichever is the ~~lesser~~ greater. In these circumstances, a report must be submitted to the ~~Executive Cabinet~~ for a decision.

**Commented [JW12]:** OPTIONAL AMENDMENT This is suggested as the current rule (taken from the FPR) would mean that a contract would require a report to Cabinet if the original estimate was £50,000 and the actual cost was £55,000.

27.7. The Lead Officer, in conjunction with the Service Manager, Commissioning must assess tenders to ensure that sufficient provision has been made by the provider in resourcing the contract delivery, technical competence and for health and safety. More information should be obtained from the tenderer during the evaluation process if necessary.

27.8. The decisions taken, and the reasons for those decisions, must be recorded and kept in an auditable electronic form and be made available for scrutiny and audit.

**28. Awarding contracts and reporting.** The following provisions must be read in conjunction with the other provisions of this SORP, especially sections 7 (exemptions) and 46 (contract management); these provisions apply to all contracts irrespective of the method of procurement. Reporting requirements for exemptions are determined by the provisions of section 7 and not solely by the value of the contract.

28.1. All contracts of a value exceeding £200,000 or which exceed the relevant OJEU threshold will automatically be referred to the ~~Executive Cabinet~~ or (if outside the Budget Framework), Council for decision before awarding.

28.2. Contracts whose value exceeds £50,000 but is less than the relevant OJEU threshold must be referred to the ~~Executive Cabinet~~

or Council before award if they relate to entirely new procurements or where the nature or character of the service or supplies to be procured differs significantly from procurements under previous contracts. Contracts of this value range may be awarded without reference to the ~~Executive Cabinet~~ or Council at the discretion of a ~~Corporate Director~~ Joint Chief Executive providing that they are direct replacements for previous contracts that have expired and that they do not represent significant changes to operational arrangements or policy.

28.3. Contracts whose value is less than £50,000 may be awarded without reference to the ~~Executive Cabinet~~ or Council providing that:

28.3.1.

The relevant Head of Service, Chief Officer - Finance / S151 ~~Head of Finance~~ and Chief Officer Governance and Monitoring Officer ~~Head of Legal Services~~ authorise award.

28.3.2. There is adequate budgetary provision.

28.3.3. The procurement does not represent a significant change to operational arrangements or policy, or a new service; where award of the contract represents a significant change, referral to ~~Executive Cabinet~~ or Council will be at the discretion of ~~the responsible Corporate Director~~ a Joint Chief Executive.

28.4. Officers and members should be mindful of the effect that this may have on timescales: where there is a degree of urgency, consideration should be given to requesting the Council's ~~Executive Cabinet~~ to delegate authority to award a contract once evaluation is complete before publishing the tender.

- 28.5. The approval of the award of contracts by relevant members of CMT must be recorded using the Council's Contract sign-off form.
- 28.6. Contracts must be signed and sealed in accordance with the Council's Contract Procedure Rules: all contracts over £50,000 in value and all contracts executed as deeds must be sealed.
- 28.7. Electronic copies of all contracts must be sent to the Service Manager, Commissioning who will assign a reference number, record on the Council's electronic Contract Register and store an electronic copy. The signed document must be filed in the Deeds Store.
- 28.8. Contracts are formally 'awarded' only when all parties have signed them; once a contract has been awarded, the Service Manager, Commissioning will publish award notices as required in the Official Journal of the European Union and/or the UK Contracts Finder website.
- 29. Post Tender Negotiations.** Once the tenders have been evaluated, 'post tender negotiations' may be conducted either with the preferred provider or a number of providers, subject to the EU Procurement Directive and PCR 2015, and subject to the following provisions:
- 29.1. Where the lowest overall tender for a call-off contract (see clause 40, below) contains individual goods or materials which were priced lower by other (unsuccessful) contractors, negotiations may be undertaken with the successful contractor either to reduce the price of those individual goods or to exclude them from the contract. These individual goods may then be purchased separately from cheaper suppliers;
- 29.2. Where the overall successful tender contains various individual prices or elements, some of which were bettered by other overall unsuccessful tenders, and where the Lead Officer, in conjunction with the Service Manager, Commissioning believes that the successful tenderer would improve those items or elements if

**Commented [JW13]:** Subject to FPR review.

requested; then, revised terms may be negotiated with the preferred provider only;

- 29.3. Where all tenders exceed the budget for the Contract, negotiations may be undertaken with any or all of the providers to explore revision of their tenders and the specification.
- 29.4. The ITT must note that post tender negotiations might occur.
- 29.5. The decision to enter into post-tender negotiations shall be taken by ~~the Head of Paid Services~~ Chief Executive or member of CMT following a report by the Lead Officer or the Service Manager, Commissioning explaining:
  - 29.5.1. Why post-tender negotiations are necessary or suitable in the particular circumstances.
  - 29.5.2. The elements of the tenders to be negotiated.
  - 29.5.3. The providers that are to be invited to negotiate.
  - 29.5.4. The officer responsible for negotiations on behalf of the Council.
- 29.6. Any post tender negotiations must be undertaken in a way that is fair to all of the contending contractors. No bias shall be shown towards or against any of the contractors and all will be offered an equal opportunity to negotiate.
- 29.7. No contractor shall be allowed to prepare or revise its tender in the knowledge of another's bid. The contents of opened tenders must be kept absolutely confidential; and
- 29.8. When negotiations are concluded, contractors may be asked to submit revised bids by a set date. These will be opened and evaluated in accordance with the same procedure used for the original tenders.

29.9. In some cases, it may be necessary to revise the specification and to re-issue the tender having taken steps to ensure submissions that are within the Council's budget.

### **Framework Agreements**

- 30.** A framework agreement is an agreement with suppliers, normally established by a procurement agency or consortium; it will usually cover the supply of a generic group of goods, supplies and services and will set out the terms and conditions of contracts which may be awarded during its lifetime. The advantages of such agreements are that they enable commissioning bodies to benefit from economies of scale as demand is aggregated across a number of organisations; and that the suppliers engaged through the framework will already have been assessed as suitable providers of services, thus reducing the procurement workload and bureaucracy. In some cases, contracts may be procured (or 'called-off') directly on a 'catalogue' basis; in others, a process known as a 'mini-competition' or further competition may be necessary to select a provider from those included on the framework.
- 31.** If a framework agreement offered by an approved provider is to be used, the Lead Officer must consult with the Service Manager, Commissioning. The Service Manager, Commissioning must confirm that the framework agreement to be used complies with the EU Procurement Directive, PCR and the Council SORP. It may be necessary to undertake further competition under the framework agreement to identify a provider. A list of organisations that offer approved framework agreements is available Annexe 2.
- 32.** If suppliers approached via a framework agreement decline to enter into a contract under the terms of the framework but are willing to offer the same services, goods or works at the prices quoted under the framework agreement under contract, advice should be sought from the Service Manager, Commissioning. It may be possible to use the information contained within the framework agreement documentation in lieu of a



quotations process, but this must be undertaken in such a way that the Council complies with Procurement regulations and principles of transparency and fairness and that demonstrates value for money. It may be necessary to seek the approval of the framework agreement provider.

### Quotations

33. When the estimated Value of a Contract is between £2,000 and £50,000 or less, it will be necessary to decide whether or not the formal tendering procedures described above should be followed, or whether to obtain written quotations. If there is uncertainty over which method to use, advice should be sought from the Service Manager, Commissioning. Whichever is chosen:

33.1. value for money should be sought;

33.2. competitiveness must be demonstrated; and

33.3. fairness and impartiality must be exercised at all times.

34. At least three quotes must normally be obtained for comparison and to demonstrate value for money in the use of resources.

34.1. If the Lead Officer believes that obtaining three quotations is impracticable, or not in the Council's interest, this must be referred to the Service Manager, Commissioning. If it is agreed to seek fewer than three quotations, this must be recorded, along with the reasons for the decision. Reasons may include:

34.1.1. The goods are proprietary articles, or are sold only at the same fixed price irrespective of who the seller is so that no reasonably satisfactory alternative is available;

34.1.2. The work to be executed or the goods or materials to be supplied consist of repairs, replacement or maintenance

(including the supply of parts) of existing proprietary machinery or plant;

- 34.1.3. A warranty is in force in relation to systems or equipment which would be invalidated if a supplier other than the incumbent was procured.
- 34.1.4. The service to be procured consists of maintenance of equipment, software or works; and the original supplier is uniquely able to provide the service satisfactorily or economically.
- 34.1.5. The Council is procuring a licence to use software, or purchasing software modules, or access to software provided externally ('Cloud' or 'Software as a Service') for ICT services or products that it has already procured; and a change of provider would be impractical because of the implications for the Council's ICT infrastructure and potential disruption of service.
- 34.1.6. The prices of the goods or materials are wholly controlled by trade organisations or government order, and no reasonably satisfactory alternative is available;
- 34.1.7. The work to be executed is of such a specialist nature that there would be no genuine competition; or the particular reputation or personal and professional expertise or experience of the contractor is of central importance to the contract (for example, an expert witness, specialist consultant or advocate). This may also apply if work previously undertaken by the provider means that they are clearly and uniquely best equipped to carry out the new work.
- 34.1.8. For other reasons, there would be no genuine competition;

34.1.9. Where goods and services are required in an emergency, or where the operational need means that insufficient time exists to obtain three quotations.

34.1.10. Other reasons.

34.2. If it is determined that it is reasonable for the Council to seek fewer than three quotations, the Service Manager, Commissioning will record this decision. .

34.3. If the contract to be awarded exceeds £10,000 in total value, the decision to seek fewer than three quotations ~~will~~ may reported to the Council executive for information at the discretion of CMT.

**35.** Written quotations will usually take the form of submissions from providers detailing their ability to meet the Council's requirements, technical quality and pricing; in some circumstances, other forms of documentation will be acceptable (e.g. published prices or descriptions of goods and services). The Service Manager, Commissioning will advise on whether evidence of price and specification other than written submissions is acceptable and compliant with the Procurement SORP and PCR 2015. Decisions regarding the use of such evidence will be recorded and approved in accordance with the provisions of the SORP.

**36.** If, after seeking quotations, fewer than three are obtained, the Lead Officer and Service Manager, Commissioning must record this fact and evidence that efforts have been made to obtain at least three.

**37.** Criteria for award of contracts should be agreed and recorded before seeking quotes. All submissions must be fully and thoroughly evaluated against the criteria before awarding the contract. Quotes can only be accepted by employees authorised to do so. The Lead Officer, if not authorised to accept tenders or quotations, must inform the relevant member of CMT before undertaking any procurement. It is the responsibility of the relevant member of CMT to consult with the Service

Manager, Commissioning to ensure that the requirements of the SORP are met.

38. The ~~Chief Officer - Finance / S151~~~~Head of Finance and Corporate Services~~ and the ~~Chief Officer Governance and Monitoring Officer~~~~Head of Legal & Democratic Services~~ must be consulted if by accepting the quotation the Council will be committed to any non-standard or unusual terms and conditions. In any event, Legal Advice should be sought before award of any contract.
39. All contracts are affected by the Contracts (Right of Third Parties) Act 1999.
40. There must be a provision in the budget for the contract. Authorisation to spend must be in accordance with the financial rules.
41. If the price included in a quotation is not fixed, this must be noted and reflected in the contract: any potential variation in price must be discussed with the Service Manager, Commissioning to ensure that it does not compromise compliance with the Procurement SORP.
42. Quotations should be sought and submitted electronically; the e-tendering system should normally be used for convenience and to provide a record that can be audited.
43. There may be instances where, even though the value of the work is less than £50,000, the Lead Officer in conjunction with the Service Manager, Commissioning may decide that it is more appropriate to adopt the full Tender Procedure that would apply if the value exceeded £50,000, as outlined above.
44. If quotations are to be evaluated on criteria other than price alone, advice should be sought from the Service Manager, Commissioning on the method to be used.
45. **Concessions.** If the Council is seeking to award a contract where the consideration for the works/services to be carried out consists either solely

in the right to exploit the works/services that are the subject of the contract, or in that right together with payment, the [the Concession Contracts Regulations 2016 apply](#)~~EU Directive makes special provision~~; officers considering awarding such contracts should seek advice from the Service Manager, Commissioning.

**Procurement; general guidance.**

- 46. Recording Procurement process.** All decisions and actions relating to procurement will be recorded using the Procurement Plan, Procurement Exemptions form and Contract sign ~~Off-off~~ form as appropriate; these documents will be filed electronically with the relevant contract on the Contract register.
- 47. Call-Off Contracts.** Call-off contracts are those that set prices and conditions for the provision of goods and services, but where the capacity required is not pre-determined. Officers will access the goods and services required as and when necessary. The actual value of the contract is therefore not known at the time of its commencement.
- 48.** Procurement of call-off contracts must be undertaken in accordance with the rules of the Procurement SORP above.
- 49.** The list of services or goods advertised when procuring a call-off contract shall contain estimated quantities which the Lead Officer envisages ordering over the contract period. The estimated quantities must be used in calculating the cheapest tender.
- 50. Contract Management.** Once the procurement process is complete, contracts must be signed (or signed and sealed), filed, and the details entered on the Contract Register. The Service Manager, Commissioning will advise and facilitate this process.
- 51. Project Management.** The Council has agreed a Project Management Guide (“PMG”) to manage major projects undertaken by the Council. The current Project Management Guide will be used for all projects.

52. **Consultancy agreements.** If the ~~Executive Cabinet~~ approves the employment of consultants, the lead officer must consult Contract Procedure Rule 5 Consultancy Agreements. The Procurement SORP applies to procurement of consultants.

53. **Employment law and IR35.** In some cases, services will be provided by individuals whose contractual relationship with the Council will have implications for pay and taxation rules. This must be considered at an early stage of the procurement process and appropriate action taken to ensure that the Council complies with HMRC regulations. The Service Manager, Commissioning will advise on whether consultation with Human Resources and Financial Services Managers is necessary to ensure compliance.

54. **Agency work.** Where the Council has agreed to act as an agent for undertaking work or supplying services, the SORP must apply unless it conflicts with the terms and conditions of the agency agreement or contract; or any instruction of the agency company or agency authority.

54.1. In the event of such a conflict, advice should be sought from the Service Manager, Commissioning and the Head of Legal & Democratic Services.

55. **Sustainability.** Contract Procedure Rule 8 'Environmental Issues' requires that the appropriate policies and strategies of the Council should be referred to in tender and contract documentation.

55.1. The Lead Officer and the Service Manager, Commissioning will assess environmental impacts as a routine part of the procurement process to identify the environmental impacts of the goods, works and services involved. If appropriate, the evaluation and exclusion/qualification criteria may involve asking providers questions such as:

55.1.1. Does the organisation have an environmental policy?

55.1.2. Does the organisation have an environmental

management system in place?

- 55.1.3. Has the organisation compiled an environmental effects register?
  - 55.1.4. Does the organisation have an environmental action plan to reduce adverse impact on the environment?
  - 55.1.5. Does the organisation have any unspent prosecution in relation to environmental legislation?
- 55.2. Where appropriate, responses to these questions will be used to consider both the environmental risk and risk to the Council's reputation. Wider costs and concerns such as reducing the potential for long term pollution should be considered when the specification is drafted. The Council will promote the key principles "reduce, reuse, recycle and rethink".
- 55.3. Suppliers may also be required as part of the procurement process to explain how they will meet or exceed the specification for works and services on the following criteria:
- 55.3.1. materials used in manufacture;
  - 55.3.2. Reduction of energy used during manufacture;
  - 55.3.3. Disposal of goods and the use of energy and water;
  - 55.3.4. Generation of waste;
  - 55.3.5. Pollution and protection of the natural environment.
- 55.4. In considering environmental factors during procurement, the Lead Officer and the Service Manager, Commissioning must take account of the EU Procurement Directive and PCR 2015 and the provisions relating to exclusion in particular.
- 55.5. **Sustainability standards.** The Council may elect from time to time to incorporate specific standards such as The WWF timber pledge or Fairtrade standards in specifications. The Council will take into account the reduction of emissions of 'greenhouse gases' and its

'carbon footprint' as part of its commitment to tackle climate change in the procurement of contracts.

**56. Procurement and the local economy.** The Council recognises that as a major buyer of goods and services, the decisions it takes in awarding contracts will have an effect on the local economy and local communities. However, the Council must also act within a legislative framework, particularly in regard to the non-discrimination and competition requirements. The Council is committed to maximise the benefits to the local economy of its procurement decisions; to achieve this, the Council will:

- 56.1. Analyse the Council's current spending patterns,
- 56.2. Take available measures to maintain local spend;
- 56.3. Ensure that procurement practice enables local providers, especially Small and Medium Enterprises (SME's), to compete for Council contracts.
- 56.4. Engage with local business through relevant organisations.
- 56.5. Offer support, advice and training to local providers to enable them to compete for Council business.
- 56.6. The Council recognises that local suppliers and SMEs generally are not able to compete for every contract opportunity. HDC will therefore encourage providers tendering for large contracts to work with the local supply chain to increase the local economic benefits of the contract.
- 56.7. The Council will encourage a diversity of suppliers to compete for its contracts to promote a competitive marketplace. The Council recognises that smaller suppliers and those in the voluntary and community sectors can often offer innovative approaches. It will identify any gaps in the supply base and strive to increase provision from currently under-represented areas.



56.8. The Lead Officer and the Service Manager, Commissioning will seek to identify approaches to any procurement activity that may make it easier for local suppliers and SMEs to compete for the contract.

56.9. The Harborough District Council Supplier List is available to enable lead officers to identify local suppliers and SMEs that may be able to respond to tendering opportunities. Lead Officers undertaking procurement exercises are encouraged to use this database to identify local suppliers when seeking quotations.

56.10. The PCR require that procurement exercises should divide services, goods and works into 'lots' when this is possible (for example, where they relate to provision of services in several geographic locations, or a number of different projects or services). If this is impracticable or likely to be disadvantageous, the Council is required to record and justify a decision to do otherwise.

**57. The Public Services Social Value Act 2012.** The Public Services (Social Value) Act 2012 requires local authorities to 'have regard to economic, social and environmental well-being' in connection with public services contracts. The Act states that the authority must consider how any procurement might improve the economic, social and environmental well-being of the relevant area (the district) and how in the process of the procurement it might act with a view to securing that improvement. The Act emphasises that the authority must consider only matters that are relevant to the procurement and in doing so to act in a way that is proportionate. The Act applies only to public services contracts, not to works or supplies contracts.

**58. Human Rights, Race Relations, Crime and Disorder.** Contract Procedure Rule 7, 'Human Rights/Race Relations/Crime and Disorder and other matters' notes that the Council has a statutory duty to promote race equality. If this duty is relevant to a contract to be awarded, the Lead Officer should consult with the Service Manager, Commissioning about

requirements that might be appropriate. Officers must also take into account the Council's obligations under the Equality Act 2010.

59. Where appropriate, the Council's current Community Safety Policy should be referred to in tender and contract documents.
60. Where appropriate, the Council's current policy and procedures in respect of the Human Rights Act should be referred to in tender and contract documents.
61. **Freedom of Information.** All tender and contract documentation must have provision for the contractor to provide information as required by the Council in respect of the current Freedom of Information law.
62. **Ethical Governance.** The requirements or guidance as set out by the Monitoring Officer must be included in contract documents.

#### **List of Annexes**

Annexe 1 – Procurement decision-making

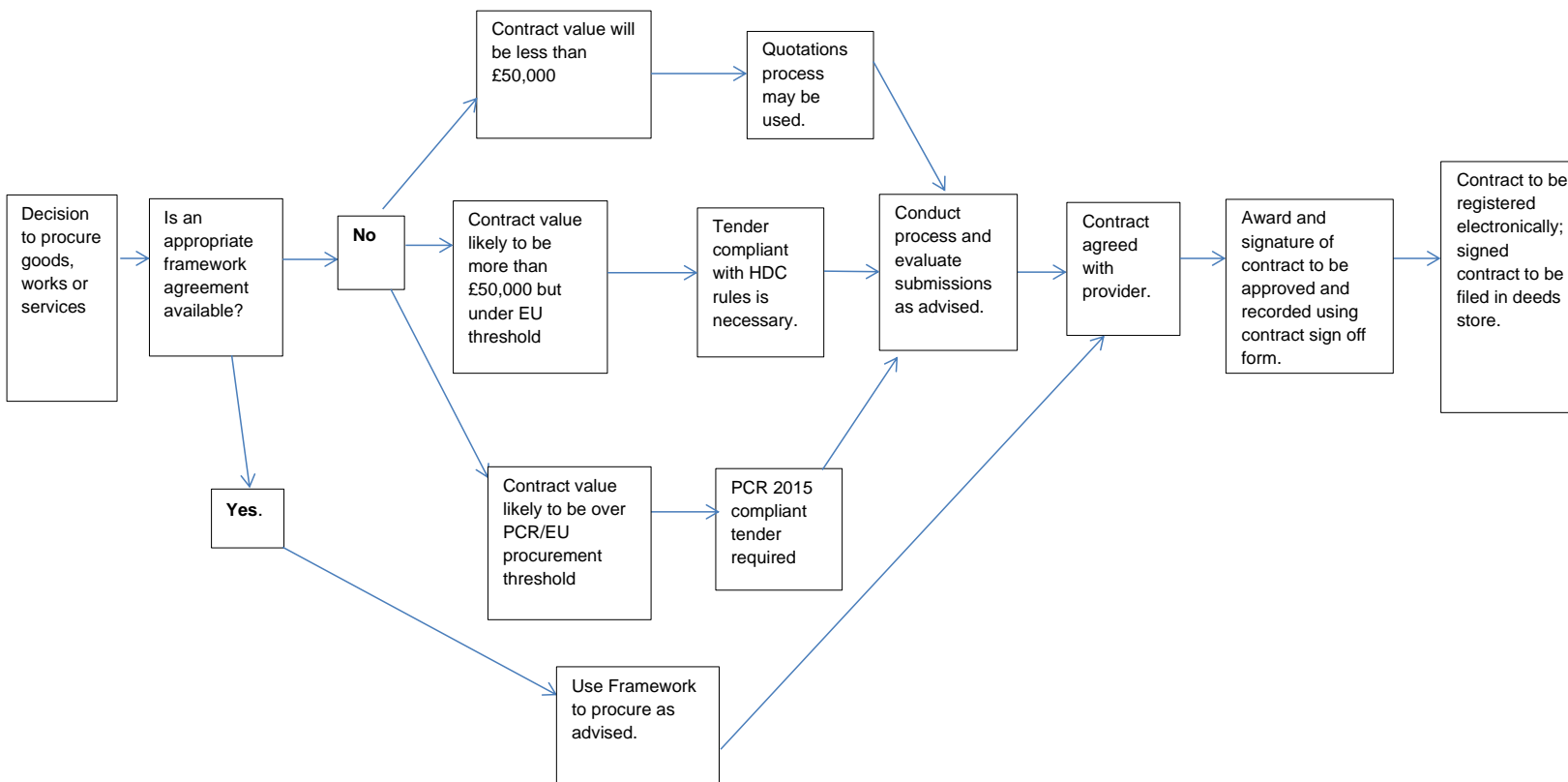
Annexe 2 - Approved framework providers

Annexe 3 – Guidance on The EU Procurement regulations

Annexe 4 – Glossary

Annexe 1

Procurement Decision Making process



## Annexe 2

### Approved framework providers

The following organisations provide framework agreements that may be used to procure goods, works and services on behalf of the Council.

The Service Manager, Commissioning must be consulted to ensure that their use is compliant with the PCR 2015 and The Harborough District Council SORP.

When using these framework agreements, procurement must comply with the rules determined by the framework provider.

Crown Commercial Services (“CCS”, formerly the Government Procurement Service and the Office of Government Commerce Buying Solutions). [CCS provides the ‘G-Cloud’ framework agreements.](#)

Scape (for construction work)

Constructionline (for construction work).

ESPO

~~Pro-5~~

~~The Northern Housing Consortium.~~

[NHS Shared Business Services](#)

The Essex Procurement Hub

## Annexe 3

### Guidance on Procurement

Further guidance is available as follows:

#### The Public Contract Regulations 2015

<http://www.legislation.gov.uk/uksi/2015/102/contents/made>

#### Procurement Policy Notes (“PPNs” guidance on procurement policy and procedures from central government):

<https://www.gov.uk/government/organisations/cabinet-office/series/procurement-policy-notes>

#### Page with links to the archived PPNs:

[http://webarchive.nationalarchives.gov.uk/20110601212617/http://www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_procurement\\_policy\\_notes.asp](http://webarchive.nationalarchives.gov.uk/20110601212617/http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_procurement_policy_notes.asp)

## Annexe 4

### Glossary (see also the [HDC Procurement SORP toolkit](#))

CMT	Harborough District Council Corporate Management Team
Call-off contract	A contract allowing the Council to access goods and services as and when necessary at a pre-determined price and under pre-determined conditions.
Competitive Dialogue procedure	Permits dialogue between the contracting authority and contractors during the procurement process; aimed at large, complex contracts such as PFIs and PPPs; enables contracting authorities to develop specifications with the input of contractors, and to assist contractors in developing tenders that are responsive to the specifications.
Concession Contract	A contract where the benefit to the provider arising from the works/services to be carried out consists either solely in the right to exploit the works/services that are the subject of the contract, or in that right together with payment
Contract Finder	Central Government web portal for publication of all contracts advertised by Councils and other Public Sector bodies.
E-tendering	Publication and management of procurements using a web portal and appropriate IT system.
European Union (EU) Regulations/directives	Regulations of the EU governing public sector procurement established in support of the European Single Market.
Evaluation criteria	Pre-determined <a href="#">framework criteria</a> for assessing tender (or other) submissions to determine the preferred provider.
Evaluation panel	Group responsible for assessing tender (or other) submissions to determine the preferred provider. May include members, customers or partner representatives
The <a href="#">Executive Cabinet</a>	The <a href="#">Executive of the Harborough District Council Cabinet</a>
ITT (Invitation to Tender)	Official and public document inviting tenders and defining specification, process and other expectations.
The Lead Officer	Officer with responsibility for the procurement; usually a member of the service with budget responsibility.
Open procedure	A single stage tender where no <a href="#">Pre-Qualification Standard Selection Questionnaire (PQQSSQ)</a> is used.
OJEU	Official Journal of the European Union: for publication of contracts where required by the PCR 2015.
PCR 2015	The Public Contract Regulations 2015: UK Government legislation to enact the EU Procurement Directives.
<a href="#">Pre-Qualification Standard Selection Questionnaire (PQQSSQ)</a>	Used in a restricted tender process at the "Selection Stage" to assess suppliers' capability. <a href="#">Formerly known as a Pre-Qualification Questionnaire (PQQ)</a>
Restricted procedure	Formerly sometimes referred to as a 'One-off list'; a two stage tender where a <a href="#">PQQ-SSQ</a> is used to reduce the number of tenders that are fully evaluated.
Source Leicestershire/Source East Midlands	Web Portal for contracts advertised by Councils and other Public Sector bodies in the region.
The Statement of Required Practice for Procurement ('The SORP').	The Council's procurement rules and policy.
Weighting	The proportion of marks given for different aspects of the tender when evaluating (usually price and quality/technical requirements).