Appendix

Part 4 - 7
Rules of Procedure
Procurement Procedure Rules

REVISED

Wealden District Council

Hastings.gov.uk Borough Council

Rother District Council

Contents

1. An Introduction to the Procurement Procedure Rules 3
2. Basic Principles and Responsibilities 5
3. Relevant Contracts 7
4. The Procurement Process 8
6. Variations to the Rules 23
7. Contracts 26
8. Managing Risks 29
9. Records 30
10. Disposal of Assets 30
11. Contracts of no cost to the Council 30
12. State Aid 31
13. Development Agreements 32
14. IT Software 33

Appendix A. Glossary 34
Appendix B. Summary Process Tables 35
Appendix C. Guidance on Award Criteria and Evaluation 37

1. An Introduction to the Procurement Procedure Rules

1.1. These Procurement Procedure Rules (hereafter referred to as 'the Rules') are intended to promote good purchasing practice, public accountability and deter corruption. Following the Rules will result in open and transparent procurement practices that will contribute towards excellence in financial management and also provide a full audit trail to counter any allegations that a purchase has been made unfairly, incorrectly or fraudulently.

1.2. The Rules must be followed by the Council and its strategic partners where contractually binding. The Rules must also be followed by arms length organisations when they are entering into contracts on behalf of the Council.

1.3. The Rules include grants, however, the Service also has to be aware of any further procurement requirements which the funding body may require within the terms and conditions of the grant.

1.4. These Rules must be considered along with the Council's Financial Procedure Rules and Scheme of Delegation.

1.5. The Chief Finance Officer and the Monitoring Officer are responsible for keeping the Rules under review and may make amendments to them from time to time subject to the correct approval. The Chief Finance Officer is also responsible for monitoring compliance with the Rules and for undertaking an annual review of the Rules.

Supporting documents (as well as these Rules) referred to in the Rules can be found on the East Sussex Procurement Hub Website as follows:

- **Procurement Initiation Document A**
- **Procurement Initiation Document B**
- **Exemption and Variation Form**

www.wealden.gov.uk/procurementhub

Further information

The East Sussex Procurement Hub (ESPH) is a Procurement Service delivered by Wealden District Council creating maximum value for a partnership which includes Hastings Borough, Rother and Wealden District Councils. Collectively we spend £65m+ on goods, services and works each year.

Our Objectives are:

- Achieve efficiencies and savings from the spend with 3rd party suppliers through joint procurement and contract management.
- Offer a Centre of Excellence for procurement practice for its members which is recognised at regional and national level;
- Deliver corporate policy and objectives through Procurement activity, and
- Engage with local businesses and small and medium sized businesses to remove barriers to working with our members.

The ESPH is not a contracting authority or a purchasing organisation and is subject to the Procurement Procedure Rules of the Councils it serves.

Further advice regarding the rules and good procurement practice can be sought from either The East Sussex Procurement Hub or from Rother District Council Finance:

East Sussex Procurement Hub	email:	esph@wealden.gov.uk
	tel:	01323 443322
Finance	email:	finance@rother.gov.uk
	tel:	01424 787717

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2. Basic Principles and Responsibilities

2.1. Basic Principles

2.1.1. All purchasing and disposal procedures and contracts must be compliant with the latest European Union (EU), National and Council policies and regulations, including:

- Achieving value for money for all public money spent;
- Adopting the highest standards of integrity;
- Following the Council's Anti-Bribery Policy and Anti Fraud and Corruption Policy;
- Ensuring fairness, equal treatment and transparency in allocating public contracts;
- Complying with UK and EU law and all other legal requirements;
- Ensuring that non-commercial considerations do not influence any contracting decision;
- Supporting the Council's corporate aims and policies;
- Meeting the Council's Data Protection, Information Security and Freedom of Information standards.

2.1.2. This list is indicative but not exhaustive and it is the officer's responsibility to ensure compliance against the areas listed above and any further service specific requirements.

2.1.3. All amounts quoted are exclusive of VAT. Any tenders or quotes sourced should also be exclusive of VAT.

2.2. The Role of Officers Undertaking Procurement Activity

2.2.1. Officers responsible for any purchasing activity must comply with the Rules, along with any guidance and updates provided by the East Sussex Procurement Hub. The latest information is available on the East Sussex Procurement Hub webpages. The Financial Procedure Rules, the Scheme of Delegation and all National and EU requirements must also be met before entering into any binding legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these Rules.

2.2.2. Officers must:

- Follow the Rules when purchasing goods, services and works;
- Have proper regard to all necessary legal, financial and professional advice;
- Declare any personal interest in a contract, financial or otherwise;
- Obtain all requisite approvals and ensure budgetary provision is in place before placing an order or raising a purchase order for any supplies, services or works;
- Check whether there is an existing corporate contract that can be used before seeking to award another contract; where a

suitable contract exists this must be used unless there is a justifiable reason not to and an exemption has been approved; See Section 5 of these Rules for further information;

- Give due regard to the local economy, the economic, social and environmental wellbeing and value for the council area and any other sustainability factors;
- Ensure that, where appropriate, whole life cost consideration is given to the goods, service or works to be purchased.
- Match all orders with an official Purchase Order and all other requirements of the Financial Procedure Rules from the Council's Financial Management System.

2.3. The Role of Executive Directors and Senior Management in Managing those Undertaking Procurement Activity

2.3.1. Directors and Senior Management must ensure that their staff:

- Comply with the Procurement Procedure Rules; the Financial Procedure Rules and the Scheme of Delegation to Officers;
- For all Type C & D contracts, send electronic copies of all signed contracts and any incidental documentation to the East Sussex Procurement Hub for storage on the SE Shared Services tender portal;
- Keep records of any exemptions to the Procurement Procedure Rules and:
- For ALL variations to Type C & D contracts send electronic copies of all signed contracts and any incidental documentation to the East Sussex Procurement Hub for storage on the SE Shared Services tender portal.

2.4. The Role of Members

2.4.1. Members should refer to these Procurement Procedure Rules, Financial Procedure Rules and Code of Conduct for Members at their Council.

3. Relevant Contracts

3.1. What is a relevant contract?

3.1.1. A relevant contract is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. All relevant contracts for goods, services or works must comply with the Rules. These include arrangements for, but not limited to:

- Works;
- The supply or disposal of products or goods;
- The hire, rental or lease of goods or equipment;
- The provision of consultancy or other professional services;
- The delivery of services.

3.1.2. Relevant contracts **do not** include:

- Contracts of employment which makes an individual a direct employee of the authority;
- Agreements regarding the acquisition, disposal, or transfer of land.

4. The Procurement Process

4.1. Steps prior to purchase

4.1.1. The Officer must confirm that they have the requisite authority to advertise, award the contract, (please see Summary Table (Appendix B)) and have the contract signed and sealed if appropriate (please see Section 7.2).

4.1.2. The Officer must appraise the purchase in a manner commensurate with its complexity and value, by:

- Considering value for money and the Council's Aims;
- Appraising the need for the expenditure and its priority;
- Defining the objectives of the purchase;
- Assessing any risks associated with the purchase and how to manage them;
- Considering what procurement method is most likely to achieve the purchasing objectives;
- Determining whether an existing arrangement or contract can be used for the purchase, see note below.
- Considering whether the goods, service, or works can be delivered in-house. (The “make or buy” assessment).
- Assessing whether other neighbouring authorities, particularly members of the East Sussex Procurement Hub, have a similar requirement and where there is a potential for joint purchase.
- Drafting a detailed scope of services/ specification;
- Using the Council's standard terms and conditions where possible or a recognised industry standard template document including the Council's additional public sector clauses or seeking legal advice for a bespoke contract;
- Giving consideration to the economic, social and environmental benefits that are required or desirable from the competitive process and which the resulting contract can bring to the community.

The Officer must also take into account any guidance provided by East Sussex Procurement Hub

NOTE - Where a strategic partnership is in place advice must be sought from the Chief Finance Officer and Monitoring Officer on how to proceed with the award and/or any tender process for the same or similar services as those specified under the strategic partnership contract.

4.2. Calculating the Total Value of a Contract

4.2.1. For the purposes of these Rules, contracts are referred to as Contract Types A, B, C, and D according to the value of the contract. This value shall be the total value payable over the period of the contract.

Contract type A	Contract Type B	Contract Type C	Contract Type D
< £5,000	£5,000 to £49,999	£50,000 to < EU threshold for goods and services	EU threshold for goods and services

4.2.2. The Public Contract Regulations stipulate particular obligations for contracts valued above the EU threshold for services and supplies, regardless of whether that contract is for supplies, services or works. Therefore the above Contract Types refer to the value of the contract regardless of requirement.

4.2.3. The process for each Contract Type is described in full below, and summarised in the tables in appendix B.

4.2.4. These thresholds apply to the aggregate (total) value of the contract. The aggregate value is determined as follows:

Annual value x contract period in years (including options to extend) = Aggregate value.

4.2.5. The EU Threshold for goods and services is currently set at £181,302 (1st Jan 2018). It is reviewed every two years and officers should check the current thresholds in place here:

www.wealden.gov.uk/procurementhub

4.2.6. These Rules apply where there are no other procedures which take precedence over these Rules, e.g. existing contracts or where external funding has been obtained with supporting contractual requirements. If in doubt, Officers must seek the advice of the East Sussex Procurement Hub or Finance.

4.3. Supporting Local Businesses

4.3.1. Officers are required to use their purchasing power to work with local businesses wherever possible where this provides equal or better Value for Money for the Council than alternatives. However it must also be noted that the EU public procurement legislation requires that any procurement activity should not discriminate, favour or show bias.

4.3.2. Officers should carefully review the required specifications of any Contract to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council.

4.3.3. For large value contracts (Contract type D), Officers must also consider whether the contract should be divided into Lots in order that small and medium sized enterprises can bid for local work. The decision not to divide into Lots should be clearly documented on the Procurement Initiation Document B (PID B).

4.3.4. Where a contract is to be divided into Lots the process followed should still be in line with the total value of all requirements. For example a contract for services which is divided into 4 Lots of approx. £50,000 each would still

be subject to the process for Type D Contracts as the total value of the contract exceeds EU thresholds. (See also 4.3.5)

4.3.5. An Officer must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Rules. Please refer to Section 4.2 for further information.

4.4. Pre-Tender Market Engagement and Consultation

4.4.1. Prior to undertaking a competitive procurement exercise, carrying out Market Engagement and Consultation (also known as Soft Market Testing) can be a valuable tool in understanding changes in the market since any similar previous contract was let, how the packaging of the contract can stimulate the market to deliver better or added value and how innovative or alternative solutions can be included within the tender process.

4.4.2. Prior consultation also encourages interest in supplying the Council and thus creates greater competition and supplier diversity.

4.4.3. The Officer responsible for the purchase may consult potential suppliers prior to the issue of the Invitation to Tender in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential candidate, but the Officer must not seek or accept technical advice on the preparation of an Invitation to Tender or quotation from anyone who may have a commercial interest in the tender, as this may prejudice the equal treatment of all potential candidates or distort competition.

4.4.4. The Officer must seek advice from East Sussex Procurement Hub in all instances prior to carrying out a Market Engagement and Consultation exercise.

4.5. Purchase of Goods/Services/Works

4.5.1. The following relates to all purchases of goods and services and works that have adequate budget provision, where value for money can be demonstrated and, where necessary, Cabinet has approved both the advertising of the tender and award or variation through the Council's procurement process. For any expenditure not in budget or for which approval from Cabinet has not been granted, the Service must obtain the relevant approval before commencing any tender or quote.

4.5.2. On occasions where there are not enough suitably qualified suppliers to meet the requirements, all suitably qualified candidates must be invited to quote or tender. So for example, for a goods contract of £10,000, if only two suitable suppliers can be found, both must be invited and a note made to evidence the research undertaken. An exemption to the Rules will be need to be sought (see section 6).

4.5.3. If the minimum number of bids is not received, please consult the East Sussex Procurement Hub or Finance for further advice.

4.5.4. For all contract Types C & D, the Officer shall consult the East Sussex Procurement Hub.

4.5.5. Where the EU procedure is required, the Officer shall consult the East Sussex Procurement Hub.

4.6. First Steps

4.6.1. Officers should ensure they have calculated and anticipated the complete requirements of the purchase, service or project, in many cases it may not be possible to revise a contract or increase the goods or services bought without seeking new quotes or tenders.

4.6.2. Officers should ensure good time is allowed for commissioning, procurement, contract and project design and involvement in order to help protect the Council from additional costs or delays.

4.6.3. Any interest which may affect the award of a contract under these Rules must be declared. Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must record their interest or any interest held by a close family member.

4.6.4. Where an officer has an interest which could influence their judgement in contracting matters, he or she must not take part in the procurement process and report the interest to the Council's Monitoring Officer.

4.6.5. Budget approval by the Council is necessary before any procurement/contract process can commence. In certain cases it is not sufficient to have budget to commence a project and further member approval may be required, for example, a scheme with a high political profile.

4.6.6. As well as the process relevant to a particular contract type (A,B,C or D) Officers should read the GENERAL CONSIDERATIONS section (section 5).

4.7. The Process - Contract Type A

4.7.1. Contract Type A applies to purchases valued below £5,000.

4.7.2. A minimum of 1 quote is required. Preferably quotes should be received and accepted in writing - email is acceptable for this purpose.

4.7.3. Officers should firstly consider if any current corporate contracts should be used for the purchase.

4.7.4. Alternatively the purchase may be called off from a compliant Framework (see Framework Agreements).

4.7.5. Officers should prioritise the use of local companies when soliciting a quote, except where this would not provide value for money.

4.7.6. Purchase Order terms and conditions should be used and a Purchase Order raised for the purchase.

4.7.7. Authority to accept the quote lies with the appropriate Service Manager.

4.8. The Process – Contract Type B

4.8.1. Contract Type B applies to purchases valued between £5,000 and £49,999.

4.8.2. A minimum of 3 written quotes are required.

4.8.3. Officers should firstly consider if any current corporate contracts should be used for the purchase.

4.8.4. Procurement Initiation Document A (PID A) should be completed as a record of quotes being sought in accordance with these rules.

4.8.5. Officers are required to use their purchasing power to work with local businesses wherever possible and where the rules allow. Therefore Officers are required to source a minimum of one of the three quotes from a local supplier.

4.8.6. A local supplier is defined as a suitably qualified supplier whose main / registered office is located within the boundaries of the Council, if there are no suitably qualified suppliers within the Council boundary this may be extended across East Sussex.

4.8.7. If a suitable local supplier cannot be found after following 4.8.5 and 4.8.6, officers must record the reason why on PID A. This is not considered a variation from the rules but non-compliance must be reported to ESPH.

4.8.8. On occasions where there are not enough suitably qualified contractors to meet the requirements. For example, for a goods contract of £10,000, if only two suitable suppliers can be found, both must be invited. An exemption to the Rules will be need to be sought (see section 6).

4.8.9. Alternatively the purchase may be called off from a compliant Framework (see Framework Agreements).

4.8.10. For most purchases, Purchase Order terms and conditions may be used, but for consultancy services, works and all purchases over £24,999 the Council's standard terms and conditions, bespoke or industry terms and conditions should be used. Advice should be taken from Legal Services.

4.8.11. A Purchase Order must be raised.

4.8.12. For purchases over £24,999 the quotation acceptance details should be completed in PID A and sent to the East Sussex Procurement Hub within 28 days of the quote being accepted as per instructions in the PID.

4.8.13. The Public Contract Regulations 2015, require details of all contracts awarded of £25,000 or more to be placed on the Government's Contracts Finder website. Completion of PID A (point 4.8.11, above) will allow the Council to comply with this requirement.

4.8.14. Quotations may be received directly by the Officer seeking quotes (see Summary Table Appendix B). When possible and practical quotes must not be opened until after the deadline set for receipt of quotations and must be opened in the presence of two officers. The relevant section of Procurement Initiation Document (PID A) (Quotation Record Form) must be completed.

4.8.15. Authority to accept the quote lies with the appropriate Service Manager. Details of quotes received and accepted are to be recorded in the Procurement Initiation Document A (PID A).

4.8.16. For contracts over £25,000 a signed original is kept by Legal. See Section 7 for further information.

4.9. The Process - Contract Type C

4.9.1. Contract Type C applies to all purchases valued between £50,000 and the EU threshold for supplies and services, regardless of whether the contract is for supplies, services or works.

4.9.2. The EU threshold for supplies and services is reviewed every two years and changes are effected from 1st January. For the current threshold for supplies and services please follow this link:

www.wealden.gov.uk/procurementhub

4.9.3. An open tender exercise is required. Officers should first consider if any current corporate contracts should be used for the purchase.

4.9.4. Selection or shortlisting of suppliers (for example the use of a Pre-Qualification Questionnaire (PQQ)) is not allowed, except in the following circumstances;

- Where the contract is for works, a minimum of 5 contractors may be invited to tender using the Constructionline service, or
- Where suppliers can be approached through a relevant and compliant framework.

4.9.5. In order to define the requirements, procurement route and assess how best value can be achieved for the contract, Procurement Initiation Document B (PID B) must be completed and signed off by The Procurement Hub or Legal, prior to starting any competitive exercise.

4.9.6. The purchase may require discussions or engagement with providers and suppliers prior to undertaking a tender. This can help define the specification, objectives and capacity of the market or inform budget considerations. Officers should ensure that the East Sussex Procurement Hub are involved before any such engagement begins.

4.9.7. In addition to the Procurement Initiation Document B (PID B) the following documents should be prepared in advance of undertaking any procurement. These should be developed in consultation with the East Sussex Procurement Hub and Legal:

- Review of current provision and outcomes required for new contract.
- Draft specification and award criteria. (See Award Criteria)
- Evaluation criteria, including basis for calculating total cost of bid.
- Form of Contract, terms and conditions.

4.9.8. The contract opportunity must be advertised on the Government's Contracts Finder website.

4.9.9. It is recommended that Contract Type C tenders are conducted electronically using the Council's e-Tendering facilities. This will ensure that point 4.9.8 (above) is complied with and that the tender process is conducted in an open, fair and transparent manner, providing an auditable record of the process.

4.9.10. As selection or shortlisting is not allowed for Type C Contracts it is imperative that the Council's mandatory requirements are clearly defined in the tender documents. These are minimum standards that a bidder must

achieve to be considered for evaluation of the quality and price of the offer. These will include:

- Grounds for Exclusion from Public Contracts.
- Financial Standing.
- Minimum Insurance Requirements (please note that a contractor is not required to hold the minimum levels of insurance, just confirm that should they be successful that these insurances will be provided upon starting the contract). Officers should not enter into contract, or allow the service, supply or works to commence until these insurances have been provided.
- Compliance with all relevant Health and Safety, Equalities and Environmental legislation and regulation.
- Completed Forms of Tender.
- Form of Tender
- Anti Collusion Certificate
- Bona-Fide Declaration

4.9.11. If relevant to the provision of supplies, services or works, minimum standards may also include accreditations, professional membership, or compliance with industry standards or regulatory bodies. These should be clearly defined within the Invitation to Tender.

4.9.12. Mandatory requirements will be assessed on a pass/fail basis. All bidders who achieve a pass in these areas must have their tender fully assessed against the award criteria.

4.9.13. Communication during the tender should be conducted in a transparent and fair manner, ensuring that all clarifications and additional information is available to all parties who have expressed an interest in the Contract at the earliest opportunity.

4.9.14. Amendments and changes to either the specification or award criteria once the tender process has begun should be avoided. However, if necessary, minor changes may be made up until the deadline for receipt of tenders. It is important that officers treat all bidders equally throughout the process and communicate any changes in a transparent manner to all bidders. If necessary consideration of extensions to the deadline for receipt of tenders should be made to ensure these changes can be incorporated and responded to fully.

4.9.15. Changes to the specification, evaluation method or award criteria **must not** be made after tenders have been received.

4.9.16. All Type C Contracts should include instructions for the return of tenders, whether hard copy or electronic. It should clearly state the time and date on which tenders must be received, and Tenders received after this time and date should be rejected.

4.9.17. If hard copy tenders are required the tender must be submitted in a plain sealed envelope, supplied by the Council. The envelopes provided should be addressed to the Chief Finance Officer and bear the words “Tender for (Name of Contract) – Do Not Open”. The envelope must not bear any mark which could identify the tenderer.

4.9.18. If a bidder gives advanced notice that a tender has been delayed and will not be received by the deadline, advice must be sought from the Procurement Hub as to whether the tender may be accepted. Ordinarily a late tender may only be accepted if no advantage could be derived by the bidder by its acceptance (ie they will have had a longer period to complete the tender).

4.9.19. The use of the Council's e-Tendering system will ensure that a fair, transparent and compliant receipt process is in place.

4.9.20. A minimum of three compliant* tenders must be received. If three compliant tenders are not received authority must be gained from the Chief Finance Officer to proceed with the evaluation.

* Compliant in this instance means tenders which meet all of the mandatory requirements of the tender and can be evaluated against the award criteria.

4.9.21. Tenders must be stored securely and a formal tender opening arranged. Tenders must not be opened in advance of the formal opening ceremony.

4.9.22. Tenders must be opened in the presence of the Chief Finance Officer and Procurement Partnership Manager or their nominated officers. Receipt of tenders must be recorded in the relevant section of PID B.

4.9.23. Tenders must then be evaluated in accordance with the published evaluation method and award criteria. Evaluation of mandatory requirements must be completed before full evaluation is undertaken.

4.9.24. A written record of scores and justification of scores for all bids should be kept.

4.9.25. Authorised Officers (see Appendix B) may accept a tender if they have delegated authority to do so, and have complied with the Rules. In some instances further delegation may be required from Members, and it is normal to keep Members informed when dealing with high profile or strategic contracts.

4.9.26. It is good practice to offer feedback to unsuccessful bidders if requested. Feedback should be kept only to those areas relevant for the decision to award and avoid details which may be considered commercially confidential. It is good practice to provide the unsuccessful bidders scores or weighting and those of the successful bidder.

4.9.27. Prior to acceptance of a tender, the tender acceptance section of PID B should be completed, and the fully completed PID B be sent to the Procurement Hub (email) and Legal (hard copy).

4.10. The Process – Contract Type D

4.10.1. Contract Type D applies to all purchases valued at, or above the EU threshold for supplies and services, regardless of whether the contract is for supplies, services or works. However there are some differences to works contracts due to the different EU threshold in place for these types of contracts, as described below.

4.10.2. All Contracts classified as Type D must be undertaken by the Procurement Hub unless otherwise agreed by the Chief Finance Officer.

4.10.3. The EU threshold for goods and services is reviewed every two years and changes are effected from 1st January. For the current threshold for supplies, services and works please follow this link:

www.wealden.gov.uk/procurementhub

4.10.4. All Contract Type D procurements must be conducted in accordance with the Public Contract Regulations 2015. These regulations set out the types of procurement procedures allowed.

4.10.5. The types of procedures are as follows:

- Open Procedure
- Restricted Procedure
- Competitive Procedure with Negotiation
- Competitive Dialogue
- Innovation Partnership

4.10.6. Each Procedure has a number of requirements which the Council must adhere to, such as:

- Minimum time allowed for each stage of the process
- Publication of opportunity in the Official Journal of the European Union (OJEU)
- All procurement documents to be available at the start of the procedure
- Assessment of social, economic or environmental benefit
- Use of award criteria and selection criteria
- Division of contracts into Lots
- Electronic tendering
- Technical specifications
- Award and standstill procedures.

4.10.7. All Type D tenders must be conducted in an open, transparent manner which allows for equal treatment and does not discriminate against a particular economic operator or group of economic operators.

4.10.8. Type D contracts must be conducted electronically, this means that the advertisement and all procurement documents are available electronically and tenders are accepted in a secure electronic environment. The Council has an e-Tendering system to allow for this.

4.10.9. It is vital that all Type D contracts allow for early involvement from Procurement and Legal, ideally at the business case or project initiation stage.

4.10.10. For works contracts valued between £181,302 and £4,551,413 (the current EU threshold for works – January 2018), not all of the requirements for EU tendering apply, however the principles of the rules, with regard to transparency, equal treatment and non-discrimination must be followed and in most cases the level of detail and care required for specifications, award criteria and evaluation will be the same.

4.10.11. Authorised Officers (see Appendix B) may accept a tender if they have delegated authority to do so, and have complied with the Rules. In some instances further delegation may be required from Members, and it is normal to keep Members informed when dealing with high profile or strategic contracts.

4.10.12. Contract Management is a crucial part in the procurement lifecycle and ensures the ongoing success and sustainability of a contract. All Type D contracts should have a defined governance structure for contract management and defined Key Performance Indicators, relevant to the successful performance and monitoring of a contract.

4.10.13. All Type D contracts must have a named Client Contract Manager (CCM), the CCM will be reviewing, monitoring and evaluating the contract to ensure that its provisions and services are being followed.

4.10.14. During the life of the contract, the CCM must monitor the contract in respect to the following:

- Performance
- Compliance with specification and contract terms
- Cost
- Any Best Value requirements
- User satisfaction and;
- Risk management.

4.10.15. Where this contract is due to be re-let, this information should be available and reviewed to inform the procurement approach.

4.10.16. Contract terms should allow for continuous improvement and the ability for the Council to benefit from changes in technology and market innovation during the life of the contract. The contract should also allow for demand to be varied within reasonable thresholds.

4.10.17. Any changes to contracts must not constitute a material change to the scope or value of the contract. Advice should be sought from Legal if there is any doubt about the changes sought.

4.10.18. For the avoidance of doubt, variations cannot be agreed if they result in additional expenditure beyond the approved budget. In these circumstances, appropriate approvals must be obtained.

5. General Considerations for all Contract Types

5.1.1. Frameworks, Consortia and Collaboration

5.1.2. Frameworks and Consortia arrangements can offer opportunities to secure value for money. However, such arrangements must be investigated to ensure that they are open for use by the Council and that they do meet Council requirements and offer value for money.

5.1.3. Frameworks will have specific procedures that have to be followed in order to make a purchase or enter into a contract (call off). This may range from direct order to mini competition. Officers must comply with all terms, including award procedures, of the framework agreement.

5.1.4. The Procurement Hub must be consulted before using (calling off a Contract from) any framework agreement.

5.1.5. The relevant PID (A or B) must also be completed.

5.1.6. Using an existing framework agreement may reduce the need to follow a competitive procedure. A Contract is still required and Legal Services must be consulted on the form of the framework Contract before any commitment is made.

5.1.7. Any frameworks used or set up by the Council must comply with all relevant legislation, including the length of Contracts called-off from the framework and the Procurement Hub will advise in this regard.

5.1.8. Where the Council sets up a framework arrangement for use by other public bodies, the Council must be protected, so far as possible, from liabilities arising as a result of third party use of that framework agreement.

5.1.9. When it is proposed that the Council will undertake a collaborative procurement with another authority or authorities, the relevant PID (A or B) shall be required even in cases where budgetary provision has already been made and that the cost of resources have been identified, considered, and recouped where possible and appropriate.

5.1.10. Where collaboration is authorised, the lead organisation's Contract Procedure Rules may be followed and will be deemed to be in compliance with these Procurement Procedure Rules so long as the lead purchasing organisation's Procurement Procedure Rules are in compliance with all applicable procurement legislation. Legal Services will advise in this regard. The lead organisation will indemnify other local authorities against any claims resulting from non-compliance with the current procurement legislation.

5.1.11. Collaborative procurements and contracts should, where possible, include the ability for the Council to request details and information relating to the procurement process necessary for audit purposes

5.1.12. A Contract is still required and the Legal Services must be consulted on the terms and conditions of the collaborative Contract before any commitment is made.

5.1.13. For all Contracts called off from a framework or collaborative arrangements, including the Council's own frameworks, authority to commit/enter Contract is still required at the relevant thresholds for Contract authorisation.

5.2. Award Criteria

5.2.1. All contract Types B, C and D must have clear instructions detailing on what basis a quote or tender will be accepted. This is known as the award criteria.

5.2.2. Most Type B contracts will not require a complex or long award criteria, and it is acceptable to accept Type B quotes on a lowest price basis. If any other quality criteria (such as experience, method statement, timescales), are to be used to determine the best value quote these must be detailed in the quote so that organisations know what elements are important to the council.

5.2.3. Type C & D contracts can only be awarded on the basis of either Most Economically Advantageous Tender (M.E.A.T) or M.E.A.T and Whole Life Cost considerations.

5.2.4. M.E.A.T involves a combination of factors including price, quality and other factors (such as social, economic or environmental benefits) to determine the best value offer.

5.2.5. Whole Life Cost will combine those factors in M.E.A.T above with consideration about the total cost of ownership, such as cost of acquisition, usage, disposal and lifecycle costs.

5.2.6. Officers must define Award Criteria that are appropriate and relevant to the purchase. The Award Criteria must be designed to secure the outcome representing the best Value for Money for the Council (which may or may not be the lowest price).

5.2.7. Any award criteria used should not discriminate against bidders or be designed to restrict competition.

5.2.8. The Procurement Hub should be consulted on the use of any award criteria used for Contract Types C & D. A guide to the use of award criteria is available on the Procurement Hub website.

5.3. Clarifications, Errors and Discrepancies

5.3.1. Discussions with bidders after submission of a tender and before the award of a contract can only be with a view to clarifying mistakes or errors in the tender submitted, confirm operational provision, terms and conditions of contract or requesting information for due diligence.

5.3.2. If mistakes in pricing are discovered and it is clear that this is due to miscalculation then the bidder may be given the opportunity to revise the mistake as long as it does not lead to the total tender price which was submitted from being increased or decreased. Where the mistake or error is in relation to the total price the bidder should be given the opportunity of confirming the price submitted or be allowed to withdraw the tender. No other form of amendment to price is allowed.

5.3.3. Where such discussions are to take place with a supplier, all bidders involved in the respective exercise must be notified and given the opportunity to clarify their bid if necessary, to ensure equal treatment.

5.3.4. Discussions with bidders after submission of a Tender and before the award of a contract with a view to obtaining adjustments in scope, price, delivery or content (i.e. post-Tender negotiations) must not be conducted - this is a distortion of competition.

5.3.5. Where post-Tender clarification results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-Tendered, following guidance from the East Sussex Procurement Hub.

5.4. Transfer of Services / TUPE

5.4.1. When any employee either of the Council or a current service provider may be affected by any transfer arrangement, for example, when a contract is retendered or service outsourced or brought in-house, officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain advice from Legal and Human Resources (HR) before proceeding with invitations to tender or quote.

5.4.2. Officers should ensure that sufficient time, particularly with regards to mobilisation of the new arrangements is given in instances where TUPE applies.

5.5. Opening Tenders and Quotations

5.5.1. Tenders for Contract Types C & D **must not** be opened until the deadline for receipt has passed. This applies whether the quote or tender is received electronically or as hard copy. Quotations for Contract Type B should be treated in the same way when possible and practical.

5.5.2. Tenders are to be opened in accordance with the following table:

Value	Officers to be present	Timescale
Under £5,000	Officer conducting the procurement	As agreed by Service Manager
£5,000 to £49,999	Officer conducting the procurement and another Officer	As agreed by Service Manager
£50,000 to EU Procurement Thresholds	Procurement Partnership Manager or nominated deputy, Chief Finance Officer or nominated deputy	Within 5 days of deadline for receipt
EU Procurement Thresholds and above	Procurement Partnership Manager or nominated deputy, Chief Finance Officer or nominated deputy	Within 5 days of deadline for receipt

5.6. Contract Award

5.6.1. For all supplies, works and most service contracts tendered under Public Procurement Regulations (Type D contracts), a ten-day 'standstill period' must be observed between the decision to award and contract conclusion. Once the decision to award a contract is made, **after you have received all necessary approvals**, each bidder must be notified in writing on the outcome of the tender process. If a pre-qualification questionnaire (PQQ) or an expression of interest prior to PQQ was used, all those bidders must be given feedback at the relevant stage. Advice on the use of PQQ and

expressions of interest can be provided by the East Sussex Procurement Hub. Please see Section 5.7 regarding de-briefing bidders.

5.6.2. The East Sussex Procurement Hub and Legal will provide advice and support with regards to Contract award letters, feedback to bidders and the contract Terms and Conditions, including any incidental documentation.

5.6.3. Officers may accept quotations and Tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Rules and in respect of the Scheme of Delegation (see Appendix B Summary Table).

5.6.4. The East Sussex Procurement Hub and / or Legal will be responsible for sending out the contract award letter and contract for signing by the winning contractor. Once signed, the Procurement Partnership Manager or Legal will arrange for the contract to be signed by the Council having checked that the appropriate authorisation is in place.

5.6.5. The Service must ensure any contract documentation is stored electronically on the SE Shared Services e-Portal and for contracts over £25,000 a signed original is kept by Legal. See Section 7 for further information.

5.6.6. A Purchase Order must be raised in the Council's Financial System or the eProcurement system, as applicable, for all orders. A quotation and a purchase order will create a legally binding contract for contracts whose total value is under £5,000. The purchase order is used to formalise the terms of the contract. Please see Section 7 for further details.

5.6.7. If the amount of the tender proposed to be accepted exceeds the amount of the budgetary provision, the tender should not be accepted until the Chief Finance Officer is satisfied that budget provision has been made for the additional cost.

5.7. De-briefing of Bidders

5.7.1. The confidentiality of quotations, Tenders and the identity of candidates must be preserved at all times and information about one candidate's Tender submission must not be given to another candidate.

5.7.2. The Officer must notify all candidates simultaneously and as soon as possible of the intention to award the contract to the successful candidate.

5.7.3. Advice must be sought from The East Sussex Procurement Hub in all instances before de-briefing bidders. Feedback must provide sufficient justification for the Council's decision making process. All feedback should provide an objective analysis of the bidder's response to the relevant criteria and the relative advantages of the successful bidder by way of comparison.

5.7.4. Any request for face to face or telephone debriefing or feedback must be referred to Legal and/or the East Sussex Procurement Hub.

5.8. Complaints and Challenges

5.8.1. If a complaint is received or if any of the bidders challenge any decisions made under these rules, Legal and the East Sussex Procurement Hub

should be notified **immediately**. No further communication should be made without approval from Legal.

6. Variations to the Rules

6.1. Overview

6.1.1. In order to maximise the Council's efficiency through the procurement process and to avoid any resulting contractual delays which could impact upon project delivery, delegated authority from Cabinet should always be sought to advertise, award and authorise signatures to the contracts.

6.1.2. In addition delegated authority from Cabinet may also be required for existing contracts which require variations, extensions or an exemption from these Rules. For operational reasons, a variation, extension or exemption may be required to minimise costs and allow the Service to consider longer term requirements given the high level of change which the Council is currently facing.

6.1.3. In these circumstances, the following may apply:

- A contract may be awarded or extended through an existing framework agreement or collaborative agreement where it offers value for money and efficient use of resources by avoiding a full EU procurement process. **No awards of this nature should be sought without considering the local economy and opening up the market to small and medium enterprises first.**
- Extensions/variations/exemptions will only be applied where the following criteria are fulfilled. The request must be:
  - Compliant with EU directives and National legislation and the Council's Procurement Procedure Rules;
  - Within an existing budget and value for money can be demonstrated;
  - Approved by the relevant Service Manager(s) and a relevant exemption from the Contract Procedure Rules is agreed in advance with the Chief Finance Officer and / or Executive Director and / or Cabinet Portfolio Holder, as appropriate.
  - Consideration has been given to the local economy and the ability for the market to be opened up to small and medium enterprises.

NOTE - no exemptions from EU legislation are possible.

6.2. Procedure

6.2.1. To apply for an exemption or an extension to a contract, you must fill in the Exemption Form available on the Council's Intranet. This form MUST be signed in accordance with the Council's Scheme of Delegation. It should be sent to those with authority to approve exemptions as set out in the Council's Scheme of Delegation before forwarding to Finance.

6.2.2. All officers must ensure that the form provides full details of the request and any supplementary documentation to support the request. Incomplete forms will be returned and could result in a delay in the request being considered.

6.2.3. Applications for exemptions where the value is under £24,999 can be signed by the Chief Finance Officer. Applications where the value is over

£25,000 must be signed by an Executive Director and the Chief Finance Officer.

6.2.4. No commitment should be made to the supplier, prior to authorisation and an exemption or extension cannot be given where this would contravene EU procurement rules.

6.2.5. Contracts awarded above £24,999 as a result of an exemption must still be published on the Contracts Finder website and included on the Council's Contract Register.

6.2.6. A record of the decision approving an exemption and the reasons for it will be stored electronically on the Council's tender portal, for ALL requests and a hard copy of the relevant contract and incidental documentation for contracts over £50,000 must be kept by Legal.

6.2.7. If an exemption has been granted to these rules, the Rules relating to Contract Documentation and Financial Procedures must still be followed and a Purchase Order raised accordingly. Failure to do so could be a disciplinary offence. For further guidance please refer to the Financial Procedure Rules.

6.2.8. The Chief Finance Officer is responsible for holding a complete record of all exemptions and is expected to report to the council's Audit Committee annually.

6.3. Exemptions

6.3.1. Exemptions will only be considered for the following reasons:

- The nature of the market for the works to be carried out, or the goods or services to be provided, has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable, for example, if there is no real competition;
- The contract offered by a supplier is to undertake investigative spend and/or contract analysis with the intention of achieving savings;
- Where the subject matter of the contract can only be arranged through one supplier.
- The contract is for works, supplies or services which are required in circumstances of extreme urgency which a diligent contracting authority could not have foreseen;
- Extending an existing contract; it must be in our interests to negotiate with the existing supplier and must be tied to the Scheme of Delegation;
- Price control- if the price is controlled by trade organisations or government order and there is no reasonable alternative;
- Repairs or parts — if the only option is to repair or buy new parts for existing equipment or buildings, and there is only one supplier;
- Purchase is to be made by auction (including online auctions);
- Purchase is for a patented article;
- The Purchase has been agreed by the Cabinet or Strategic Management Team to be for the good of the Authority; or

- There are other circumstances that are truly exceptional.

6.3.2. To apply for a variation or extension, please see Section 6.2, above.

6.4. Variations and Extensions

6.4.1. Subject to any statutory restrictions and compliance with these Rules, a Service Manager, in conjunction with the East Sussex Procurement Hub, may authorise the following extensions and variations to an existing contract, either:

- An extension for a particular period provided for within the terms and conditions of the contract (but subject to satisfactory outcomes of contract monitoring); or
- A single extension of the contract by up to six months, or half the contract term (whichever is less); and
- Any other variation, and, if relevant a consequent change in price, determined in accordance with the contract terms.

6.4.2. In any other circumstances the Service Manager may vary or extend a contract, providing that to do so is consistent with the provisions of Financial Procedure Rules.

6.4.3. Contracts procured under the EU Regulations must not be extended or varied without consulting the East Sussex Procurement Hub and Legal.

6.4.4. It is good practice to detail within the original contract if it can be extended, along with details of how long the extension is in place for. However the length or number of extensions detailed should not be made in order to avoid competitive process and the contract should only include extensions which are appropriate to the life cycle of the product/service and would not harm competition or value for money.

6.4.5. To apply for a variation or extension, please see Section 6.2, above.

7. Contracts

7.1. Documentation

7.1.1. All relevant contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from Legal as to the form of contract.

7.1.2. All relevant contracts, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when). The use of interim certificates and practical completion certificates may be appropriate for works contracts.
- The time, or times, within which the contract is to be performed
- The provisions for the Council to terminate the contract including break clauses.
- The provisions for managing performance such as incentives, defaults and determination.
- The provision for collateral warranties from sub contractors.
- Provisions for any payment due from the contracting authority to the contractor under the contract to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed
- Provisions that any subcontract awarded by the contractor imposes a similar requirement for payment to be made.
- Provisions for sharing confidential procurement information with other public sector organisations.

For examples of suitable clauses please refer to Legal or the East Sussex Procurement Hub.

7.1.3. The Council's terms and conditions of contract must be used wherever possible rather than the suppliers. If you intend to use the suppliers terms advice must be sought from Legal.

7.1.4. The formal advice of Legal must be sought for the following contracts:

- Where the Total Value exceeds £50k
- Contracts involving leasing arrangements
- Where it is proposed to use a supplier's own terms
- Contracts that are complex in any other way

7.1.5. All Type D contracts must include performance indicators and an appropriate formal review structure.

7.1.6. The East Sussex Procurement Hub will provide further advice on contract specific specifications.

7.2. Contract Formalities

7.2.1. Once the Executive Director or delegated Officer has accepted the winning bidder, all agreements shall be completed as follows in the Table below:

Value	Method of Completion	By who
Under £5,000	Purchase Order	Line Manager
£5,000 to £24,999	By Signature	Service Manager
£25,000 to £49,999	By Signature	Legal
£50,000 to £172,513	Under Seal	Executive Director
£172,514 and above	Under Seal	Executive Director and any Member

7.2.2. All relevant contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the prior approval from the Chief Finance Officer, Legal and Monitoring Officer. A letter of intent is insufficient.

7.2.3. All orders must be matched with a Purchase Order and be in line with the Council's Financial Procedure Rules.

7.3. Contracts under Signature

7.3.1. The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it. The Officer signing the contract on behalf of the Council must check to ensure that he/she has the relevant authorisation to sign the contract.

7.4. Contracts under Seal

7.4.1. A contract must be sealed where:

- The Council wishes to extend the liability period under the contract and enforce its terms for up to 12 years;
- The price to be paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- There is any doubt about the authority of the person signing for the other contracting party; and/or
- The total value of the contract is £50,000 or over

7.4.2. Where contracts are completed by each side adding their formal seal, such contracts shall be attested by an officer so authorised under the Council's Constitution.

7.4.3. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the Monitoring Officer, acting under delegated powers.

7.5. Transfer of Contracts

7.5.1. In appropriate circumstances, the Council may agree to transfer a contract by way of a novation agreement.

7.5.2. This decision must be taken by the Cabinet for contracts of an initial value in excess of £250,000 (or the relevant Committee for non-executive functions), and by the relevant Executive Directors for contracts of a value of up to £250,000. Agreement must also be obtained from the Chief Finance Officer and the Monitoring Officer.

7.5.3. The Chief Finance Officer must hold a complete record of all transfers.

8. Managing Risks

8.1. Prevention of Corruption/ Anti-Bribery

8.1.1. Officers must comply with the Officer Code of Conduct, Anti- Bribery Policy and Anti-Fraud and Corruption Policy and must not invite or accept any gift or reward in respect of the award or performance of any contract. High standards of conduct are obligatory; it will be for the Officer to prove that anything received was not received corruptly. Corrupt behaviour will lead to dismissal.

8.2. Declaration of Interest

8.2.1. Any interest which may affect the award of a contract under these Rules must be declared. Officers must declare to their line manager any interest which could influence their judgement in contracting matters. Officers must also record their interest or any interest held by a close family member.

8.2.2. Where an officer has an interest which could influence their judgment in contracting matters, he or she must not take part in the procurement process.

8.2.3. No gifts or hospitality should be accepted from any bidders to any contract being let by the Council, and to do so is a disciplinary offence. You must inform the Chief Finance Officer and the Monitoring Officer if you are dealing with a contract for the Council and have been offered such a gift or hospitality.

8.2.4. All officers involved in contracting matters must have regard to the Officer Code of Conduct.

8.3. Guarantees, Bonds and Damages

8.3.1. Certain contracts, mainly for works, will require guarantees, bonds and other performance measures to protect the Council against delays, increased cost, loss of revenue or contractor performance.

8.3.2. When a Contractor is the subsidiary of a parent company a Parent Company Guarantee (PCG) will be requested if the following conditions are met:

- The Candidate does not meet the minimum financial requirements of the assessment process.
- The Parent company has been assessed and meets the minimum financial requirements.

8.3.3. A Performance Bond is needed:

- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract, and
- The contract value is in excess of £500,000.

8.3.4. Liquidated damages should be included for all works contracts. These should be calculated at an appropriate daily rate to cover any potential loss of revenue, income or additional associated costs concerned with the delay.

8.3.5. Retentions of contract sums of minimum 2.5% should be included on all works contracts Type C & D.

8.3.6. Finance must be consulted for advice on the use of all of the above.

9. Records

9.1. The following records must be kept for a period of six years:

- Invitations to quote and quotations;
- A record of any exemptions to the procurement process and the reasons for them;
- A record of the reason if the most economically advantageous tender is not accepted;
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced;

9.2. The original signed or sealed contract along with all tender documents should be stored electronically on the SE Shared Services e-Portal, and all contracts over £50k should be stored in the archive for a period of 20 years.

10. Disposal of Assets

10.1. Please consult the Chief Finance Officer before disposing of any goods or assets to ensure the latest guidance is followed.

10.2. All disposals must be in line with Financial Procedure Rules.

11. Contracts of no cost to the Council

11.1. There may be a circumstance where a contract arises that involves no cost to the Council but a commercial advantage would be gained from it by the company who is awarded the contract. In such circumstances advice must be sought from the East Sussex Procurement Hub and Legal.

12. State Aid

12.1. Definition

12.2. State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and / or Suppliers or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

12.3. Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

12.4. For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is given by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

12.5. Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

12.6. Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

12.7. Exemptions for State Aid

12.8. Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period;
- Aid in favour of Small, Medium Enterprises, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection;
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

12.9. Such Aid must still be notified to the European Commission and as a result Council Officers are advised to seek the advice and guidance of the Legal Services and / or Monitoring Officer where State Aid may be said to exist on a particular project or procurement.

13. Development Agreements

13.1. Definition

13.2. A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercially desirable as a result of incentivisation by the public sector body.

13.3. Where the Council wishes to establish a development agreement that meets the definition above, again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or Concession Contract and may therefore be subject to the legislation on public procurement. Advice must be sought from Legal in all cases.

13.4. For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:

13.5. The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);

13.6. The development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lessor or otherwise retains an interest in the land or property;

13.7. The development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the “winner” chosen by the Council;

13.8. There is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;

13.9. The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);

13.10. The development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.

13.11. Where a development agreement cannot be said to meet the criteria defined above a public works or Concession Contract must be awarded in accordance with the public procurement legislation.

14. IT Software

14.1. IT software contracts will be let in accordance with the Rules.

14.2. All contracts for software shall assume that the software shall remain in use by the Council until it determines that it no longer meets its business requirements. At that point a procurement process will commence in accordance with the Rules. All software should be reviewed for its fit with business requirements on a regular basis.

14.3. All contracts for software shall assume that upgrades are taken for systems and there will be no requirement to retender the contract at that point nor to seek an exemption. In computing an upgrade is generally a replacement of hardware, software or firmware with a newer or better version, in order to bring the system up to date or to improve its characteristics.

14.4. Companies usually make software upgrades for the following reasons:

- to support industry regulatory requirements;
- to access emerging technologies with new features and tools;
- to meet the demands of changing markets;
- to meet user requests for enhancements;
- to meet legislative changes imposed on users; and
- to continue to receive comprehensive product support.

14.5. Before agreement to major upgrades are made, Service areas must have consulted ICT and obtained agreement to the suitability of the upgrade for the Council's ICT environment and that resources are available in ICT to undertake the implementation within the required timescales.

Appendix A. Glossary

Contracts Finder	Public Sector opportunities portal https://online.contractsfinder.businesslink.gov.uk/
Data Protection	The Data Protection Act controls how your personal information is used by organisations, businesses or the government. Everyone responsible for using data has to follow strict rules called 'data protection principles'.
East Sussex Procurement Hub	Shared Procurement Service hosted by Wealden District Council on behalf of Hastings, Rother and Wealden Councils
Lots	The division of the contract or requirement into smaller chunks. Possible Lot options include geographical coverage, labour type or multi discipline.
MEAT	Most Economically Advantageous Tender as combination of quality and cost to determine best value.
PID	Project Initiation Document used to define requirements and objectives of the purchase
PQQ	Pre Qualification Questionnaire
Pre Qualification	The process of shortlisting expressions of interest to create a tender list
SE Shared Services Tender Portal	Online opportunities and tendering portal http://www.sesharedservices.org.uk/esourcing
SME	Small and Medium Enterprises
TED	Tenders Electronic Daily http://ted.europa.eu/
TUPE	Transfer of Undertaking Protection of Employment covers everything from equipment and premises as well as staff
VCSO	Voluntary and Charitable Sector Organisation
Whole Life Costs	Also known as Total Cost of Ownership. This considers all elements of the cost of a product or service such as acquisition and procurement, operation and management, end of life management and relevant indirect costs.

Appendix B. Summary Tables.

Contract Types	Type A	Type B	Type C	Type D
Value	Up to £4,999	£5,000 to £49,999	£50,000 to EU threshold for supplies and services	EU Threshold for supplies and services
Procedure	Minimum of one written quote	Minimum of three written quotes	Tender procedure	EU compliant tender procedure
	Or suitable framework	Or suitable framework	Or suitable framework	Or suitable framework
Evaluation Criteria	Lowest Cost	Lowest Cost or Quality vs Cost (M.E.A.T)	Quality vs Cost (M.E.A.T)	Quality vs. Cost (M.E.A.T) and / or Whole Life Cost
Selection of Suppliers	If possible quote should be from a local supplier	One quote must be from a local supplier	No selection allowed except for works contracts where a minimum of 5 contractors may be invited from Constructionline	EU Compliant tendering procedure which may follow the restricted procedure.
Minimum number of quotes or tenders required	1	3	3	3
Minimum Advertising Requirements	None	None	Contracts Finder	OJEU (with the exception of works contracts under EU threshold for works) & Contracts Finder.
PID requirements	None	PID A	PID B (relevant sections)	PID B (all sections).
Form of Contract Required	Purchase Order terms	Purchase order terms except for consultancy services, works and all purchases over £24,999 which should use Council's standard terms and conditions (seek legal advice)	Council's terms and conditions or industry standard. Advice must be sought from Legal.	Council's terms and conditions, bespoke or industry standard. Advice must be sought from Legal.

Bonds and Guarantees				Works contracts >£500,000 Performance Bond for 10% of total contract sum. Parent Company Guarantee if applicable.
Retentions			Works – min. 2.5% of contract sum	Works – min. 2.5% of contract sum.
Liquidated Damages			Works – an appropriate daily rate for liquidated damages should be included.	Works – an appropriate daily rate for liquidated damages should be included.

	Type A	Type B	Type C	Type D
Opening	Officer seeking quote	Officer seeking quote and another Officer	Chief Finance Officer and Procurement Partnership Manager or nominated deputies	Chief Finance Officer and Procurement Partnership Manager or nominated deputies

	Type A	Type B	Type C	Type D
Acceptance	Line Manager	Service Manager	Chief Finance Officer and Service Manager	Chief Finance Officer and Executive Director

	Type A	Type B	Type C	Type D
Contract Completion	Line Manager (PO terms required)	Service Manager or Contracts over £25,000 - Legal	Executive Director (Under Seal)	Executive Director and any Member (Under Seal)

Appendix C. Guidance on setting Award Criteria and Evaluation (double click on the image below)

East Sussex Procurement Hub

Guidance for Buyers on Evaluating Tenders

1. Introduction

The purpose of a tender evaluation is to identify which bid offers the most economically advantageous proposal based on the criteria specified in the invitation to tender or quote document.

Depending on the value or complexity of the contract, evaluation of contractors can be done in two stages:

1. The Pre Qualifying (or selection) stage - This allows a selection of suppliers most suitable to bid for your requirements. It is seen as a tool to look at the companies past performances and current practices.
2. The Invitation to Tender stage - This is the chance to ask what a company will do to meet your needs and evaluate how much the service, goods or works will cost.

If you use a two stage process you cannot ask for solutions to your needs at stage 1, and conversely cannot ask for details of past performance or experience when you are asking them to provide a solution for you. However if you need them to back up a solution that is being offered then proof that it has worked or provided the necessary benefits can be requested.

In some instances, for example when running a low value procurement, or where the market has a small number of suppliers, a single stage (open) tender may be required to encourage bids through a quicker and simpler process. You should still use qualifying (or selection) questions which ensure that the company that you consider to supply to you is financially, technically and legally capable of fulfilling the contract, no matter how good the price / solution may be!

2. Pre Qualification Questionnaires

A Pre Qualification Questionnaire (PQQ) is an evaluation document used to identify a short-list of suitable companies to invite to tender when restricted and competitive dialogue procedures are used. The questionnaire should be used to identify if the applicants have the relevant capacity (financial and resources), experience and expertise to fulfill the contract. A PQQ must not be used to evaluate possible solutions that the company may offer and any criteria used at the pre-qualification stage should not be used again or revisited when evaluating the invitation to tender.

Many elements in a PQQ are Pass / Fail and may require input from specialist officers (such as Finance to undertake a financial assessment). Where sections of the PQQ are to be scored in order to rank bidders, please read the sections on applying weightings and scoring structures.

If references are required these must be obtained at PQQ stage as once a company is short listed, you can no longer assess their performance in this way. A more effective way of assessing a company's previous performance is for them to provide detailed case studies which you can then use to follow up with the original contractor.

When using an open tender procedure, the questions normally asked at PQQ should be included as part of the invitation to tender. The evaluation of the tenders should be undertaken in the same manner as a restricted procedure, first assessing the capability and capacity of all bidders (stage 1 -