

# STANDING ORDERS RELATING TO CONTRACTS

# CONTENTS

<b>1. INTRODUCTION</b>	<b>3</b>
<b>2. GENERAL</b>	<b>4</b>
2.1. Definitions and Interpretation	4
2.2. Basic Principles	10
2.3. Application of the Standing Orders	11
2.4. Exemptions to the Standing Orders	12
2.5. Waivers of Standing Orders	13
2.6. Procurement Strategy	13
2.7. Contract Value and Disaggregation	13
2.8. Conflicts of Interest	14
2.9. Compliance and Breach	15
2.10. Authority to Authorise	16
2.11. Procurement Business Cases	16
2.12. Sustainable Procurement including Social Value	17
2.13. Departmental Service & Capital Plans	17
<b>3. COMPETITIVE PROCESS</b>	<b>18</b>
3.1. Procurement Overview	18
3.2. Protocols – The Council’s Procurement and Award Procedures	20
3.2.2. Protocol 2 (A)	22
3.2.3. Protocol 2 (B)	24
3.2.4. Protocol 3	25
3.2.5. Protocol 4	26
3.2.6. Protocol 5	29
3.2.7. Protocol 7 (A)	31
3.2.8. Protocol 7 (B)	32
3.2.9. Protocol 8	33
3.2.10. Protocol 10	35
3.3. Pre-Tender Market Testing	37
3.4. Invitation to Tender/Request for Quotations	37
3.5. Clarification Questions	38
3.6. Submission, Receipt and Opening of Tenders/Quotations	38
3.7. Evaluation Criteria	39
3.8. Post-Tender Negotiations	40
3.9. Selecting the Successful Contractor	40
3.10. Financial Vetting of Contractors	40
3.11. Award of Contract	41
3.12. Debriefing Organisations	41
<b>4. CONTRACTS</b>	<b>42</b>
4.1. Form of Contracts	42
4.2. Content of Contracts	42
4.3. Contract Execution – Deed or Signature	43
4.4. Council Terms & Conditions and Award Letter	44

4.5.	Approved Lists.....	45
4.6.	Framework Agreements.....	45
4.7.	Dynamic Purchasing System (DPS).....	46
4.8.	External Body Grant Funding.....	47
4.9.	Contract Management.....	48
5.1	APPENDIX A - PROCUREMENT & AWARD PROCEDURES – Protocols.....	49
5.2	APPENDIX B – Bribery, Corruption and Fraud Clause .....	53
5.3	APPENDIX C – Endorsement Clause .....	53

## 1. INTRODUCTION

SECTION 135 OF THE LOCAL GOVERNMENT ACT 1972 REQUIRES A LOCAL AUTHORITY TO MAKE STANDING ORDERS WITH RESPECT TO THE MAKING OF CONTRACTS BY THEM OR ON THEIR BEHALF FOR THE SUPPLY OF GOODS OR MATERIALS OR FOR THE EXECUTION OF WORKS.

THESE STANDING ORDERS RELATING TO CONTRACTS (THE “STANDING ORDERS”) ARE THE STANDING ORDERS REQUIRED BY THE 1972 ACT. THEY FORM PART OF THE COUNCIL’S CONSTITUTION AND ARE, IN EFFECT, THE INSTRUCTIONS OF THE COUNCIL, TO OFFICERS AND ELECTED MEMBERS, FOR ENTERING INTO CONTRACTS ON BEHALF OF THE COUNCIL.

THESE STANDING ORDERS PROVIDE A FRAMEWORK FOR PROCUREMENT ACTIVITY ACROSS THE COUNCIL. THEY SET OUT HOW CONTRACTS FOR GOODS, SERVICES AND WORKS SHOULD BE PUT IN PLACE; THE GOVERNANCE REQUIREMENTS ASSOCIATED WITH SUCH ACTIVITY, AND THE CONTRACT MANAGEMENT OF CONTRACTS ONCE THEY ARE ENTERED INTO.

THESE STANDING ORDERS SHOULD NOT BE REGARDED IN ISOLATION, BUT RATHER AS PART OF THE OVERALL GOVERNANCE AND REGULATORY FRAMEWORK OF THE COUNCIL AS SET OUT IN THE CONSTITUTION, INCLUDING, BUT NOT LIMITED TO, THE COUNCIL’S *SCHEME OF DELEGATION*, THE FINANCIAL *SCHEME OF DELEGATION*, AND THE FINANCIAL REGULATIONS. THESE STANDING ORDERS COVER UK AND RETAINED EU REQUIREMENTS AS WELL AS GOOD PRACTICE.

THESE STANDING ORDERS ARE TO PROTECT THE INTERESTS OF THE COUNCIL, ITS OFFICERS, ELECTED MEMBERS AND THE GENERAL PUBLIC AND MUST BE COMPLIED WITH AT ALL TIMES.

## 2. GENERAL

### 2.1. Definitions and Interpretation

2.1.1. In these Standing Orders, the following words shall have the following meanings:

“Award Letter”	means the letter issued by the Council to the successful tenderer to award the Contract and which includes the Council’s requirements and the Tender Documents and all other documents which are incorporated as part of the Contract;
Anti-Fraud and Anti-Corruption Strategy & Fraud Response Plan	means the policy and response plan in relation to the prevention of fraud and corruption.
“Chief Financial Officer”	means the Director of Finance who has statutory duties in relation to the financial administration and stewardship of the Council;
“Client”	means the Council Officer who is responsible for the commissioning and delivery of works, goods, or services on behalf of the Council in their given role;
“Concession contract”	means a contract for the supply, for pecuniary interest, of works or services to the Council;
“Contract”	means any agreement with the Council for the execution of works or the supply of goods or services, including on a concession basis;
“Contract Award Notice”	means the notice issued by the Council to formally advertise that a contract award has been made;
“Contracts Finder”	means the Central Government website which enables suppliers to view and search opportunities for tenders, pipelines of potential procurement activity and awarded

	contracts worth over £25,000 with the Council;
“Contract Manager”	means the person or persons identified in each department to carry out contract management activity;
“Contracts Register”	means the Council’s centrally held register which provides key information about contracts above £25,000 (the goods and services, values, date started, expiry date, procurement category etc) - as required in the LGA Transparency Code;
“Corporate Debit Card Policy”	means the policy of the Council in relation to the use of the Council’s corporate debit card;
“Council”	means Derbyshire County Council;
“Council Plan”	means a plan outlining the Council’s ambitions, values and overarching outcomes for Derbyshire as approved annually by Council;
“Departmental Capital Plans”	means the departmental plans, which support the implementation of the Council Capital Programme;
“Departmental Service Plan”	means the departmental plans, which support the implementation of the Council Plan;
“Directive”	means Directive 2014/24/EU insofar as reference to it in the Regulations has been retained in UK law by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020;
“DPS”	means Dynamic Purchasing System;
“Financial Regulations”	means the document produced specifically in respect of the financial administration procedures of the Council;

“Financial Regulations For Schools”	means a document produced specifically in respect of the financial administration procedures for schools;
“Financial Scheme of Delegation”	means the documents setting out the Officer financial authorisation levels for each Council Department;
“Find a Tender’ service (FTS)”	means ‘Find a Tender’ service which on 31 December 2020, replaced Tenders Electronic Daily (TED) in the UK public procurement process. UK buyers who previously published OJEU notices on TED will now do that on Find a Tender;
“Firm”	means any business entity or person, including bodies corporate and corporations, associations, organisations, partnerships, co-operatives, trusts or other unincorporated bodies;
“Framework agreement”	means an agreement between one or more contracting authorities and one or more economic operators made pursuant to regulation 33 of the Public Contracts Regulations 2015 which establishes the terms governing contracts to be awarded during a given period, in particular with regard to the price and, where appropriate, the quality envisaged;
“ITT - Invitations to tender”	invitations to tender are used in a competitive tendering process in which qualified suppliers or contractors are invited to submit sealed bids for the supply of specific and clearly defined goods or services during a specified timeframe;
“Light Touch Regime FTS Threshold”	means, for the purpose of these Standing Orders, the financial threshold for social and other specific services pursuant to regulation

	5 of the Public Contracts Regulations 2015, and which is revised every two years;
“National Procurement Strategy”	means The National Procurement Strategy which sets out local government’s ambitions and priorities in relation to procurement;
“Officer”	means an employee of Derbyshire County Council. For the avoidance of any doubt this shall not include an agency worker or other contractor engaged by the Council;
“Procurement and Award Procedure”	means the procurement and award procedures of the Council as set out in the Protocols detailed in Standing Order 3.2 and Appendix A - Procurement & Award Procedures - of these Standing Orders;
“Procurement Business Case”	means a business case as set out in these Standing Orders Relating to Contracts;
“Procurement Data”	<p>means expenditure exceeding £5,000 as defined in the LGA Transparency Code 2015 and includes:</p> <ul style="list-style-type: none"> <li>• invitations to tender to provide goods and/or services with a value exceeding £5,000,</li> <li>• contracts, commissioned activity, purchase orders, framework agreements and any other legally enforceable agreement with a value that exceeds £5,000.</li> <li>• grants over £5,000 to voluntary, community or social enterprise organisations;</li> </ul>
“Procurement Professional”	means any Officer of the Council who is either (a) a qualified procurement professional, or (b) a procurement

	professional by way of their Council role as a purchaser of works, goods, or services;
“Procurement Strategy”	means the Council’s procurement strategy as may be amended and updated from time to time;
“Protocols”	means the procurement and award procedures of the Council as set out in Standing Orders 3.2 to 3.12 and Appendix A - Procurement & Award Procedures;
“Public Notice”	means a notice published on the Contracts Finder website and, where appropriate, in trade newspaper or journal circulating among such Firms that undertake such contracts;
“Purchase Order Form”	means the purchase order document used by the Council as part of the Council’s e-procurement system;
“Regulations”	means the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016, the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 as amended and updated from time to time (including the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020;
“Request for Quotation”	means the document used in soliciting price and delivery quotations that meet minimum specifications for specific goods and/or services.  They are used commonly for standard, off-the-shelf items, items built to known specifications, items required in small quantities, or items whose purchase price falls below sealed-bidding threshold;



“School Contract”	means a Contract let by the governing body of a school acting in the exercise of its powers in respect of a delegated budget;
“Senior Officer”	means an Officer of sufficient seniority as set out in the Financial Scheme of Delegation and where not set out in those documents, as determined by the appropriate Executive Director;
“Spend Data”	means expenditure exceeding £500 up to £5,000 as defined in the LGA Transparency Code 2015;
“Standstill Period”	means the period of time within which the Council must not enter into Contracts as set out in regulation 87 of the Public Contracts Regulations 2015;
“Supplies and Services FTS Threshold”	means, for the purpose of these Standing Orders, the financial threshold for supplies and services pursuant to regulation 5 of the Public Contract Regulations 2015;
“Terms & Conditions for Goods & Services”	means the Council’s corporate terms and conditions for goods and services;
“Terms & Conditions for Works”	means the Council’s corporate terms and conditions for works;
“Transparency Code”	means the Local Government Transparency Code 2015 which sets out key principles for local authorities to create greater transparency through the publication of public data;
“Works FTS Threshold”	means, for the purpose of these Standing Orders, the financial threshold for works pursuant to regulation 5 of the Public Contracts Regulations 2015.

- 2.1.2. Any reference in these Standing Orders to a statute, statutory instrument or statutory provision includes a reference to that statute, statutory instrument or statutory provision together with all Standing Orders and regulations made under it as from time to time amended, consolidated or re-enacted.
- 2.1.3. Any reference in these Standing Orders to an Officer of a certain level shall include a reference to an Officer authorised by them to act on their behalf provided that such authorisation is contained within the Council's Scheme of Delegation, including, the Financial Scheme of Delegation.
- 2.1.4. For the purposes of these Standing Orders, in ascertaining whether an agreement falls within the definition of a Contract, the determining factor will be the substance of the agreement and not the form. For the avoidance of doubt, where the effect of the agreement is that the Council has works, services or goods delivered to it or on its behalf, then for the purposes of these Standing Orders, it will be a Contract. Using other words, titles or headings as descriptors of an agreement (e.g., memorandum of understanding, grant, memorandum of agreement, purchase order etc.) where the Council has works, services or goods delivered for it or on its behalf, does not avoid the application of these Standing Orders.
- 2.1.5. Supplier, vendors, and contractor are used interchangeably in these Standing Orders and mean a third-party organisation with whom the Council may contract.

## **2.2. Basic Principles**

- 2.2.1. All procurement procedures must:
- (a) support all relevant Council plans, priorities and policies, including the Council Plan and the Procurement Strategy, including social value;
  - (b) realise value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome;
  - (c) uphold the highest standards of integrity;
  - (d) comply with all applicable legislative requirements;
  - (e) ensure:
    - (i) transparency – both in terms of procedures and contract opportunities;
    - (ii) equality of treatment and non-discrimination of potential suppliers;

- (iii) proportionality – both in terms of procedures and decision making during the procurement process.

## **2.3. Application of the Standing Orders**

2.3.1. These Standing Orders apply to the procurement and letting of the following types of contracts by or on behalf of the Council:

- (a) the purchasing of any goods or materials;
- (b) the purchasing of any services, including consultancy services;
- (c) the renting, hiring, or leasing of any equipment or goods;
- (d) the ordering or carrying out of any building or engineering works; and
- (e) the purchasing of any goods or services using external funding.
- (f) Concession contracts

2.3.2. Every procurement and award of a Contract made by or on behalf of the Council shall also comply with UK law.

2.3.3. The FTS threshold for goods and services is the Supplies and Services FTS Threshold; the FTS threshold for works is the Works FTS Threshold and the FTS threshold in respect of social and other specific services is the Light Touch Regime FTS Threshold, all of which apply to the application of these Standing Orders.

2.3.4. Should there be a conflict or discrepancy between these Standing Orders and any UK law, the law shall always prevail and must be followed.

2.3.5. The procurement and award of a Contract made by or on behalf of the Council shall not comply with these Standing Orders where:

- (a) an exemption applies pursuant to Standing Order 2.4 below;
- (b) a waiver of the Standing Orders has been granted pursuant to Standing Order 2.5 below;

(c) the Contract is a School Contract procured by the school, in which case it shall be procured and awarded in accordance with the Financial Regulations for Schools.

2.3.6. Where another local authority undertakes a procurement as the commissioning authority for and on behalf of the Council, including with any other parties, the standing orders, procurement procedures and financial regulations of that other local authority may be relied upon provided that the Procurement Professional, in conjunction with Legal & Democratic Services and the Client, ensures that the procurement of the works, goods and/or services to which that Contract relates, is carried out in accordance with all applicable UK law, and they shall obtain confirmation in writing from the other commissioning local authority that such compliance has been achieved and that Derbyshire is named as a local authority that can utilise the contract.

## **2.4. Exemptions to the Standing Orders**

2.4.1. The following types of transactions and/or forms of Council expenditure are not required to be part of a competitive process pursuant to these Standing Orders. Please be advised that the following list is not exhaustive:

- (a) expenditure under approved Council Contracts, which have already been appropriately procured in accordance with these Standing Orders;
- (b) disposals, acquisitions or transfer of interest in or over land/property, where such transactions do not form part of a wider works, goods or services transaction that is being procured;
- (c) items sold or purchased by public auction;
- (d) employment offers/contracts which makes the individual a direct employee of the Council;
- (e) expenditure with other Council departments that can provide works, goods or services to the Council;
- (f) Contracts for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body that can perform the works.

2.4.2. Legal & Democratic Services must be contacted for advice about whether a matter is exempt from these Standing Orders.

## **2.5. Waivers of Standing Orders**

- 2.5.1. Any requirement of these Standing Orders may be waived by the Council, Cabinet, Cabinet Member or Executive Director in writing, but only where it is satisfied that there are special circumstances justifying exemption and it is legal to do so.
- 2.5.2. All such request for a waiver of these Standing Orders will require a formal report requesting approval, to be submitted to Cabinet, Cabinet Member or Executive Director using authority levels set out in the Departmental Scheme of Delegation.
- 2.5.3. A waiver of these Standing Orders cannot circumvent the law and cannot as a matter of law excuse non-compliance with the law.

## **2.6. Procurement Strategy**

- 2.6.1. The aim of the Procurement Strategy is to:
  - (a) set out how the Council will carry out procurement and commissioning activities, in line with the National Procurement Strategy, to ensure value for money in the delivery of high-quality services; and
  - (b) to recognise that the procurement and commissioning of goods, works and services can deliver additional benefits in the support of its strategic and policy objectives as set out in the Council Plan.
- 2.6.2. All procurement activities must be undertaken in accordance with the Procurement Strategy and Executive Directors must ensure that all requirements of the supply of goods, services and works are carried out in line with the Procurement Strategy and the Protocols as set out in these Standing Orders.
- 2.6.3. The Chief Financial Officer is responsible for annually producing and updating the Procurement Strategy for approval by Cabinet.

## **2.7. Contract Value and Disaggregation**

- 2.7.1. The value of the goods, works or services required must not be sub-divided or underestimated for the purpose of reducing the total value of the Contract in order to bring the procurement

exercise below the relevant FTS threshold and, therefore, be exempt from the application of the Financial Regulations or these Standing Orders.

- 2.7.2. The value of the goods, works or services required must also not be sub-divided or underestimated for the purpose of reducing the total value of the Contract in order to bring the procurement exercise below the Council's thresholds as set out in these Protocols, so as to avoid the Council's procedural requirements
- 2.7.3. Repeat expenditure should be aggregated and should consider any previous/repeated spend via a non-contracted route or contract awards which total £50,000 or above for the same requirement during the preceding 12 months, and where possible, take account of the expected value which would occur in the 12 months following the proposed Contract award. The resulting value must be considered in line with Financial Regulations and these Standing Orders
- 2.7.4. In determining how to calculate the estimated value of a Contract to comply with the Public Contracts Regulations 2015 (Regulation 6) please contact County Procurement or Legal & Democratic Services for advice.
- 2.7.5. Any supply or service contracts which are regular in nature, or which are intended to be renewed within a given period must be aggregated where possible as described in Standing Order 2.7.3.
- 2.7.6. Contract expenditure figures must be monitored by the designated Contract Manager, based on an assessment of risk, to ensure that the basis of any Contracts awarded remain appropriate and legal.

## **2.8. Conflicts of Interest**

- 2.8.1. All Officers involved in any procurement process are required to adhere to the Officers' Code of Conduct and the Council's Anti-Fraud and Anti-Corruption Strategy. Furthermore, in accordance with the Officers' Code of Conduct as set out in the Constitution, where an Officer engages or supervises contractors or has any other official relationship with contractors and has previously had or currently has a relationship in a private or domestic capacity with a contractor, the Officer must declare that relationship to their Executive Director.

- 2.8.2. Contracts and purchases must be awarded on merit, in accordance with these Standing Orders and the Financial Regulations and no special favour should be shown to businesses run by, for example, friends, partners or relatives.
- 2.8.3. Any Officer involved in a tendering process for goods, services or works that is above the Supplies and Services FTS Threshold, must declare any interest they have in the matter to which that procurement process relates, including a nil interest, by completing and signing a Declaration of Interest Form, which will be held by County Procurement. Should the Officer's interest change during the course of the procurement process, that change in interest must be declared. Appropriate action must be taken pursuant to the interest that is declared, including removing the Officer from that particular procurement process.

## **2.9. Compliance and Breach**

- 2.9.1. All Officers must comply with these Standing Orders and each Executive Director shall ensure that Contracts let by Officers in his or her service comply with these Standing Orders.
- 2.9.2. Where an Officer is found to be in breach of these Standing Orders, appropriate action will be taken as follows:
- (a) for an inadvertent breach the Officer's manager will provide guidance and support, including explaining the consequences and gravity of non-compliance;
  - (b) for a first deliberate breach the Officer's manager will meet with the Officer to formally discuss the breach and any required actions and details of the breach shall be recorded;
  - (c) for subsequent deliberate breaches the Officer's manager will meet with the Officer together with a senior Officer to the manager to formally discuss the matter. Such remedial action may be taken as the manager and senior Officer consider appropriate in the circumstances, including but not limited to, formal action under the Council's disciplinary procedure.
  - (d) Details of deliberate breaches shall be reported to the Director of Finance and Assistant Director of Audit with any further action being taken in line with the employee code of conduct policy.
- 2.9.3. Any non-compliance with or breach of Standing Orders must be considered with regard to the requirements of paragraph 2Aa.7 (Audit Requirements, Internal Audit) of Annex 3 to the Financial Regulations. This details the action to be taken in all cases of suspected fraud, misappropriation or misuse of money, materials or equipment, or any mismanagement of

money or other assets, or any other irregularities. In any case of doubt the Assistant Director of Finance (Audit) must be consulted.

## **2.10. Authority to Authorise**

- 2.10.1. The Council's Scheme of Delegation, which forms part of the Council's Constitution, including the Financial Scheme of Delegation sets out the governance requirements in respect of delegations for decision making that all Officers and elected members must comply with.
- 2.10.2. High level decisions are reserved for Council, Cabinet and Cabinet Member and any matter that is not reserved for Council, Cabinet or Cabinet Member may be approved by the Executive Directors of each Department where such delegation is set out in the Council's Scheme of Delegation, including the Financial Scheme of Delegation.
- 2.10.3. Where goods, services or works are procured, Cabinet, Cabinet Member and Executive Directors have authorisation to approve the procurement process and the award of contracts (depending on value) as detailed in Standing Order 3 and Appendix A - Procurement & Award Procedures to these Standing Orders, which set out the Council's Protocols.

## **2.11. Procurement Business Cases**

- 2.11.1. The following procurement processes require the submission of a Procurement Business Case (*Business Case Submission*) to the Head of Procurement, the Chief Financial Officer and the Director of Legal and Democratic Services for approval before the procurement process commences:
  - (a) Permission to use a non-Derbyshire County Council framework (Protocol 2A) is required where:
    - (i) the framework is not included on the County Procurement pre-approved framework list, or
    - (ii) Changes to the framework terms and conditions are required;
  - (b) Award of Contract without Competition - Sole Supplier/Direct Award (Protocol 8);
  - (c) Material changes to Contracts (Protocol 10);
  - (d) Extensions of Contract beyond the originally awarded term or value indicated at the time of the original tender (Protocol 10).
  - (e) Provider Selection Regime (Protocol 4)



- 2.11.2. A Procurement Business Case template must be used in the situations set out in Standing Order 2.11.1, and can be found at Procurement Business Case.
- 2.11.3. Advice on completing the Procurement Business Case may be obtained from County Procurement.
- 2.11.4. A Procurement Business Case does not supersede the requirement to have Contract Award approval in writing.

## **2.12. Sustainable Procurement including Social Value**

- 2.12.1. Consideration must be given to how what is being procured might improve the economic, social and environmental well-being of Derbyshire residents as well as how that improvement might be secured. This applies to all procurements where it is relevant, and it must be proportionate and in line with the Public Services (Social Value) Act 2012.
- 2.12.2. Advice on incorporating Sustainability and/or Social Value into a procurement may be obtained from County Procurement

## **2.13. Departmental Service & Capital Plans**

- 2.13.1. It is Council practice that all proposed Contract awards with an expected contract value of £50,000 or above must be included within the appropriate Departmental Service or Capital Plans, which will be approved by Council. A Key Decision Notice is also published to support the Council Plan approval process. Where such Contracts are included in the Departmental Service or Capital Plans, the award of the Contract can be approved by the relevant Executive Director under the Council's Scheme of Delegation.
- 2.13.2. If a Contract award has not been approved in an appropriate Departmental Service or Capital Plan, approval to award must be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A - to these Standing Orders – Procurement & Award Procedures. A Key Decision notice may also be required dependent on the Contract award value.
- 2.13.3. Where a contract award exceeds the value/budget included in the approved Departmental Service or Capital Plan, approval to award a contract at the new value must be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in

accordance with Council's Financial Regulations and Appendix A to these Standing Orders – Procurement & Award Procedures. A Key Decision Notice may also be required dependent on the revised total value.

### **3. COMPETITIVE PROCESS**

#### **3.1. Procurement Overview**

- 3.1.1. Officers must comply with UK law and the Council's governance framework when undertaking the procurement of goods, services or works for or on behalf of the Council.
- 3.1.2. Pursuant to Standing Order 3.1.1, Officers must ensure that they comply with the Public Contracts Regulations 2015 (as amended) when procuring goods, services or works.
- 3.1.3. There are seven main competitive processes permitted under the Public Contracts Regulations 2015 and they represent best practice for all procurements above the applicable FTS thresholds:
  - (a) Open Procedure;
  - (b) Restricted Procedure;
  - (c) Dynamic Purchasing System;
  - (d) Framework Agreements (with or without mini competitions);
  - (e) Competitive Procedure with Negotiation;
  - (f) Competitive Dialogue;
  - (g) Innovation Partnership.
- 3.1.4. The Standing Order pertaining to each of these is different and the process chosen to fulfil a supply requirement must not only meet the business needs of the Council but also the purpose for which the process was designed. Each process also comes with selection risks and resource implications, to which due consideration must be given.
- 3.1.5. It is, therefore, essential that Officers appraise themselves of the various procedures and how best to utilise them to deliver Value for Money ("VfM") and the right business solution.
- 3.1.6. The Council has also created Procurement and Award Procedures, which are set out in the Protocols detailed in Standing Orders 3.2 to 3.12 below and Appendix A - Procurement & Award Procedures, which must be followed when procuring goods, services or works.

- 3.1.7. The Procurement and Award Procedures identify the required approach that must be followed for contracts and awards across the Council and specifically highlight the following information:
- (a) the type of spend that they cover;
  - (b) the process that is required to deliver a compliant procurement;
  - (c) the minimum advertising requirements to conform to Council and legal requirements;
  - (d) the requirements of a contract between the Council and a contractor;
  - (e) how a contract should be awarded;
  - (f) where the publication of the award shall take place;
  - (g) registration of contracts of £25,000 and above on the Central Contracts Register; and
  - (h) the requirements for inclusion on the Council's financial system to allow payment of the supplier and monitoring of the tender/contract process.
- 3.1.8. It must be noted that all references to FTS in the 'Award of Contract' column in the Procurement and Award Procedures table in Appendix A - Procurement & Award Procedures, means the Supplies and Services FTS Threshold, irrespective of whether the procurement is for goods, services or works. All references to FTS in the other columns in the Procurement and Awards Procedure table in Appendix A - Procurement & Award Procedures, means the relevant FTS threshold for the activity undertaken.
- 3.1.9. It should be noted that the admission of a vendor/supplier onto the Council's financial system will be dependent on being approved and demonstrates that the correct process of procurement and award has been followed.
- 3.1.10. All procurements must use standardised documentation, which is available from the County Procurement Team.
- 3.1.11. All competitions shall be in accordance with the Public Contract Regulations 2015, Financial Regulations, and these Standing Orders to Contracts.
- 3.1.12. Where the procurement activity has a contract value that is below the relevant FTS threshold for the activity that is being undertaken, Officers must still ensure that they comply with the Regulations, all relevant guidance, case law and advice from the Director of Legal and Democratic Services when undertaking tender processes or seeking quotations.
- 3.1.13. It is recommended that early advice from County Procurement and Legal & Democratic Services is sought before the commencement of a procurement process.

### **3.2. Protocols – The Council’s Procurement and Award Procedures**

The Council’s Procurement and Award Procedures are comprehensively set out in the Protocols (tabled in Appendix A to these Standing Orders). For the avoidance of doubt, any references to the FTS threshold in the Award of Contract section of the Protocols, means the Supplies and Services FTS Threshold, irrespective of whether the procurement is for goods, services or works. References to the FTS threshold in the remainder of the Protocols, means the relevant FTS threshold for the activity undertaken. Appendix A - Procurement & Award Procedures sets out a summary of award procedure for each Protocol. Further details and key requirements are detailed below. (Please note that Protocols 6 and 9 are no longer in use and are not, therefore, listed below).

### 3.2.1 Protocol 1

- 3.2.1.1. Protocol 1 is applicable to all contracts above the relevant FTS threshold, including the establishment of any Derbyshire County Council framework or DPS agreements, but excluding non-Derbyshire County Council framework agreements and, as such, the requirements of the Public Contracts Regulations 2015 must be complied with.
- 3.2.1.2. All such tendering must be carried out with the support of County Procurement utilising the Council's approved eTendering system.
- 3.2.1.3. It is important that advice is sought from County Procurement and the Director of Legal and Democratic Services at the earliest possible stage on the contract approach to be taken.
- 3.2.1.4. Where a procurement is included in the approved Departmental Service or Capital Plan, approval to award the contract must be sought in writing from the relevant Departmental Executive Director utilising the Scheme of Delegation.
- 3.2.1.5. Where a procurement has not been included in the approved Departmental Service or Capital Plan, approval to award a contract must be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A to these Standing Orders – Procurement & Award Procedures. A Key Decision Notice may also be required dependent on the contract award value.
- 3.2.1.6. Where a contract award exceeds the value/budget included in the approved Departmental Service or Capital Plan, approval to award a contract at the new value must be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A to these Standing Orders – Procurement & Award Procedures. A Key Decision Notice may also be required dependent on the revised total value.
- 3.2.1.7. A Contract Award Notice must be published on FTS in accordance with the Public Contract Regulations 2015.
- 3.2.1.8. Publication of a Contract Award Notice must also be made on Contract Finder. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above.

### **3.2.2. Protocol 2 (A)**

- 3.2.2.1. Protocol 2(A) must be followed where a non-Derbyshire County Council (external) framework is to be used for the procurement of goods, works or services.
- 3.2.2.2. County Procurement holds a pre-approved List of External Frameworks which are reviewed annually to ensure compliance with Procurement Regulations and acceptance of call off T&C's.
- 3.2.2.3. To use a pre-approved framework, you must ensure that:
  - a). no amendments are being made to the overarching framework T&C's where the proposed call-off/contract award exceeds £50,000.
  - b). that call-off(s)/contract award(s) above £50,000 are detailed in an approved Departmental Service or Capital Plan.
- 3.2.2.4. Where the requirements of Standing Order 3.2.2.3 have been met, call off(s)/contract award(s) should follow Protocol 2(B).
- 3.2.2.5. If the framework to be used is:
  - a) not included on the Councils pre-approved framework list, and/or
  - b) amendments are required to the Framework T&C's (where the proposed call-off/contract award exceeds £50,000) and/or
  - c) Has expired and been replaced by a new framework which is not on the Council's pre-approved list

then a 2a Procurement business case will be required to enable the proposed framework terms and conditions & call off terms and conditions to be reviewed/approved by Procurement, Director of Legal and Democratic Services and Finance. The Business Case will also require final approval by the appropriate Executive Director under the Scheme of Delegation.
- 3.2.2.6. Where a procurement has not been approved in an appropriate Departmental Service or Capital Plan and is above FTS threshold permission to use and award a contract from a non DCC framework must be also obtained from Cabinet Member or Cabinet dependent on value and a Key Decision Notice published if required.
- 3.2.2.7. Once these approvals are in place, call off(s)/contract award(s) from the framework should follow Protocol 2(B)



### **3.2.3. Protocol 2 (B)**

- 3.2.3.1. Protocol 2 (B) sets out the procedures for all call-offs/contract awards from a non-Derbyshire County Council (external) framework.
- 3.2.3.2. The terms and conditions of the framework agreement must be complied with, including the requirements for direct award and mini competition, where appropriate.
- 3.2.3.3. Any amendments to the framework call off terms and conditions, may only be made in accordance with these Standing Orders and the provisions of the framework agreement. Advice should be sought from County Procurement and/or Director of Legal and Democratic Services prior to call-off.
- 3.2.3.4. If the proposed call offs/contract awards are not detailed an approved Departmental Service or Capital Plan, Protocol 2a must be followed first.
- 3.2.3.5. Call off/contract awards must be approved in writing in line with the Scheme of Delegation.
- 3.2.3.6. Publication of a Contract Award Notice must be made on Contract Finder for Contract awards of £25,000 and above. Please contact the County Procurement Team for information/advice on publishing the Contract Award Notice.
- 3.2.3.7. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Please provide details to County Procurement Team for addition to the Contracts Register.



### **3.2.4. Protocol 3**

- 3.2.4.1. Calling-off from a DCC Framework or Dynamic Purchasing System (DPS) (established under Protocol 1 or 5).
- 3.2.4.2. The terms and conditions of the framework/DPS agreement must be complied with, including the requirements for a direct award or mini competition, where appropriate.
- 3.2.4.3. Any amendments to the framework call-off terms and conditions must be approved by the Director of Legal and Democratic Services prior to contract award.
- 3.2.4.4. Approval to award a call off contract under a Derbyshire County Council Framework or DPS must be obtained in writing from the appropriate Executive Director, utilising the appropriate Scheme of Delegation. Evidence of approvals should be retained for audit purposes.
- 3.2.4.5. Publication of a Contract Award Notice must be made on Contract Finder for any Contract awards of £25,000 and above. Please contact the County Procurement Team for information/advice on publishing the Contract Award Notice.
- 3.2.4.6. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Please provide details to County Procurement Team for addition to the Contracts Register.

### **3.2.5. Protocol 4**

- 3.2.5.1. Protocol 4 is applicable to any contracts procured in accordance with the Provider Selection Regime (PSR) that fall under the Common Procurement Vocabulary (CPV) codes as set out in schedule 1 of the PSR and, as such the Health Care Services (Provider Selection Regime) Regulations 2023 shall apply in place of the Public Contracts Regulations 2015 for all applicable contract award processes commenced on or after 1 January 2024. All references in this Protocol 4 to ‘regulations’ are to regulations of the Health Care Services (Provider Selection Regime) Regulations 2023.
- 3.2.5.2. The procurement of goods and out of scope services continues to be governed by the Public Contracts Regulations 2015 and this Protocol 4 will not apply to those procurements.
- 3.2.5.3. Where a procurement has crossover between the PSR and PCR 2015, then the route of the procurement will be determined by which element has the higher value i.e., above 50% of the total contract value.
- 3.2.5.4. All tendering using Protocol 4 must be carried out with the support of County Procurement utilising the Council’s approved e-tendering system.
- 3.2.5.5. It is important that advice is sought from County Procurement and the Director of Legal and Democratic Services at the earliest possible stage on the contract approach to be taken.
- 3.2.5.6. All relevant notices must be published as required under the relevant regulation(s).
- 3.2.5.7. Contract details must be recorded on the Council’s central Contract Register.

### **Contract Award**

- 3.2.5.8. The available routes to award a contract under Protocol 4 are:
- A) Direct Award Process A - where the existing provider is the only capable provider (PSR regulation 7);

- B) Direct Award Process B - where service users have a choice of providers, and the number of providers is not restricted by the relevant authority (PSR regulation 8);
- C) Direct Award Process C - where the existing provider is satisfying the existing contract and will likely satisfy the proposed new contract, and the contract is not changing considerably (PSR regulation 9);
- D) Most Suitable Provider Process where the relevant authority is able to identify which provider is most suitable based on consideration of key criteria and basic selection criteria (PSR regulation 10);
- E) Competitive Process where the authority cannot use any of the other processes or wishes to run a competitive exercise (PSR regulation 11).

3.2.5.9. A Protocol 4 Procurement Business Case will be required to be submitted to and approved by the Head of Procurement, Chief Financial Officer and Director of Legal and Democratic Services which justifies the route selected including evidence that the proposed procurement complies with the relevant regulation.

3.2.5.10. If a procurement is included in the approved Departmental Service & Capital Plan, approval to award the contract must be sought from the Director of Public Health utilising the relevant scheme of delegation. If a procurement is not included in the approved Departmental Service & Capital Plan, approval to award the contract must be sought (in addition to the Business Case required under Standing Order 3.2.5.9) from the Director of Public Health, Cabinet Member or Cabinet, depending on value as specified in the Council's Financial Regulations.

3.2.5.11. Where the procurement is carried out in accordance with Standing Orders 3.2.5.8 - C), 3.2.5.8 - D) or 3.2.5.8 - E) of this Protocol, the Council must apply a standstill period and must not enter into the contract or conclude the framework agreement before the end of the 8th working day after the day the standstill period begins.

### **Frameworks**

3.2.5.12. The competitive process must be followed to conclude a framework agreement (PSR regulation 16) or to select further providers to be party to an existing framework agreement (PSR regulation 17).

3.2.5.13. Contracts under a framework agreement may only be awarded in accordance with PSR regulation 18.

## **Modification of contracts and framework agreements during their term**

- 3.2.5.14. Modifications of contracts awarded under this Protocol 4 which have not been clearly and unambiguously provided for in the contract terms shall only be made in accordance with PSR regulation 13.
- 3.2.5.15. Modifications to contracts produce a risk of challenge and it is, therefore, necessary to produce a Protocol 4 Business Case with a risk assessment to seek approval from the Head of Procurement, Chief Financial Officer and Director of Legal and Democratic Services.
- 3.2.5.16. In addition to the Business Case process, modifications to contracts will need to be approved by Cabinet or Cabinet Member depending on the modification value.

### **Urgent Award or Modification**

- 3.2.5.17. An urgent award of or modification to a contract may only be made in accordance with PSR regulation 14.
- 3.2.5.18. Urgent awards of or modifications to contracts produce a risk of challenge and it is, therefore, necessary to produce a Protocol 4 Business Case with a risk assessment and evidence to justify the urgency to seek approval from the Head of Procurement, Chief Financial Officer and Director of Legal and Democratic Services.
- 3.2.5.19. In addition to the Business Case process, modifications to contracts will need to be approved by Cabinet or Cabinet Member depending on the modification value.

### **3.2.6. Protocol 5**

- 3.2.6.1. Expenditure between £50,000 and the FTS threshold must be actioned in accordance with this Protocol 5.
- 3.2.6.2. All such tendering must be carried out with the support of County Procurement utilising the Council's approved eTendering system.
- 3.2.6.3. It is important that advice is sought from County Procurement and the Director of Legal and Democratic Services at the earliest possible stage on the contract approach to be taken.
- 3.2.6.4. Where a procurement is included in the approved Departmental Service or Capital Plan, approval to award the contract must be sought in writing from the relevant Departmental Executive Director utilising the relevant Scheme of Delegation.
- 3.2.6.5. Where a procurement not been approved in the appropriate Departmental Service or Capital Plan, approval to award a contract be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A - Procurement & Award Procedures - Procurement & Award Procedures to these Standing Orders – Procurement & Award Procedures.
- 3.2.6.6. Where a contract award exceeds the value/budget included in the approved Departmental Service or Capital Plan, approval to award a contract at the new value must be sought in writing from the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A to these Standing Orders – Procurement & Award Procedures. A Key Decision Notice may also be required dependent on the revised total value.
- 3.2.6.7. Publication of a Contract Award Notice must be made on Contract Finder for Contract awards of £25,000 and above. Please contact the County Procurement Team for information/advice on publishing the Contract Award Notice.

3.2.6.8. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Please provide details to County Procurement Team for addition to the Contracts Register.

### **3.2.7. Protocol 7 (A)**

3.2.7.1. Protocol 7 (A) sets out the requirements for one-off purchases of less than £5,000.

Where such purchases are to be made, Protocol 7 (A) directs that one written quotation is required which shall be invited from suppliers considered competent to perform/fulfil the contract. Evidence should be retained for audit purposes.

3.2.7.2. Please refer to Standing Order 2.7 Contract Value and disaggregation when considering the use of this Protocol.

3.2.7.3. Please refer to Standing Order 2.8 Conflict of Interest & 2.9 Compliance & Breach when considering the use of this Protocol.

3.2.7.4. Transactions made pursuant to this Protocol must be approved in writing in accordance with the Scheme of Delegation.

3.2.7.5. Where appropriate, purchases can be made using the Council's Debit/Charge Card in accordance with the Corporate Debit/Charge Card Policy.

### **3.2.8. Protocol 7 (B)**

- 3.2.8.1. Protocol 7 (B) states that purchases of £5,000 and up to £50,000 require evidence that a minimum of three written quotations, have been sought from suppliers considered competent to perform the contract. Evidence should be retained for audit purposes.
- 3.2.8.2. Please refer to Standing Order 2.7 Contract Value and Disaggregation when considering the use of this Protocol.
- 3.2.8.3. Please refer to Standing Order 2.8 Conflict of Interest & 2.9 Compliance & Breach when considering the use of this Protocol.
- 3.2.8.4. Where the Executive Director considers obtaining three quotations is impractical or problematical, arrangements for inviting tenders or negotiating contracts under competitive conditions shall be in accordance with procedures agreed with County Procurement and the Chief Financial Officer.
- 3.2.8.5. Consideration must be given to inviting quotations from local Derbyshire businesses where possible.
- 3.2.8.6. Transactions made pursuant to this Protocol must be approved in writing and in accordance with the departmental Scheme of Delegation.
- 3.2.8.7. Publication of a Contract Award Notice must be made on Contract Finder for Contract awards of £25,000 and above. Please contact the County Procurement Team for information/advice on publishing the Contract Award Notice.
- 3.2.8.8. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Please provide details to County Procurement Team for addition to the Contracts Register.



### **3.2.9. Protocol 8**

- 3.2.9.1. Protocol 8 sets out the procurement and award procedure in respect of Award of contract without competition (Sole Supplier & Direct Award other than a call off from a framework agreement which permits direct award in which case Protocol 2a and 2b or Protocol 3 shall apply as appropriate).
- 3.2.9.2. Wherever possible the Council should avoid procurements involving sole suppliers or the direct award of contracts and should only act in accordance with the Public Contract Regulations 2015.
- 3.2.9.3. Specifications should be written so as to allow as many as possible in the market to submit solutions to Council requirements without any artificial constraints. There are, however, times when for compatibility or market reasons one supplier is the only viable source of a service, component, or software or is in a unique supply position.
- 3.2.9.4. The direct award of a contract without competition, produces a risk of challenge, and it is, therefore, necessary to produce a Procurement Business Case with a risk assessment and evidence to demonstrate compliance with Public Contract Regulations 2015.
- 3.2.9.5. In addition to the Business Case process outlined at Standing Order 3.11.4, the Contract Award must be approved by the relevant Departmental Executive Director, Cabinet Member or Cabinet, in accordance with Council's Financial Regulations and Appendix A - Procurement & Award Procedures to these Standing Orders. A Key Decision Notice may also be required dependent on the Contract award value.
- 3.2.9.6. Where the contract award value is above the relevant FTS threshold, the award must be published on FTS in accordance with the Public Contract Regulations 2015. Please contact the County Procurement Team for information/advice on publishing the FTS Notice.
- 3.2.9.7. Publication of a Contract Award Notice must be made on Contract Finder for Contract awards of £25,000 and above. Please contact the County Procurement Team for information/advice on publishing the Contract Award Notice.

3.2.9.8. Contract details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Please provide details to County Procurement Team for addition to the Contracts Register.

### **3.2.10. Protocol 10**

3.2.10.1. Protocol 10 sets out the procedure in relation to a material variation/change to an existing contract or framework which has not been provided for as part of the original contract terms.

3.2.10.2. Material variations can include but not limited to:

- a) Changes to contract value or prices
- b) Extension of contract
- c) Changes to terms and conditions
- d) Changes to the requirements or scope
- e) Additional works/services or supplies
- f) Novation
- g) Changes to subcontractors associated with the contract

3.2.10.3. In making changes to contracts, the Council should only act in accordance with Regulation 72 of the Public Contract Regulations 2015. Advice should be sought from County Procurement or Director of Legal and Democratic Services.

3.2.10.4. Material changes to existing contracts produce a risk of challenge, and it is, therefore, necessary to produce a Procurement Business Case with a risk assessment and evidence to demonstrate compliance with Public Contract Regulations 2015.

3.2.10.5. The Procurement Business Case will require approval from, Head of Procurement, Chief Financial Officer and the Director of Legal and Democratic Services.

3.2.10.6. In addition to the Business Case process outlined at Standing Order 3.12.4, the modification, may also require approval by Cabinet or Cabinet Member dependent on the modification value (see Appendix A – Procurement & Award Procedures)

3.2.10.7. For modification to contracts, where the total value of the contract is above £25,000, a notice must be published on Contracts Finder.

3.2.10.8. For modifications to contracts with a total value applicable to the FTS threshold, a notice must also be published on FTS in accordance with the Public Contract Regulations 2015.

3.2.10.9. Contract modification details must be entered onto the Council's central Contract Register for any Contract of £25,000 and above. Details of the modification should be sent to the County Procurement Compliance Team.

### **3.3. Pre-Tender Market Testing**

- 3.3.1. Before commencing a procurement procedure, the Council may conduct market consultations with a view to preparing the procurement and informing contractors of its procurement plans and requirements.
- 3.3.2. Advice may be sought, for example, from independent experts, authorities and market participants etc. and such advice may be used in the planning and conduct of the procurement procedure provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.
- 3.3.3. County Procurement should be contacted for further advice about pre-tender market engagement.

### **3.4. Invitation to Tender/Request for Quotations**

- 3.4.1. Invitations to tender and requests for quotations must be issued in accordance with these Standing Orders.
- 3.4.2. All invitations to tender must be issued through the Council's approved eTendering system.
- 3.4.3. Only in exceptional circumstances may a procurement process be conducted by alternative means to Standing Order 3.4.1 (for example, due to technical failure), and permission to conduct a procurement process by alternative means must be obtained from the Head of Procurement, Chief Financial Officer and the Director of Legal and Democratic Services before the procurement process begins.
- 3.4.4. Tenders and quotations must be invited so as to give sufficient time for the market to respond to the requirement.
- 3.4.5. For all Contracts above the applicable FTS threshold, the standard Selection Questionnaire (SQ) must be used for multi-stage procurements and adapted for single stage procurements. Copies of the latest SQ can be requested from County Procurement: Procurement Contacts
- 3.4.6. The Council is committed to minimising the burden on businesses and all tender documentation should be relevant, proportionate, appropriate to the goods, services or works required and can be requested from County Procurement: Procurement Contacts
- 3.4.7. All tenders above the applicable FTS threshold must conform to the requirements set out in the Public Contract Regulations 2015. The notice must be in the form prescribed by the Public

Contract Regulations 2015. The electronic notice must be issued through the approved system only.

3.4.8. The award of the Contract for tenders and quotations should be in line with the appropriate Protocol.

### **3.5. Clarification Questions**

3.5.1. Where details of a tenderer's bid are unclear, the Council may ask the tenderer for clarification of the submitted details. However, the nature of the questions asked can only be for clarification purposes and the responses to the questions must not involve changes to the features of the tenderer's submission. The response to clarification questions must, therefore, simply clarify what has already been submitted as the bid.

3.5.2. County Procurement should be contacted for further advice about clarification questions.

### **3.6. Submission, Receipt and Opening of Tenders/Quotations**

3.6.1. An invitation to tender shall state clearly the closing date and time for its receipt and that:

- (a) the Council does not bind itself to accept the lowest or any tender;
- (b) all tender submissions must be made through the "response" feature of the Council's approved eTendering system unless Standing Order 3.4.3 applies.
- (c) proof of posting will not be accepted as proof of delivery where a procurement process has been conducted via alternative means pursuant to Standing Order 3.4.2 and the tender or supplementary information fails to arrive at the address shown on the additional bid information label before the closing date and time for the receipt of hard copy tenders and supplementary information; and
- (d) only the electronic receipt issued within the Council's approved eTendering system will be accepted as proof of an electronic submission.

3.6.2. No tender shall be accepted if it is received after the closing date and time and shall be instantly rejected, except in the following circumstances:

- (a) where the delay in submission is the result of the electronic tendering system and this can be verified to be the case; or

(b) where the late submission is the only submission received, it is compliant in every other respect and the approval of the Chief Financial Officer and the Director of Legal and Democratic Services has been obtained to its consideration.

3.6.3. Any electronic tender submitted by any means other than through the Council's approved eTendering system will be deleted unread unless an alternative method to electronic tendering has been agreed pursuant to Standing Order 3.4.2.

3.6.4. Electronic tenders shall be kept within the secure area of the Council's approved eTendering system until the time and date specified for their opening.

3.6.5. Tenders received through the Council's approved eTendering system are subject to the electronic security protocols within that system, which require tenders to be opened electronically.

3.6.6. Where a procurement process has been conducted by alternative means pursuant to Standing Order 3.4.2 and hard copy tenders have been received, all tenders shall be opened at one time, which shall be as soon as possible after the closing date and time and only in the presence of three Officers appointed by the Director of Legal and Democratic Services and those Officers shall date and certify a list of tenders received.

### **3.7. Evaluation Criteria**

3.7.1. In any procurement process, the successful tenderer must be the one that submits:

(a) the lowest price; or

(b) offers the most economically advantageous tender based on specific criteria that are linked to the subject matter of the contract and can be used to demonstrate the most economically advantageous offer.

3.7.2. Examples of criteria used to identify the most economically advantageous offer include, but are not limited to: sustainability, social value, price, cost effectiveness, life cycle costs, quality, technical merit, capacity/ availability to perform the contract, approach to continuous improvement etc.

3.7.3. All criteria must relate to the subject matter of the contract, be objectively quantifiable and align with the Council's corporate objectives.

3.7.4. These criteria should be assessed through either:

- (a) Essential criteria – assessed on a compliant or pass basis/non-compliant or fail basis; or
- (b) Technical criteria – assessed on a scored basis in accordance with a pre-set scoring matrix.

3.7.5. The procurement documentation must clearly set out the evaluation criteria and how the evaluation criteria will be applied. The procurement documentation must also set out the overall weightings to be attached to each of the criterion.

3.7.6. The evaluation of bids must be undertaken in accordance with the evaluation criteria detailed in the procurement documents provided to bidding organisations.

### **3.8. Post-Tender Negotiations**

3.8.1. Post-tender negotiations will only be undertaken in circumstances agreed by the Head of Procurement, Director of Legal and Democratic Services and Chief Financial Officer. It is essential that such negotiations are conducted professionally and with demonstrable probity.

3.8.2. Post-tender negotiations take place after the formal receipt of tenders and before the formal award of Contracts. The purpose is to secure some improvement in price, delivery, or quality.

### **3.9. Selecting the Successful Contractor**

3.9.1. The successful contractor must be the contractor that has submitted the tender that has been objectively judged to be the most economically advantageous when evaluated against the criteria as required under Standing Order 3.7 or that has submitted the lowest quotation.

### **3.10. Financial Vetting of Contractors**

3.10.1. The financial vetting of contractors is an integral part of the procurement process and is designed to ensure that the contractor is financially able to perform the requirements imposed by the Contract. In the context of this process, financial vetting should form part of the selection criteria and be proportional to the financial and business risk of the Council alongside other qualitative and quantitative factors that can be grounds for selecting or rejecting a preferred supplier.

3.10.2. The financial vetting procedure is the responsibility of the Chief Financial Officer and is distinct from the technical vetting of contractors which is the responsibility of appropriate technical and professional Officers.



3.10.3. Subject to Standing Order 3.10.4, the financial vetting of contractors must be undertaken where the contract value (excluding extensions) exceeds the Supplies and Services FTS Threshold. For the avoidance of doubt, the Supplies and Services FTS Threshold applies to works contracts for the purposes of financial vetting.

3.10.4. It may also be considered necessary to carry out financial vetting:

- (a) if the Contract is considered to be high risk;
- (b) where there are contract variations, changes in financial status or market conditions etc. during the period of the Contract; or
- (c) where the Chief Financial Officer or the Director of Legal and Democratic Services states that it is a requirement.

The Chief Financial Officer will provide specific guidance on when financial vetting should be undertaken.

### **3.11. Award of Contract**

3.11.1. The Council must notify the successful and unsuccessful bidders, in writing, of the outcome of a procurement process in accordance with the Public Contracts Regulations 2015.

3.11.2. Where the procurement is above the applicable FTS threshold, the Council must observe a Standstill Period pursuant to the Public Contracts Regulations 2015.

3.11.3. Where the procurement is above the applicable FTS threshold, the contract award must not be made before the expiry of the Standstill Period.

3.11.4. Authority to award Contracts must be obtained prior to the award of a Contract and such authority must be in accordance with Appendix A - Procurement & Award Procedures of these Standing Orders and the Council's Scheme of Delegation.

### **3.12. Debriefing Organisations**

3.12.1. Should you receive a debriefing request from a tenderer, please contact County Procurement or Legal & Democratic Services for advice.

## **4. CONTRACTS**

### **4.1. Form of Contracts**

4.1.1. Pursuant to The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 the Council specifies that the following Contracts must be in writing:

4.1.1.1.1. any Contract above £5,000 awarded after a competitive process as determined in accordance with Standing Order 3 above;

4.1.1.1.2. those Contracts that do not fall within 4.1.1.1.1 with a contract value greater than £50,000;

4.1.1.1.3. Any Contract specified by the Director of Legal and Democratic Services or the Chief Financial Officer.

4.1.2. It is recommended that all other Contracts are in writing and, where they are not in writing, they must be evidenced in writing.

4.1.3. For the purposes of these Standing Orders, a Contract is in writing if all the terms agreed between the parties are set out in a document which is signed or sealed in accordance with these Standing Orders.

4.1.4. For the purposes of these Standing Orders, a Contract is evidenced in writing if all the terms agreed between the parties are set out in a number of documents that can be produced to prove the terms of the agreement.

4.1.5. Without prejudice to Standing Order 4.1.1 above, the decision as to whether a Contract is evidenced in writing rather than being in writing shall be the responsibility of the Executive Director of each Directorate.

### **4.2. Content of Contracts**

4.2.1. Every Contract shall:

(a) be in a form approved by the Director of Legal and Democratic Services;

(b) specify the subject matter, price, contract period and such other terms as are agreed;

- (c) require compliance with any appropriate British Standard Specification or Code of Practice or other equal and approved European standard;
- (d) indemnify the Council against any claim which may be made in respect of personal injury to any person in circumstances where it is not due to the negligence of the Council;
- (e) indemnify the Council against any claim for damage to property due to the negligence of the contractor and include provision to ensure that the contractor has appropriate insurance in place to protect against such claims and that the contractor shall produce evidence of such insurance to the satisfaction of the Council when requested;
- (f) contain a clause permitting cancellation in circumstances of corruption, such clause having the same effect as that set out in Appendix B to these Standing Orders;
- (g) contain a clause prohibiting a contractor from endorsing its products by reference in any way to the Council, such clause having the same effect as that set out in Appendix C to these Standing Orders;
- (h) contain a clause with acceptable levels of security in place with the effect of protecting the Council's data, including personal and special category data as defined by the Data Protection Act 2018, a model clause for which is available from Legal & Democratic Services. These requirements are in line with the Council's information security management system, current data protection legislation and information security best practice.

#### **4.3. Contract Execution – Deed or Signature**

- 4.3.1. All Contracts in writing must be signed or sealed and dated (i.e. fully executed) before and not during or after the performance of the Contract and such signing, sealing and dating must be in accordance with these Standing Orders and the Council's Scheme of Delegation.
- 4.3.2. Pursuant to Standing Order 4.1.1 above, all Contracts in writing must be signed unless the Director of Legal and Democratic Services requires that they should be by deed or by law are required to be by deed. All Contracts that are set out as deeds must be sealed by the Director of Legal & Democratic Services in accordance with the procedure set out in Standing Order 4.3.3.
- 4.3.3. The Council seal shall only be applied in the presence of the Director of Legal and Democratic Services or some other person authorised by the Director of Legal and Democratic Services

who shall also attest the sealing and record particulars of the sealing in a book kept for the purpose.

4.3.4. Signature of contracts by two Senior Officers is a legal requirement of The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001. In accordance with that Order, any Contract that falls within Standing Order 4.1.1 must be signed by two Senior Officers on behalf of the Council as follows:

- (a) where Legal & Democratic Services has been involved in the preparation and/or drafting of the contractual requirements, one of the signatures must be from a Senior Officer within Legal & Democratic Services who is duly authorised to do so in accordance with the Council's Scheme of Delegation;
- (b) where Legal & Democratic Services has not been involved in the preparation and/or drafting of the contractual requirements, two signatures from Senior Officers within the Directorate responsible for the Contract who are duly authorised to do so in accordance with the Council's Scheme of Delegation;
- (c) where specifically directed by the Director of Legal and Democratic Services, in accordance with those directions.

4.3.5. Any other Contract that does not fall within Standing Order 4.1.1 shall be signed by the relevant Officer in accordance with the Council's Scheme of Delegation.

4.3.6. A Contract shall only be signed or sealed and dated where the appropriate required authorities are in place.

#### **4.4. Council Terms & Conditions and Award Letter**

4.4.1. The Council's corporate Terms & Conditions for Goods & Services should be used as contractual terms for the purchase of goods and services where the value of the purchase is below the Supplies and Services FTS Threshold.

4.4.2. The Council's corporate Terms & Conditions for Works should be used as contractual terms for the purchase of works that are below £50,000.

4.4.3. The Terms & Conditions for Goods and Services and the Terms & Conditions for Works must not be used for Contracts with a value higher than those set out in Standing Orders 4.4.1 or

4.4.2 above unless the consent of the Director of Legal and Democratic Services has been obtained.

4.4.4. Where the Council's Terms & Conditions for Goods & Services or the Council's Terms & Conditions for Works are used, the appropriate Award Letter must be completed and signed by all contracting parties unless the purchase has been made using the Council's Purchase Order, in which case the Purchase Order must be processed in accordance with the Council's processing procedure.

4.4.5. A supplier's terms and conditions may only be used in exceptional circumstances and justification for using such terms and conditions must be evidenced in writing and approved by the relevant Executive Director.

#### **4.5. Approved Lists**

4.5.1. Approved lists must not be used where they are prohibited under the Public Contracts Regulations 2015.

#### **4.6. Framework Agreements**

4.6.1. A framework is an agreement put in place by the Council or an external contracting authority in accordance with regulation 33 of the Public Contracts Regulations 2015 with a provider or range of providers for the provision of goods, services or works.

4.6.2. Suppliers bid competitively to be awarded a place on a framework. Each framework is different, but generally, suppliers must demonstrate how they can provide the goods and services required and to an agreed standard.

4.6.3. The number of suppliers on the framework differs from framework to framework, depending on what is being offered. Some frameworks have only one supplier offering complex, end to end services, while others will have lots of suppliers.

4.6.4. The term of a framework agreement must not exceed four years, except where:

- (a) a longer period is permitted under the light touch regime pursuant to Part 2, Chapter 3 of the Public Contracts Regulations 2015; or
- (b) where exceptional circumstances justify a longer duration, as provided for in regulation 33(3) of the Public Contracts Regulations 2015.

4.6.5. When establishing a Derbyshire County Council framework, the framework agreement must be procured and approved in accordance with Protocol 1 or Protocol 5, dependent on the estimated framework value.

4.6.6. Any call-off from a Derbyshire County Council framework agreement must be undertaken in accordance with Protocol 3

4.6.7 Any call-off from a national, regional, sub-regional, consortium or other non-Derbyshire County Council (external) framework agreement shall only be undertaken in accordance with Protocol 2A. Where a Procurement Business Case is required, it must clearly identify the benefits to be gained, the legality of the framework agreement, the terms associated with any purchases made and details of how value for money will be obtained. The Business Case template is available from County Procurement Team

4.6.8 Publication of a Contract Award Notice must be made for all Contract awards (including the call-offs from either DCC or External frameworks) of £25,000 and above.

4.6.9 Call-Off Contract details must be entered onto the Council's central Contract Register for any Contract awards of £25,000 and above.

#### **4.7. Dynamic Purchasing System (DPS)**

4.7.1 The DPS is a procedure available pursuant to regulation 34 of the Public Contracts Regulations 2015 for contracts for works, services and goods commonly available on the market procured under Protocols 1 or 5

4.7.2 The DPS can be used for identified types of requirements, which may be divided into 'lots' of products, works or services.

4.7.3 The DPS is a two-stage process. In the initial setup stage, all suppliers who meet the selection criteria must be admitted to the DPS.

4.7.4 The number of suppliers that may join a DPS cannot be restricted.

- 4.7.5 Unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime.
- 4.7.6 Individual contracts are awarded during the second stage. In this stage, all suppliers on the DPS (or the relevant lot within the DPS) are invited to bid for the specific contract.
- 4.7.7 DPS is a completely electronic process and should be set up as set out in Regulation 34 of the Public Contracts Regulations 2015.
- 4.7.8 Where a DPS agreement is used, the agreement must be approved at Executive Director level where the procurement is already approved in the Departmental Service or Capital Plans and,
- 4.7.9 Where it is not already approved in the Departmental Service or Capital Plans, it must be approved by Executive Director, Cabinet Member or Cabinet, depending on value.
- 4.7.10 Any call-off under a Derbyshire County Council DPS agreement must be undertaken in accordance Protocol 3 and the award of the call-off contract must be approved in writing at Executive Director level in accordance with Scheme of Delegation.

#### **4.8. External Body Grant Funding**

- 4.8.1 Where grant money is received by the Council to fund the provision of works, goods or services under a Contract, then these Standing Orders shall apply in full. However, where the Council administers grant money on the funding body's behalf, these Standing Orders may not apply, and advice should be sought from the Director of Legal & Democratic Services as to their applicability.
- 4.8.2 Where the funding body has attached grant conditions to the grant, care must be taken to ensure that any relevant grant requirements are appropriately captured in any Contracts between the Council and the eventual grant recipient.
- 4.8.3 Where grant conditions are attached that make compliance with these Standing Orders unachievable, the Director of Legal and Democratic Services shall advise accordingly.
- 4.8.4 For advice about whether these Standing Orders apply to a grant, please contact Legal & Democratic Services.

#### **4.9. Contract Management**

- 4.9.1 All Contracts must be contract managed to ensure that the Contract is carried out in accordance with its terms and conditions.
- 4.9.2 It is the responsibility of each Executive Director to ensure that appropriate contract management arrangements are put in place that are proportionate to any given Contract.
- 4.9.3 All Contract management information & KPI data should be stored centrally as part of the Council's central Contract Register held by County Procurement
- 4.9.4 All Contracts with a value of £25,000, must be recorded on the Council's central Contract Register held by County Procurement, and in line with the Local Government Transparency Code. All Contracts between £5,000 & £25,000 shall be reported to County Procurement and the Chief Financial Officer on a monthly basis.
- 4.9.5 Where possible, Contracts shall be identified on the Council's financial system to allow electronic ordering and to assist Officers in identifying approved Contracts.



## 5.1 APPENDIX A - PROCUREMENT & AWARD PROCEDURES – Protocols

\*FTS: The government e-notification service Find a Tender (FTS) which is used to post and view public sector procurement notices. Threshold values apply for the purposes of the Public Contracts Regulations 2015

\*Contracts Finder - helps suppliers to find public sector procurement opportunities. It is aimed at potential suppliers, in particular smaller businesses and voluntary or charitable organisations, who are interested in doing business with government and public sector bodies.

Protocol	Spend Type	Process Required	Advertising Required	Contracting Requirements	Award of Contract	Publication of Award	Inclusion on SAP
Protocol 1  See section 3.2.1	All contracts, DCC frameworks & DPS procurements above FTS threshold.	Tender through the Council's approved eTendering system	FTS, Contracts Finder website	Contract approved by Director of Legal and Democratic Services	<u>Procurements approved in the Departmental Service or Capital Plans:</u>  Executive Director Approval  <u>Procurements not approved in the Departmental Service or Capital Plans:</u>  Below FTS: Executive Director Approval  FTS to £500,000: Cabinet Member Approval  Above £500,000: Cabinet Approval	Contracts Finder FTS, Central Contract Register	MD4, published catalogue and contract detail
Protocol 2(A)  (See section 3.2.2)	(A) Permission to use an external/non-DCC Framework	<b>Option 1 - Where the proposed procurement:</b>  (i) is from a pre-approved framework  (ii) does not require any amendments to the Framework T&C's  (iii) was included on an approved Departmental Service or Capital Plan	None	Call-off as set out in the Framework documents	Where Protocol 2(a) Process Requirements have been met the Award of Contract should follow Protocol 2(B)  <i>* Note – where the proposed procurement was <b>not</b> approved as part of a Departmental Service or Capital Plan and is above the FTS threshold, written approval will be required (in addition to the Procurement Business Case) via Cabinet</i>	Not Applicable	Not Applicable

		<p><b>Option 2 - Where the proposed procurement:</b></p> <p>(i) requires an amendment to the Framework T&amp;C's</p> <p>(ii) is below £50,000 but high risk</p> <p>(iii) is above £50,000 and the framework to be used is <b>not</b> on the pre-approved framework list.</p> <p>(iiii) have <b>not</b> been approved as part of an approved Departmental Service or Capital Plan</p> <p>Then:</p> <p>The submission of Procurement Business Case must be made to the Chief Financial Officer, Head of Procurement, and Director of Legal and Democratic Services, with final approval of the BC by an appropriate Executive Director under Scheme of Delegation.</p> <p>Note: Where the procurement was not approved as part of a Departmental Service or Capital Plan and is above the FTS threshold, written approval will be required (in addition to the Procurement Business Case) via Cabinet Member or Cabinet dependent on value. A Key Decision Notice may also be required dependent on value.</p>	None	Approval of the Framework documents & call of terms by Director of Legal and Democratic Services (as part of the Procurement Business Case Process)	Member or Cabinet dependent on value. A Key Decision Notice may also be required dependent on value.		
<p>Protocol 2(B)</p> <p>(See section 3.2.3)</p>	<p><b>(B)</b></p> <p>Call-off &amp; award a contract from a External/non-DCC Framework</p>	Call-off as set out in the Framework documents	None	Call-off as set out in the Framework documents	<p><u>Procurements approved in the Departmental Service Plans</u></p> <p>or</p> <p><u>Approved via Protocol 2a (option 2)</u></p> <p>Executive Director under scheme of delegation</p>	£25,000 and above on, Contracts Finder, & Central Contract Register	MD4, published catalogue and contract detail

Protocol 3 (See section 3.2.4)	Call-off from a DCC Framework or Dynamic Purchasing System (established under Protocol 1 or 5)	Call-off as set out in the Framework or Dynamic Purchasing System documents	None	Approval of call-off terms by Director of Legal and Democratic Services	Executive Director or equivalent under scheme of delegation	£25,000 and above on, Contracts Finder, & Central Contract Register	MD4, published catalogue and contract detail.
Protocol 4 (See section 3.2.5)	Provider Selection Regime  (Applicable to ASC&H or Childrens Services only)	Submission of Procurement Business Case to Chief Financial Officer, Head of Procurement and Director of Legal and Democratic Services for approval justifying use of:  (i) Direct Award processes A, B and C or (ii) Most suitable provider process or (iii) Competitive process  Or material changes to contracts (falling under PSR only)	FTS, Contracts Finder for Competitive process	Contract approved by Director of Legal and Democratic Services	<u>Procurements approved in the Departmental Service Plans</u>  Executive Director  <u>Procurements not approved in the Departmental Service Plans</u>  FTS to £500,000 Cabinet Member  Above £500,000 Cabinet	Contracts Finder, FTS, & Central Contract Register	MD4
Protocol 5 (See section 3.2.6)	£50,000 to FTS threshold	Tender through the Council's approved eTendering system	For above £50,000 on Contracts Finder	The Council's Terms and Conditions or other form of contract as appropriate	Executive Director or equivalent under scheme of delegation	£50,000 and above on Contracts Finder, & Central Contract Register	MD4, published catalogue and contract detail
Protocol 6	Not used			NOT IN USE			
Protocol 7 A & B  (See sections 3.2.7 & 3.2.8)	(A)  Quotation up to £5,000	Minimum of 1 quotation	None	The Council's Terms and Conditions or other form of contract as appropriate	Executive Director or equivalent under scheme of delegation	None	Council debit card or MD4
	(B)	Minimum of 3 written quotations	None	The Council's Terms and Conditions or	Executive Director or equivalent under scheme of delegation	£25,000 and above on	MD4

	Quotation above £5,000 to £50,000			other form of contract as appropriate		Contracts Finder & Central Contract Register	
Protocol 8  (See section 3.2.9)	Award of Contract without Competition	Submission of Business Case to Chief Financial Officer, Head of Procurement and Director of Legal and Democratic Services for approval	None	Contract approved by Director of Legal and Democratic Services	Up to FTS threshold: Executive Director  FTS threshold to £500,000: Cabinet Member  Above £500,000: Cabinet	£25,000 and above on Contract Finder  FTS (if above the FTS threshold),  & Central Contract Register	MD4, published catalogue and contract detail
P9	Not used						
Protocol 10  (See section 3.2.10)	Material Changes to Contracts	Submission of Business Case to Chief Financial Officer, Head of Procurement and Director of Legal and Democratic Services for approval	None	Contract approved by Director of Legal and Democratic Services	Up to FTS threshold: Executive Director  Above FTS threshold to £500,000: Cabinet Member  Above £500,000: Cabinet	£25,000 and above on Contract Finder  FTS (if above the FTS threshold),  & Central Contract Register	Update of contract data

## 5.2 APPENDIX B – Bribery, Corruption and Fraud Clause

1. The Council may terminate this contract by written notice with immediate effect and recover from the contractor all losses resulting from such termination, if the contractor, or any of its employees, agents or subcontractors (in all cases whether or not acting with the contractor's knowledge):
  - (a) directly or indirectly offers, promises or gives any person working for or engaged by the Council a financial or other advantage to:
    - I. induce that person to perform improperly a relevant function or activity;
    - II. reward that person for improper performance of a relevant function or activity;
  - (b) directly or indirectly requests, agrees to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
  - (c) commits any offence:
    - I. under Section 117(2) of the Local Government Act 1972;
    - II. under the Bribery Act 2010;
    - III. under the Fraud Act 2006 and legislation creating offences concerning fraudulent acts;
    - IV. at common law concerning fraudulent acts relating to this contract or any other contract with the Council; or
    - V. defrauds, attempts to defraud or conspires to defraud the Council.

## 5.3 APPENDIX C – Endorsement Clause

1. The award of this Contract shall not entitle the contractor to endorse its products by reference in any way to the Council nor shall the contractor exhibit or display for advertisement or otherwise any goods, equipment or vehicles to be supplied under the Contract to the Council and which can be identified with the Council (whether the property in such goods, equipment or vehicles shall have passed to the Council or not) without the written consent of the Council

## APPENDIX D – Modern Slavery Act1.

1. All suppliers subject to Section 54 of the Modern Slavery Act 2015 must comply with all the applicable human rights and employment laws as set out in the Modern Slavery Act 2015.