

## CPRs including local rules listed under Schedule One

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## 1. Introduction

- 1.1 These Contract Procedure Rules (“Rules”) are standing orders made pursuant to Section 135 of the Local Government Act 1972. Compliance with the Rules and observance of all relevant legislation from which they emanate in particular, but not limited to: the Public Procurement (Amendments, Repeals and Revocations) Regulations 2016; the Public Contracts Regulations 2015; Concession Contracts Regulations 2016; Equality Act 2010; Public Services (Social Value) Act 2012; the Local Government (Transparency Requirements) (England) Regulations 2015 (As amended from time to time); and the associated principles relating to non-discrimination, equal treatment and transparency, is mandatory for all Officers and Members.
- 1.2 Stockport Metropolitan Borough Council, Tameside Metropolitan Borough Council, Trafford Borough Council and Rochdale Metropolitan Borough Council ( individually referred to as the “Council” and collectively referred to as the “STAR Authorities”) have agreed, through an Inter Authority Agreement (“IAA”) to facilitate the joint delivery of Procurement Functions with a view to the attainment of a more economical, efficient and effective discharge of its Procurement Functions via a shared procurement service to be identified as “STAR”. Other authorities may, from time to time, join the IAA.
- 1.3 Each of the STAR Authorities have agreed to establish and participate in a joint committee (the “Joint Committee”) and have agreed to delegate their Executive and to the extent that the activities of the Joint Committee are not executive functions the STAR Authorities delegates to the joint committee the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of the Procurement Functions delegated to it.
- 1.4 The Rules ensure that Procurement Functions are undertaken in a legally compliant, transparent, fair and competitive manner. These Rules shall apply to all procurement activity where the Council is to procure any Supplies, Services or the execution of Works, or enters into a Concessions Contract as either a contracting authority or commissioner of such, regardless of the origin of funding (such as external grants, partnership funding, pooled or joint budgets for example).
- 1.5 These Rules allow for Joint Procurement activity to be undertaken by STAR Procurement on behalf of some or all of the STAR Authorities and any other Contracting Authorities (together the Participating Authorities) who may, from time to time opt to participate in the Joint Procurement. The Participating Authorities will select one of their number to act as lead in the process (Lead Authority). The Lead Authority will draft a Memorandum of Understanding (MOU) to be agreed and signed by the Participating Authorities. The MOU will set out the commitment of resources, and other considerations that each will dedicate to the Joint Procurement activity. The Participating Authorities and Officers must follow their own governance procedures and these Contract Procedure Rules as appropriate.
- 1.6 The Joint Committee shall monitor compliance with the Rules and undertake an annual review of the Rules. The Joint Committee may present recommendations for amendments to the Rules to the Council from time to time and any such amendments shall be subject to the Council’s own ratification procedures.
- 1.7 Officers and elected Members involved in procurement activity must comply with these Rules, the Council’s Financial Procedure Rules/Regulations and the Council’s Employees Code of Conduct/Members Code of Conduct. Officers must ensure that any agents, consultants and contractual partners acting on their behalf, also comply with these Rules. They must also have due regard to any guidance provided by STAR, STAR Legal and their own legal teams. Any failure to comply with any of the provisions of these Rules must be

reported immediately to the SRO for Legal. Failure by any Officer or Member to comply with the provisions of these Rules may lead to disciplinary action being taken against them.

- 1.8 These Rules must be read in conjunction with the Council's Constitution and in particular the Financial Procedure Rules, the Procurement Handbook, any relevant guidance documents endorsed by the Council and the Council's local Rules as contained in Schedule 1.
- 1.9 A number of local Rules can be found in the attached [Schedule 1](#) and which form part of these Rules.

## **2. Interpretations and Definitions**

- 2.1 In the event of any conflict between English law and these Rules and Council Policy, the requirements of English law shall prevail over these Rules and Council Policy.
- 2.2 Any reference to legislation, primary or secondary, shall include any amendments/replacements made from time to time.
- 2.3 All figures specified in these Rules are exclusive of VAT.
- 2.4 In the event of any doubt as to the interpretation of these Rules, or as to proper procedure to be followed, advice should be sought from STAR in the first instance.
- 2.5 In these Rules the words and phrases below have the meanings detailed at Schedule 2

## **3. Basic Principles and Responsibilities**

- 3.1 Value for money is fundamental to the procurement activity carried out by the Council. This should be achieved through competition, unless there are compelling reasons to the contrary.
- 3.2 In addition to these Rules, above set financial Regulation Thresholds, procurement undertaken by the Council is subject to a legal framework which encourages free and open competition and value for money, to ensure that the public procurement market is open and competitive and that suppliers are treated equally and fairly. The legislative rules cover aspects such as advertising of contracts, procedures for assessing company credentials, awarding the contracts and remedies (penalties) when these rules are breached.
- 3.3 When procurement activity is not subject to the Public Contracts Regulations because the estimated value of a contract falls below the relevant financial Regulations Threshold, Officers and elected Members must adhere to these Rules.
- 3.4 In all procurement activity, Officers and elected Members must comply with the following overriding principles of procurement:
  - a. non-discrimination;
  - b. openness/transparency;
  - c. equal treatment for all;
  - d. mutual recognition; and
  - e. proportionalityAdvice and guidance around the application of these principles in respect of procurement activity can either be accessed via the Procurement Handbook or from STAR Procurement or legal officers.

- 3.5 All procurement activity must be compliant with all relevant legislation, the Council's Constitution, the Procurement Handbook and the local policies in [Schedule 1](#), and as a minimum have regard to:
- a. **The need to achieve accountability** through sound governance mechanisms, with informed decisions which facilitates procurement activity which demonstrates the highest standards of integrity, transparency and fairness and enables the Council to discharge its responsibility in respect of expenditure of public money;
  - b. **The need to provide consistent procurement policy to suppliers and achieve competitive supply;**
  - c. **The need to meet commercial, regulatory and corporate priorities of the Council;**
  - d. **The need to procure responsibly** by considering how what is to be procured may improve social, environmental and economic well-being of the Council's relevant area;
  - e. **The need to ensure Value for Money, Best Value** and achieve efficiencies by administering procurement processes which are cost effective
  - f. **The need to ensure fair-dealing** by ensuring that suppliers are treated fairly and without unfair discrimination, including protection of commercial confidentiality where compatible with the Council's obligations under FOIA and EIR;
  - g. **The need to ensure legislative compliance** in procurement processes and award of contracts;
  - h. **The need to promote responsiveness** by endeavouring to meet the aspirations, expectations and needs of the community served by the procurement processes;
  - i. **The need to provide transparency** by ensuring that there is openness and clarity on the Council's procurement policy and its delivery and a clear audit trail in relation to procurement activity.
  - j. **The need to Social Value** by considering and evaluating Social Value as part of the procurement process including the use of the Social Value Portal for all over £50,000 contracts.
- 3.6 The Procurement Handbook contains further detailed practical guidance and information on the above requirements and process steps which Officers and elected Members must refer to when undertaking procurement activities.

#### **4. Contracts to which these Rules do not apply**

- 4.1 Where there is any doubt regarding the application of these Rules, Officers and elected Members must seek guidance from STAR, STAR Legal or their own legal team.
- 4.2 These Rules **do not** apply to the following:
- a. employment contracts for Officers engaged on a PAYE basis;
  - b. Contracts relating solely to the disposal or acquisition of securities;
  - c. Contracts for the acquisition of an interest in land and property;
  - d. Contracts for the appointment of Counsel or the appointment of experts for the purpose of legal, or potential legal proceedings by the SRO for Legal Services;
  - e. Grant funding agreements;
  - f. Certain Qualifying Contracts between entities within the public sector; and
  - g. Any contracts specifically excluded by relevant legislation

## 5. Preparation Steps

**Officers and elected Members must refer to the Procurement Handbook before undertaking any activity in connection with procurement.**

### 5.1 Governance Requirements: Approval Process

- 5.1.1 The ASO must ensure that they are aware of what decisions must be made at each stage of the procurement process:
- The approval process is fundamental to determine the timescales within which a procurement exercise can be completed. Approval requirements involving decisions which must be taken by the Council's cabinet or Council is likely to extend the overall procurement timescales;
  - The ASO must refer to the Council's Constitution, Scheme of Delegation and/or seek confirmation from its legal team in order to determine the correct and appropriate approval process before any procurement activity is initiated.
- 5.1.2 The ASO must submit a PID to STAR prior to undertaking any procurement activity. By submitting the PID the ASO confirms that they have the authority to initiate the procurement activity. The PID must also determine where there are further approval steps which must be taken throughout the procurement process:
- The ASO will be required to provide evidence of any decisions made and/or approvals obtained in respect of the relevant procurement activity.

### 5.2 Appraisal of the Procurement Options

- 5.2.1 Once the PID has been received, the ASO, together with the APO, must conduct an options appraisal of the procurement options and will determine, as a minimum:
- Contract value;
  - the most viable route to market;
  - procurement process requirements and associated documentation;
  - market research, engagement and consultation requirements;
  - associated implications;
  - key actions;
  - procurement timescales against approval requirements;
  - Specification or Quotation Specification as appropriate;
  - Social Value and the economic, social and environmental wellbeing of the borough and the benefit which the procurement process can bring to the community and have regard to the duty to secure continuous improvement in accordance with Best Value.

Further information on the above can be found in the Procurement Handbook.

- 5.2.2 The ASO and APO must determine if procurement activity will result in either the employees of the Council or its Contractor transferring to a new employer and they must consult STAR Legal and/or their own legal teams to ensure compliance with TUPE, and other related legislation, and to assess the implications in respect of pension arrangements.
- 5.2.3 The ASO and APO will seek advice and guidance from STAR Legal and/or from colleagues on a wider basis where necessary or desirable.
- 5.2.4 The ASO will liaise with STAR to develop either a Specification or a quotation request commensurate to the scope of the Supplies, Services, execution of Works, or Concessions Contract.

### 5.3 Framework Agreements and DPS

5.3.1 For the avoidance of doubt, a Framework Agreement or DPS is generally considered suitable where it has either been entered into by:

- a. the Council in compliance with these Rules; or
- b. another local authority, a local authority purchasing consortium or central government where the Framework Agreement or DPS has been tendered and awarded in accordance with procurement legislation, and the Council is identified as a contracting authority.

5.3.2 Where, following an options appraisal as required by [Rule 5.2](#), a suitable Framework Agreement or DPS is identified, the requirements of Rule 5.5.4, Rule 6 (Quotes) and Rule 7 (Tenders) will not be applicable and the ASO and APO must ensure that:

- a. An order is placed or a contract is awarded in accordance with the terms and conditions set out in the relevant Framework Agreement or DPS; and
- b. Where applicable, a mini-competition (the tender process required by the Framework Agreement) is held in accordance with rules of the Framework Agreement or DPS; and
- c. The correct contractual documentation is entered into in accordance with approval requirements.

5.3.3 Framework Agreements must not be for more than four years (including options to extend) unless otherwise authorised by the SRO for Legal.

### 5.4 Market Research, Engagement and Consultation

5.4.1 The ASO and APO will determine market research, engagement and consultation requirements and where relevant the APO will determine where an ASO may consult potential Bidders or Tenderers in general terms prior to a request for a Quote or an Invitation to Tender provided this does not prejudice any potential Bidders or Tenderers.

5.4.2 The ASO and APO must not seek or accept technical advice on the preparation of a quotation request or an Invitation to Tender from anyone who may have a commercial interest in the Quote or Tender, as this may prejudice the equal treatment of all potential Bidders and Tenderers and/or distort competition.

### 5.5 Estimating the Total Value of a Contract

5.5.1 Rule 5.5 is applicable to the procurement of all contracts where an existing Framework Agreement or DPS is not being used to make an award of contract.

5.5.2 Officers must calculate the total value of the Contract in order to determine which procurement activities should be commenced in accordance with these Rules. The procurement activity that must be followed is prescribed in Table 1 below.

5.5.3 The Council must not split Contracts in order to avoid public procurement rules or calculate the value of the Contract in such a way as to deliberately avoid exceeding the Regulation Thresholds or any threshold identified in these Rules. The value of a Contract should be calculated as follows and applies to the aggregate value of the Contract Agreement:

***Yearly potential contract value X Contract Period in years (including any option to extend) = Total value.***

5.5.4 The value of a Framework Agreement or DPS means the maximum estimated amount payable by the users of the Framework Agreement or DPS for the Supplies, Services or execution of

Works (excluding VAT) under Call-off Contracts entered into over the entire possible duration of the Framework Agreement or DPS.

5.5.5 The value of the Contract will determine which procurement activity to follow in accordance with Table 1 below subject to Rules 5.5.6 and 5.5.7:

**Table 1: Procurement Activities**

Supplies, Services and Concessions

Value Band	Value	Procurement Activity	Minimum Requirement for advertising the opportunity
A	£0 - £9,999.99	Minimum one Quote in accordance with <a href="#">Rule 6</a> – Quotes	N/A*
B	£10,000 - £24,999.99	Minimum three Quotes in accordance with <a href="#">Rule 6</a> – Quotes – following consultation with STAR	N/A*
C	£25,000 and up to the Regulation Thresholds	Minimum three Quotes in accordance with Rule 6 – Quotes and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	Electronic procurement portal
		In accordance with Rule 7 – Tenders and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	Electronic procurement portal and Contracts Finder
D	Above the Regulation Thresholds	Most appropriate procedure permitted by the Regulations	Find a Tender Service Notice and Contracts Finder

Works and Public Works Concessions



Value Band	Value	Procurement Activity	Minimum Requirement for advertising the opportunity
A	£0 - £9,999.99	Minimum one Quote in accordance with <a href="#">Rule 6</a> – Quotes	N/A*
B	£10,000 - £24,999.99	Minimum three Quotes in accordance with <a href="#">Rule 6</a> – Quotes following consultation with STAR	N/A*
C	£25,000 up to the Regulation Threshold	Minimum three Quotes in accordance with <a href="#">Rule 6</a> – Quotes following consultation with STAR	Electronic procurement portal
		In accordance with <a href="#">Rule 7</a> – Tenders and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	Electronic procurement portal and Contracts Finder
D	Not Required		
E	Above the Regulation Thresholds	Most appropriate procedure permitted by the Regulations	Find a Tender Service notice and Contracts Finder

**\*WHERE ANY OPPORTUNITY OVER £25K IS OPENLY ADVERTISED, IT MUST BE PLACED ON CONTRACTS FINDER**

5.5.6 Where the Contract value falls within Value B or D for Supplies, Services and Concession Contracts or Value Band C or E for Works and Public Works Concession Contracts, the ASO shall determine which procurement activities should be undertaken by reference to the Procurement Handbook.

5.5.7 Where the value of the Contract is above the Regulation Thresholds, the ASO and the APO will determine which procurement activity to follow in accordance with the Regulations.

5.5.8 Irrespective of the value in Rule 5.5.5 Contracts and Framework Agreements that are subject to European Union grant funding requirements shall be advertised in accordance with published guidance, ERDF National Procurement Requirements (ERDF-GN-1-004) as amended from time to time.

## 5.6 Standards and Award Criteria

5.6.1 The ASO must define award criteria that is appropriate to the procurement activity and designed to secure an outcome giving Value for Money for the Council. The basic award criteria shall include one of the following:

- a. Most economically advantageous tender (“MEAT”) - where considerations other than price also apply;
- b. Lowest price - where payment is to be made by the Council;
- c. Highest price - if payment is to be received.

If MEAT is the chosen award criteria, advice must be obtained from STAR to ensure that it is compatible with the Regulations.

5.6.2 The ASO must seek advice from STAR and/or STAR Legal to ensure any award criteria is compliant with relevant legislation and best practice.

## 6. Quotes

### 6.1 Requests for Quotes

6.1.1 When requesting a Quote, a Quotation Specification must be provided to prospective Bidders to enable the submission of competitive Quotes.

6.1.2 The request for a Quote shall also make reference to or include the following as a minimum:

- a. the terms and conditions of Contract that will apply; and
- b. notification that Quotes are submitted to the Council on the basis that they are compiled at the Bidder’s expense; and
- c. a description of the award criteria as appropriate and in accordance with [Rule 5.6](#); and
- d. the date and time by which a Quote is to be submitted by; and
- e. that the Council is not bound to accept any Quotes submitted.

6.1.3 The proposed form of Contract must comply with [Rule 8](#) and the standard terms and conditions of Contract, as determined and made available by STAR Procurement must be used. Advice and approval must be obtained from a STAR Legal Officer where alternative terms and conditions are proposed.

6.1.4 Where requests for a Quote are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

### 6.2 Submission and Receipt of Quotes

6.2.1 Bidders must be given a reasonable period in which to prepare and submit a proper Quote, consistent with the complexity of the Contract requirement.

6.2.2 STAR and the ASO will together identify whether any of the Quotes received are abnormally low and where it is determined that a Quote is abnormally low, the ASO must take advice from STAR on how to proceed.

6.2.3 Where there is a deadline for quotes, any Quote (including all associated documents) submitted after the specified date and time for submission of Quotes shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.

6.2.4 If fewer than the minimum number of Quotes is received as stipulated in Table 1 in [Rule 5.5](#), then advice must be sought from the Director of Procurement (STAR) as to whether to proceed. Any decision must be recorded in writing and stored on the electronic procurement portal..

### 6.3 **Amendments to Quotes**

6.3.1 The Council may accept amendments to Quotes, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quote (and associated documents) is correct and which should be considered as part of the procurement activity.

6.3.2 Approval for any amendments after the closing date (whether to submissions by bidders or to requirements by the Council) must be sought from the Director of Procurement (STAR) in consultation with STAR Legal. An example where a Quote may be amended after the closing date for submission would be if the amendment is made only in order to correct an arithmetical error.

### 6.4 **Evaluation of Quotes**

6.4.1 All compliant Quotes, including those in mini-competitions under Framework Agreements and DPS, must be checked by the ASO to ensure they are arithmetically correct. The ASO may seek advice from STAR if there is any doubt. If any errors are found they should be notified to STAR for advice.

6.4.2 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on the electronic procurement portal. The ASO must then confirm to STAR that the Contract can be awarded in accordance with [Rule 6.5](#) by updating the PID.

### 6.5 **Contract Award – through a Quotation Process**

6.5.1 All Quotes, including those in mini-competitions under Framework Agreements, must be confirmed in writing before a decision to award can be made and all Quotes must be stored on the electronic procurement portal.

6.5.2 All awards of contracts must be:

- a. in accordance with Council's Scheme of Delegation;
- b. in accordance with Finance Procedure Rules/Regulations; and
- c. recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.

6.5.3 Once the decision has been made and the approval given to award the Contract, the ASO must send a Contract award letter to the winning Bidder(s).

6.5.4 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 8.2](#) unless Rule 8.2.2 applies.

6.5.5 STAR will, in consultation with STAR Legal where necessary, advise on the formalities for completion of the contract.

## 7. Tenders

### 7.1 Invitations to Tender

- 7.1.1 All Tender opportunities must be advertised on the electronic procurement portal and, where appropriate, Contracts Finder in accordance with Table 1 at [Rule 5.5](#).
- 7.1.2 The Invitation to Tender, shall include the following where appropriate, as determined/advised by STAR:
- a. A form upon which the Tenderer can provide details of its bid (“Form of Tender”);
  - b. A reference to the Council’s ability to award in whole, in part or not at all;
  - c. A Specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers;
  - d. the terms and conditions of Contract that will apply;
  - e. A requirement for Tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
  - f. A requirement for Tenderers to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
  - g. Notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer’s expense;
  - h. A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weightings as considered appropriate and in accordance with [Rule 5.6](#). The evaluation criteria must be clear, concise and unambiguous and must be approved by the APO in consultation with the ASO. The evaluation criteria cannot be amended once published in the Invitation to Tender;
  - i. The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
  - j. Whether the Council is of the view that TUPE will be applicable in relation to the procurement activities;
  - k. Whether additional arrangements will be required in relation to pension provision;
  - l. Provisions relating to the Council’s termination rights in the event that corruption is discovered;
  - m. The relevance and application of any parent company guarantees and/or bonds;
  - n. That the Council is not bound to accept Tenders; and
  - o. Any matters required by local polices in [Schedule 1](#).
- 7.1.3 The proposed form of Contract must comply with [Rule 8](#) and the standard terms and conditions of Contract, as determined and made available by STAR Procurement, must be used. Advice and approval must be sought from a STAR Legal Officer where alternative terms and conditions are proposed.
- 7.1.4 All communications relating to Tenders must be via the electronic procurement portal for reasons of transparency and in order that a record can be maintained.

## 7.2 **Pre and Post Tender Clarification Procedures**

- 7.2.1 Any pre and/or post Tender clarification activity may only be undertaken in accordance with the procedure set out in the Procurement Handbook. The ASO must seek guidance from STAR.

## 7.3 **Submission and Receipt of Tenders**

- 7.3.1 Tenderers must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the Regulations.
- 7.3.2 Any Tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.
- 7.3.3 All Tenders received, including those in mini-competitions under Framework Agreements, must remain unopened until the date and time specified by STAR has passed.
- 7.3.4 If less than three Tenders are received then advice must be sought from the Director of Procurement (STAR) on how to proceed. Any decision must be recorded in writing and stored on the electronic procurement portal.

## 7.4 **Verifying and Opening Tenders**

- 7.4.1 Tenders are to be verified and opened in accordance with the procedures set out in the Procurement Handbook.

## 7.5 **Amendments to Tenders**

- 7.5.1 The Council may accept amendments to Tender submissions, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions.
- 7.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the Director of Procurement (STAR) in consultation with STAR Legal.

## 7.6 **Evaluation of Tenders**

- 7.6.1 If a SQ or an expression of interest prior to SQ was used, all those Tenderers must be given feedback at the relevant stage.
- 7.6.2 STAR and the ASO will together identify whether any of the Quotes received are abnormally low and where it is determined that a Quote is abnormally low, the ASO must take advice from STAR on how to proceed.
- 7.6.3 All compliant Tenders, including those in mini-competitions under Framework Agreements, must be checked by the ASO and the APO to ensure they are arithmetically correct. If any errors are found they should be referred to STAR for advice.
- 7.6.4 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on the electronic procurement portal. The ASO must then confirm to STAR that the Contract can be awarded by updating the PID.
- 7.6.5 In accordance with the Council's risk-based sourcing policy, the APO may require a best and final offer from more than one Tenderer.

## 7.7 **Contract Award – through a Tender process**

- 7.7.1 The winning Tender shall be awarded the Contract in accordance with the award criteria used.

- 7.7.2 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the SRO for Finance, may accept the Tender ensuring compliance with the Financial Procedure Rules/Regulations.
- 7.7.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.
- 7.7.4 All award decisions must be recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.
- 7.7.5 A Contract which has a contract value above the Regulation Thresholds, can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on a non-working day, then the notice period will be deemed to have lapsed on the next working day.
- 7.7.6 Once the decision to award a Contract is made, each Tenderer must be notified by either the ASO or the APO in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(s) and this should be done via the electronic procurement portal. The letters must include a description of the relative advantages of the successful Tenderer.
- 7.7.7 Prior to commencement of the Contract, the Contract must be completed in accordance with [Rule 8.2](#) unless Rule 8.2.2 applies.
- 7.7.8 The APO must publish a contract award notice in the Find a Tender Service and on the Council's website no later than 48 days after the date of award of the Contract where a Contract value exceeds the Regulation Threshold and has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations relating to Contract award.
- 7.7.9 Contract award letters, feedback to Tenderers and, including any incidental documentation must be approved by the APO prior to sending and STAR Legal will advise on the contract Terms and Conditions where the value of the Contract is over the Regulation Thresholds.
- 7.8 Enquiries about the Tender process**
- 7.8.1 The confidentiality of Tenders and the identity of Tenderers must be preserved at all times insofar as this is compatible with the Councils' obligations under FOIA and EIR.
- 7.8.2 If the Council receives a request for information under the FOIA as a result of the de-briefing process, the request must be referred to both the Director of Procurement (STAR) and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.
- 7.8.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Director of Procurement (STAR) who will advise on how to respond and notify the SRO for Legal.

## **8. Contract Provisions and Contract Formalities**

### **8.1 Contract Provisions**

- 8.1.1 All Contracts must be in writing and must set out the parties' obligations, rights and risk allocations. Advice must be sought from STAR as to the appropriate form of Contract to be used and must be on the standard terms and conditions, as determined and made available by STAR Procurement. Advice and approval must be

obtained from a STAR Legal Officer where alternative terms and conditions are proposed.

- 8.1.2 All Contracts, irrespective of value, shall, where appropriate, clearly specify as a minimum:
- a. What is to be supplied (i.e. the Works, materials, services, matters or things to be furnished, had or done)
  - b. The provisions for payment (i.e. the price to be paid and when)
  - c. The time, or times, within which the contract is to be performed
  - d. The provisions for the Council to terminate the Contract and break clauses.
  - e. The provision for collateral warranties from sub-contractors.
  - f. Standards of performance
  - g. Limitations on liability

## 8.2 **Contract Formalities**

- 8.2.1 Once a decision to award has been made in accordance with Rule 6.5.3 or 7.7.3, the Contract must be signed or sealed in accordance with Rule 8.3 and the procedures set out in the Procurement Handbook.
- 8.2.2 All Contracts which are to be formally completed in writing must be completed before the Supplies are supplied, or the Service, execution of Works or Concessions Contract begins, except in exceptional circumstances, and then only with the prior approval from the SRO for Legal.
- 8.2.3 A purchase order must be raised in the appropriate eProcurement system for all Supplies, Services and Works requirements to be acquired through an EPS and for all Contracts. The purchase order must refer to the terms and conditions of Contract between the Council and the Contractor.
- 8.2.4 The ASO must ensure that the person signing on behalf of the Contractor has requisite legal authority to bind the Contractor. Where there is any doubt, the ASO must seek advice from the STAR Legal Officer or the Council's own legal team.

## 8.3 **Contracts under Seal**

- 8.3.1 A Contract must be sealed where:
- a. The Council wishes to extend the liability period under the Contract and enforce its terms for up to 12 years; or
  - b. The price to be paid or received under the Contract is a nominal price and does not reflect the value of the supplies or services; or
  - c. There is any doubt about the authority of the person signing for the other contracting party; or
  - d. The Contract value is £250,000 or above.
- 8.3.2 The seal must be affixed in accordance with the provisions of the Council's Constitution.

#### 8.4 **Transfer of Contracts**

- 8.4.1 Unless Rule 9.3.1(d) applies, no Contract should be transferred from one Contractor to another without first consulting STAR. Contracts can only be transferred if approved in accordance with the table below:

<b>Value of Contract/Quote</b>	<b>Decision Maker</b>
All values	SRO for Finance and SRO for Legal or their nominees in accordance with the Council's Scheme of Delegation and consultation in with the Director of Procurement (STAR)

### 9. **Exemptions and Modifications**

#### 9.1 **Exemptions**

- 9.1.1 In limited circumstances, it may be necessary to seek an Exemption from the Rules and guidance from STAR must be sought before any procurement activity commences.
- 9.1.2 An Exemption is an exemption to the requirements under these CPRs only and cannot be considered where the Contract value is above the relevant Regulation Threshold.
- 9.1.3 Exemptions will only be considered in exceptional circumstances. Examples of circumstances which may be considered exceptional could include the following:
- a. The arrangement is a permitted exemption from the requirement for competition contained in European or domestic legislation;
  - b. To comply with legal requirements;
  - c. The Contract is for Supplies, Services or the execution of Works which are required in circumstances of extreme urgency or unforeseeable emergency involving risks to persons, property or serious disruption to Council services;
  - d. 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;
  - e. Where a Service review includes the intention to co-terminate relevant Contracts;
  - f. Proprietary or patented supplies or services are proposed to be purchased which, in the opinion of the ASO, are only obtainable from one person, and it can be demonstrated that no reasonably satisfactory alternative to those proprietary or patented supplies is available; or
  - g. The ASO can demonstrate that no genuine competition can be obtained in respect of the purchase of particular Supplies, Services or execution of Works; or
  - h. The ASO is satisfied that the Services or execution of Works are of such a specialist nature that they can only be carried out by one person (e.g. statutory undertakers); or
  - i. Supplies are proposed to be purchased by or on behalf of the Council at a public auction; or
  - j. Supplies or Services are proposed to be purchased which are of a specialist or unique nature (such as antiquities for museums or a particular performance artist); or



k. Any other exceptional circumstances.

## 9.2 Procedure for Exemptions

- 9.2.1 To apply for an Exemption the ASO must fill in the Exemption Form and follow the process as set out in the Procurement Handbook.
- 9.2.2 For the avoidance of doubt, in circumstances where either Rule 6.2.4 or Rule 7.3.4 applies, then an Exemption Form should not be completed.
- 9.2.3 No commitment should be made to a potential Contractor prior to completion of the exemption procedure.
- 9.2.4 The Director of Procurement (STAR) is responsible for ensuring a complete record of all Exemptions. A record of the decision approving an Exemption and the reasons for it must be stored on the electronic procurement portal.

## 9.3 Modifications to a Contract or Framework Agreement

- 9.3.1 Contracts and Framework Agreements may be modified during their term without a new procurement procedure in accordance with this Rule 9.3 in any of the following cases:
- (a) where the Modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses
- (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
  - (ii) do not provide for modifications or options that would alter the overall nature of the Contract or the Framework agreement;
- (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor:
- (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
  - (ii) would cause significant inconvenience or substantial duplication of costs for the Council,
- provided that any increase in price does not exceed 50% of the value of the original Contract or Framework Agreement;
- (c) where all of the following conditions are fulfilled:
- (i) the need for Modification has been brought about by circumstances which a diligent Council could not have foreseen;
  - (ii) the modification does not alter the overall nature of the Contract or Framework Agreement;
  - (iii) any increase in price does not exceed 50% of the value of the original Contract or Framework Agreement.
- (d) where a new Contractor replaces the one to which the Council had initially awarded the Contract or Framework Agreement as a consequence of:

- (i) an unequivocal review clause or option in conformity with sub-paragraph (a), or
- (ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of the Regulations;
- (e) where the Modifications, irrespective of their value, are not substantial within the meaning of Rule 9.3.5;
- (f) where Rule 9.3.3 applies; or
- (g) where the Contract Value is below the relevant Regulation Threshold, any other exceptional circumstances as agreed by the SRO for Legal.

9.3.2 Where several successive Modifications are made:—

- (a) the limitations imposed by the proviso at the end of Rule 9.3.1 (b) and by Rule 9.3.1 (c)(iii) shall apply to the value of each Modification; and
- (b) such successive Modifications shall not be aimed at circumventing the Regulations.

9.3.3 This Rule 9.3.3 applies where the value of the Modification is below both of the following values:

- (a) the relevant Regulation Threshold and
- (b) 10% of the initial Contract or Framework Agreement value for service and supply Contract or Framework Agreement and 15% of the initial Contract or Framework Agreement value for works contracts,

provided that the Modification does not alter the overall nature of the Contract or Framework Agreement

9.3.4 For the purposes of Rule 9.3.3 where several successive Modifications are made, the value shall be the net cumulative value of the successive modifications.

9.3.5 A Modification of a Contract or a Framework agreement during its term shall be considered substantial for the purposes of Rule 9.3.1(e) where one or more of the following conditions is met:

- (a) the Modification renders the Contract or Framework Agreement materially different in character from the one initially concluded;
- (b) the Modification introduces conditions which, had they been part of the initial procurement procedure, would have:
  - (i) allowed for the admission of other Tenderer than those initially selected,
  - (ii) allowed for the acceptance of a Tender other than that originally accepted, or
  - (iii) attracted additional participants in the procurement procedure;
- (c) the Modification changes the economic balance of the Contract or Framework Agreement in favour of the Contractor in a manner which was not provided for in the initial Contract or Framework Agreement; or

- (d) the Modification extends the scope of the Contract or Framework Agreement considerably;
- (e) a new Contractor replaces the one to which the Council had initially awarded the Contract or Framework Agreement in cases other than those provided for in paragraph Rule 9.3.1(d).

9.3.6 Where 9.3.1(a) applies, and the Framework Agreement or Contract provides in writing for an extension to the length of the Framework Agreement or Contract's term and the following conditions are met:

- a. The extension is for substantially the same works, supplies and/or services provided in the original Framework Agreement or Contract;
- b. The financial terms for the extension are as agreed in the original Framework Agreement or Contract and deliver Best Value to the Council;
- c. The OJEU/FTS notice or other advertisements for the Framework Agreement or Contract stated that an extension Contract may be awarded;
- d. The estimated value of the Framework Agreement or Contract in the OJEU/FTS notice or other advertisements took account of the potential extension; and
- e. The length of the extension is no longer than that permitted by the original Framework Agreement or Contract;

the decision to award the extension may be taken by the SRO for the relevant service and the Director of Procurement (STAR).

#### 9.4 **Procedure for Modifications**

- 9.4.1 To apply for a Modification the ASO must provide a copy of the original signed contract, fill in the Modification Form and follow the process as set out in the Procurement Handbook.
- 9.4.2 No commitment should be made to a potential Contractor prior to completion of modification procedure.
- 9.4.3 The Director of Procurement (STAR) is responsible for ensuring a complete record of all Modifications is kept and a record of the decision approving a Modification and the reasons for it must be submitted to STAR to be stored on the electronic procurement portal.

### **10. Declarations of Interest and Anti-Bribery and Corruption**

- 10.1 The Council's reputation with regards to procurement activity is important and should be safeguarded from any imputation of dishonesty or corruption. All elected Members of the Council and Officers are reminded of their responsibilities in relation to gifts, hospitality and any conflicts of interest and should ensure they comply with the obligations set out in the Council's Members' Code of Conduct and the Officers' Code of Conduct respectively and any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council from time to time
- 10.2 Any Officer or Member must declare any interest which could influence their judgement in relation to procurement activity in accordance with the Council's Codes of Conduct.
- 10.3 No gifts or hospitality should be accepted from any Bidders or Tenderers involved in procurement activity except in accordance with the Council's Codes of Conduct.

## 11. Contract Management

- 11.1 All Contracts must have a Council Contract Manager (“Contract Manager”) for the entirety of the Contract. In the event that there is no named Contract Manager the ASO will fulfil the role of Contract Manager.
- 11.2 The Contract Manager will be responsible for reviewing monitoring and evaluating the contract to ensure that its provisions and the services within it are being followed and performed as they should be.
- 11.3 During the life of the Contract, the Contract Manager should monitor the Contract in respect to the following:
- a. Performance (against agreed KPIs where relevant);
  - b. Compliance with specification and contract;
  - c. Cost;
  - d. Any Best Value duties ;
  - e. Continuous Improvement;
  - f. User satisfaction; and
  - g. Risk management.
- 11.4 Before the end of the Contract, the Contract Manager will work with STAR to give adequate time to prepare for the end of the Contract, and where appropriate, plan for the preparatory steps of the pre-procurement stage.
- 11.5 STAR can provide advice and support on good practice in performance management of Contracts.
- 11.6 All Contracts must be included and published on the Contracts Register maintained by STAR in line with the Local Government Transparency Code 2014. This is a mandatory requirement and it is the responsibility of the SRO for each Service to ensure that they have informed STAR of the Contracts they are responsible for and provided them with the information necessary to update the Contracts Register accordingly.

## 12. Retaining Relevant Documents

- 12.1 All records in relation to the award of Contracts and the associated procurement process, including supporting documentation, shall be stored by STAR in an electronic filing system to be available for inspection by the Council’s internal and external auditors, or Officer, immediately upon request. Records will be retained in accordance with relevant regulations applicable to electronic record retention.
- 12.2 All contracts shall be returned to the Council by STAR and must be retained as follows:

Contracts not under seal and with a value between £5,000 and £249,999.99	for six years after the end of the Contract
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all sealed Contracts and Contracts with a value of £250,000 and above	for twelve years after the end of the Contract
Contracts that are grant funded regardless of value	Must comply with retention period above or the terms and conditions of the grant, whichever is the longer

12.3 If legislation related to any individual Contract stipulates a longer retention period than this, then the legislation requirements takes precedence over the Council's minimum periods.

12.4 Once executed, the Council shall retain one original of the complete Contract documents in line with the timescales in the table above and one copy of the complete Contract documents shall be provided to the Contractor.

## **SCHEDULE 1**

### **Local arrangements for Trafford Council**

There are no local arrangements.

## SCHEDULE 2

### Definitions

APO	means Authorised Procurement Officer and is the relevant STAR Officer who is responsible for the Goods, Services, execution of Works or Concessions Contract for which the Specification relates.
ASO	means Authorised Service Officer and is any Officer, within a directorate of the Council, who has delegated authority to undertake initiate and oversee procurement activity via STAR and whom is responsible for decisions connected to the award of a contract in connection with these Rules.
Best Value	has the same meaning as that defined in the Local Government Act 1999 as amended from time to time.
Bidder	means any Economic Operator that submits a Quote.
Call-Off Contract	means an order placed or a contract awarded in accordance with an established Framework Agreement or DPS and which are subject to the application of Rule 5.1.
CM	means the procurement Category Manager or similar role with equivalent experience and seniority within STAR
Concessions	means the granting of a right (exclusive or otherwise) to an economic operator to exploit works or services provided for their own gain with or without payment. Further guidance on Concession Contracts can be found in the Procurement Handbook
Contract	means a legally binding agreement between the Council and the Contractor for the procurement by the Council of all Goods, Services, the execution of Works and which incorporates the terms and conditions under which the Goods, Services, execution of Works and Concessions will be provided.
Contracting Authority	means any body which meets the definition of the same in the Public Contracts Regulations 2015
Contractor	shall mean the Bidder or Tenderer who the Council enters into a Contract with following the submission of a Quote or Tender and who is appointed by the Council to provide the Goods, Services, execution of Works or Concessions Contract. They may also be referred to as 'suppliers', 'providers' or 'service providers' within certain Council departments.
Contracts Finder	means the web-based portal provided for the purposes of Part 4 of the Regulations by or on behalf of the Cabinet Office.
DPS	Means Dynamic Purchasing System which is an electronic system procured using the restricted procedure for the purchase of commonly used goods services or works which are generally available on the market and objectively defined to which all bidders who meet the requirements of the selection criteria must be admitted during the entire period of the validity of the system
Economic Operator	means any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of Works and/or a work, the supply of Goods or the provision of Services on the market
EIR	means the Environmental Information Regulations 2004, as amended from time to time
Electronic Purchasing System	means purchases made online or via a telephone system
Exemption	means the release of the obligation to comply with these Rules
Financial Procedure Rules/Regulations	means the written code of procedures forming part of the Council's constitution which provide a framework for proper financial management and which set out the rules on accounting, audit, administrative procedures and budgeting systems.

Find a Tender Service	Means the e-procurement portal by which above Regulation Threshold tenders are advertised.
FOI	means the Freedom of Information Act 2000
Framework Agreement	means an agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing Call-off Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
Invitation to Tender	means an invitation issued by the Council to Tenderers to submit a Tender or a quote for the provision of Goods, Services, the execution of Works or a Concessions Contract in accordance with the Specification or request for those Goods, Services, execution of Works or Concessions Contract.
Joint Procurement	means the combined procurement actions of two or more of the STAR Authorities with one authority acting as the lead in the process and only one request for Quote or Tender published on behalf of all participating authorities.
Key Decision	has the same meaning as set out in the Council's constitution
Modification	means any variation to a Contract, DPS or Framework Agreement, including an extension.
Modification Form	means the form supplied by STAR for the purpose of recording the authorisation of a Modification.
Officer	means any employee of the Council which shall include any person engaged by the Council to act as an agent or consultant on its behalf
PID	means a Procurement Initiation Document providing details of the procurement activity and the authority to commence it as required in accordance with Rule 6.1.
Post Tender Report	means a summary of the outcomes delivered by the procurement activity
Procurement Functions	means the procurement operations of the Councils except for any procurement activity carried on by each Council that is specifically excluded by each Council from being dealt with by the STAR on its behalf.
Procurement Handbook	means the document which STAR Procurement may issue after having obtained the consent of the SRO Legal of each authority from time to time to set out the procedure to achieve the Council's procurement objectives
Procurement Policy	means the document which the Council may issue from time to time to set out how it will achieve its procurement objectives
Qualifying Contract	means any contract awarded to a legal person where the conditions under Regulation 12 of the Public Contracts Regulations 2015 are fulfilled.
Quotation Specification	means an appropriate description of the Goods, Services, execution of Works or Concessions (commensurate with the value of the Contract) setting out the Council's requirements in respect of Requests for Quotes
Quote	means a formal offer submitted by a Bidder to supply Goods, Services, execute Works or operate a Concessions Contract at a defined price
Regulations	means the Public Contracts Regulations 2015 SI2015/102, the Concessions Contracts Regulations 2016 SI2016/273 as amended or replaced from time to time.
Regulations Threshold	means the financial threshold as amended from time to time, and where applicable, requires the procurement activity to be subject to the Regulations.
Scheme of Delegation	means the scheme identified within the Council's constitution which delegates powers and duties of the Council to Officers under Section 101 of the Local Government Act 1972 and all other powers enabling such delegation necessary for the discharge of the Council's functions.
Services	means the time, effort and expertise required by the Council, from time to time, and supplied by a Contractor.
Specification	means the outputs, outcomes and the scope and nature of Goods, Services, execution of Works or Concessions Contract required by the Council from a procurement activity.
SQ	means "Selection Questionnaire" and is the document used by the Council to screen potential tenderers in accordance with the Regulations.



SRO	means "Senior Responsible Officer" and is the Officer delegated in the Council's Scheme of Delegation for the relevant service with the responsibility for the award of the Contract.
SRO For Legal	means the "Senior Responsible Officer for Legal" and is the most senior Officer delegated in the Council's Scheme of Delegation for Legal Services or in default of such delegation, the Council's Monitoring Officer.
SRO for Finance	means the "Senior Responsible Officer for Finance" and is the most senior Officer delegated in the Council's Scheme of Delegation for the Finance Services or in default of such delegation, the Officer appointed by the Council pursuant to s151 of the Local Government Act 1972.
STAR Legal	means an officer of Trafford Council's legal team which provides a legal service to STAR and STAR Authorities, in connection with and to facilitate discharge of the Procurement Functions by STAR.
STAR Legal Officer	means a member of the legal team jointly funded by all participating Council's in accordance with the IAA, whose role is to provide legal support to STAR.
Supplies	means an inherently useful tangible item required by the Council, from time to time.
Tender	means a formal offer submitted by a Tenderer to the Council at a stated price in response to a Specification to supply Goods, Services, execute Works or operate a Concessions Contract.
Tenderer	means any Economic Operator that submits a Tender.
The Chest	means the Council's eProcurement system.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time .
Value for Money	means the optimum combination of whole-life costs, price, quality and benefits to meet the Council's requirement. Such a term equates to the requirement in the Regulations of most economically advantageous offer as well as the duty of Best Value as defined by the Local Government Act 1999 as amended from time to time.
Work	means the provision of physical activity which is directed toward the production or accomplishment of something by the Contractor, from time to time.
Writing	the requirement that any document should be in writing is satisfied where (apart from the usual meaning of that expression) the text of it is created and transmitted by electronic means, in legible form, and capable of being used for subsequent reference.