



CONSTITUTION OF THE LIVERPOOL CITY REGION COMBINED AUTHORITY

Part 5

Financial Standing Orders

Section C

Procurement and Contract Procedure Rules

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Section C

Procurement and Contract Procedure Rules

1. Definitions

Within these Procurement and Contract Procedure Rules (PPR):-

- (a) “Central Purchasing Body” means contracting authorities that acquire goods, services or works intended for one or more contracting authorities, award contracts intended for one or more contracting authorities and / or conclude framework agreements for goods, services or works intended for one or more contracting authorities including without limitation Crown Commercial Services and Yorkshire Purchasing Organisation;
- (b) “Combined Authority” means the Liverpool City Region Combined Authority or Merseytravel as appropriate;
- (c) “Commissioning” means the process of specifying, consulting with affected Officers and monitoring of services to meet service needs both in the short and long term as outlined in more detail in paragraph 4 below;
- (d) “Contract Review” means a process to assess the performance/delivery and value for money of an existing contract from both a commercial and outcome based approach which will influence the future contractual relationship with any incumbent contractor;
- (e) “Contracts Finder” means a web based portal provided for the purposes of the Regulations;
- (f) “Delegated Decision” means a decision named as such in the Combined Authority’s or Merseytravel’s Scheme of Delegation;
- (g) “Decision” means a decision named as such in the Combined Authority’s or Merseytravel’s Scheme of Delegation;
- (h) “Director” means a Director of the Combined Authority or Merseytravel as appropriate;
- (i) “Dynamic Purchasing System” means an electronic process for making commonly used purchases, the characteristics of which are generally available on the market. Throughout the validity it is open to any suppliers which satisfies the selection criteria.
- (j) “EPS” means the Combined Authority’s electronic process of tendering for goods, services and works;
- (k) “Electronic Auction” means an electronic auction conducted in accordance with procedures determined by the Monitoring Officer;
- (l) “Framework Agreement” means an agreement between one or more contracting authorities and one or more contractors, the purpose of which is

to establish the terms governing contracts to be available during a given period in particular with regard to price, as detailed in the Regulations;

- (m) “Head of Service” means those officers who are so designated by the Combined Authority as a Head of Service, Senior Head of Service or Rolling Stock Project Director;
- (n) “High Risk Procurement” means a procurement that:-
 - (i) has potential implications for the health and safety of employees, service users, residents of the Liverpool City Region, contractors or other stakeholders;
 - (ii) has potential business continuity implications, for example where failure of supply would have implications on the Combined Authority’s ability to deliver proper services;
 - (iii) is for goods, services or works that are provided directly to children and/or other vulnerable members of the community;
 - (iv) is for goods, services or works where there is a potential environmental impact;
 - (v) is for goods, services or works where there is any other identifiable risk either to the reputation, financial standing or ability to deliver services on the part of the Combined Authority;
and/or
 - (vii) is determined to be such once assessed in accordance with the Combined Authority Corporate Risk Impact Ratings.
- (o) “High Value Procurement” means a procurement with a total aggregated value over £150,000 calculated in accordance with paragraph 6 below (exclusive of VAT);
- (p) “Intermediate Value Procurement” means a procurement with a total aggregated value between £20,000 and £150,000 calculated in accordance with paragraph 6 below (exclusive of VAT);
- (q) “ITT” means an Invitation to Tender or an Invitation to Quote;
- (r) “Low Value Procurement” means a procurement with a total aggregated value under £20,000 calculated in accordance with paragraph 6 below (exclusive of VAT);
- (s) “Monitoring Officer” means the Monitoring Officer of the Combined Authority or the Secretary of Merseytravel as appropriate;
- (t) “Officers” means any officer employed by the Combined Authority;
- (u) “One Place” means the Combined Authority’s corporate intranet;
- (v) “Purchase Order” shall mean a purchase order in the format prescribed by the Treasurer of the Combined Authority;
- (w) “Register” means a register of Bus Service Operators maintained in accordance with the Transport Act 1985;

- (x) “Regulations” means The Public Contracts Regulations 2015, The Utilities Contracts Regulations 2016 and/or the Concession Contract Regulations 2016 (as appropriate and as amended or replaced);
- (y) “Select List” means lists of approved contractors for the provision of goods services and/or works established under these PPR and as approved by the Combined Authority;
- (z) “SME’s” means an enterprise falling within the category of micro, small or medium sized enterprises defined by the EU Commission Recommendation of 6 May 2003;
- (aa) “Social Value” means having regard to economic, social and environmental wellbeing as set out in the Public Service (Social Value) Act 2012 (as amended or replaced) in relation to public services contracts;
- (bb) “Subsidised Service Contract” means an agreement providing for bus service subsidy within the meaning of Section 63(10)(b) of the Transport Act 1985;
- (cc) “Tender” means a document prepared by a potential supplier setting out it’s bid for the work in response to an Invitation to Tender;
- (dd) “Value for Money” means ensuring that the same quality goods, services and works cannot be achieved at a substantially lower price elsewhere. The quality of related services ie delivery, maintenance, after sales support should be taken into account along with the direct costs of the goods, services or works. Ways of ensuring Value for Money include:
 - (i) obtaining a number of informal quotations from different suppliers;
 - (ii) comparing prices in supplier’s brochures, sales literature;
 - (iii) benchmarking prices with other authorities or organisations;
 - (iv) comparing prices with those previously paid, taking into account inflationary and deflationary factors; and
 - (v) making use of existing framework arrangements, existing dynamic purchasing systems, call-off arrangements or approved lists of suppliers involving the Procurement Team in the process.

2. General

- 2.1 These PPR apply in respect of any procurements by the Combined Authority.
- 2.2 Every contract entered into by the Combined Authority shall be entered into pursuant to or in connection with the Combined Authority’s functions (as appropriate) and shall comply with:
 - (a) all relevant statutory provisions including but not limited to Section 149 of the Equality Act 2010 and the Public Service (Social Value) Act 2012 (as amended or replaced);
 - (b) the Regulations, the Treaty of Rome and the general principles of national and EU legislation (if applicable);
 - (c) the Combined Authority Constitution including these PPR’s, the Financial Regulations and the Scheme of Delegation;
 - (d) the Combined Authority Transport Plan for the Combined Authority area;
 - (e) the Combined Authority Procurement Strategy;

- (f) The Combined Authority Equalities Policy; and
- (g) any other relevant Combined Authority strategies and/or policies.

Where any PPR conflicts with any statutory provision, any statutory modification or re-enactment thereof or any regulations made thereunder, that provision or regulation shall prevail.

2.3 The purpose of the PPR's is to ensure:

- (a) competition and propriety are present in the tendering and the award of contracts for the provision of all supplies, services and the execution of works;
- (b) a transparent, lawful and fair procurement process;
- (c) Value for Money for the Combined Authority;
- (d) the thresholds and level of authority for approvals is consistent with the Combined Authority's approved Scheme of Delegation;
- (e) the procedures for enabling competition and regulating the manner in which quotations and Tenders are invited, evaluated and contracts awarded are clear;
- (f) relevant legislation is complied with; and
- (g) relevant approvals are sought.

2.4 One Place will assist in ensuring consistency of approach to procurement across the Combined Authority. A dedicated procurement resource will be maintained on One Place and will contain guidance and good practice to assist Officers in following best procurement practice. The contents of the procurement guidance on One Place will be reviewed at regular intervals by the Monitoring Officer.

2.5 The Combined Authority has a Confidential Reporting Code that applies to all Officers and includes those contractors working for the Combined Authority. Officers must be proactive in ensuring that its policies and procedures, culture and stance in relation to the prevention, detection and action against fraud are communicated to all relevant parties.

2.6 Any breach or non-compliance with these PPR must on discovery be reported immediately to the Head of Audit. The Head of Audit shall determine whether such breach or non-compliance presents a significant risk of harm to the Combined Authority and if satisfied that such risk exists shall undertake any necessary investigation and report the findings to the Combined Authority.

- 2.7
- (a) The Combined Authority will conduct its business and operations in accordance with the highest professional and ethical standards;
 - (b) The Combined Authority will take appropriate action to ensure that its resources are not spent on practices that lead to unlawful discrimination, unlawful activity and/or breach of the Combined Authority's equality duty;
 - (c) The Combined Authority will consider any failure by Officers to comply with the Constitution and if necessary will address such through the Combined Authority's disciplinary processes;
 - (d) The Monitoring Officer shall undertake a continuous review of the Constitution and submit any additions or changes necessary to the Combined Authority for approval;

- (e) The Treasurer shall, in consultation with the Monitoring Officer be responsible for ensuring that all contract activity undertaken by the Combined Authority is done so in accordance with these PPR and the Regulations;
- (f) The Directors and Heads of Service shall ensure that all Officers in their directorates are aware of the existence and content of the Constitution and other internal regulatory documents and that they comply with them;
- (g) The Monitoring Officer shall advertise all contracts/anticipated contracts in excess of £25,000 on Contracts Finder if they are advertised elsewhere;
- (h) The Monitoring Officer shall maintain a register of all Combined Authority contracts in excess of £20,000;
- (i) The Monitoring Officer shall make an appropriate EPS available; This system shall:
 - (i) evidence that any transmission was successfully completed and recorded;
 - (ii) keep Tenders in a separate secure electronic folder which is not opened until the deadline has passed for receipt of Tenders;
 - (iii) keep a record of all Tenders received;
 - (iv) keep a record via EPS of all correspondence between the Combined Authority and the tenderers;
- (j) The Combined Authority shall expect that individuals and organisations, including the suppliers, contractors and service providers, with whom it deals, will act towards the Combined Authority with integrity and without thought or actions involving fraud and corruption; and
- (k) The Combined Authority shall maintain the principles of non-discrimination, equal treatment and transparency.

2.8 Officers will work to ensure:

- (a) lead by example in ensuring adherence to legal requirements, rules, procedures and practices;
- (b) allow sufficient time to provide for all the various elements for the fulfilment of the appropriate procurement process giving due regard to statutory timescales;
- (c) work with relevant officers to fully engage them in the process and thereby develop a realistic procurement/decision making/mobilisation of the new contractor and demobilisation of any existing contractor;
- (d) undertake Commissioning as required by these PPR;
- (e) when procuring goods services or works focus on the principles of efficiency, effectiveness, sustainability, economy and shall consider collaborating as a procurement option (if appropriate);
- (f) ensure that those responsible for procuring goods services or works on behalf of the Combined Authority shall comply with these PPR;
- (g) ensure that all specifications for IT goods or services is ratified during Commissioning by the Head of IT;
- (h) consider and implement the principles of non-discrimination, equal treatment and transparency and the highest standards of probity;
- (i) not seek to procure goods, services or works without the engagement of the relevant Head of Service and the Monitoring Officer as per the requirements of this Constitution;

- (j) not distort competition but also consider with the Monitoring Officer the potential of aggregating and disaggregating contracts to encourage SME participation in procurements; but not in order to avoid the requirements of the Regulations and these PPR;
- (k) accurately determine the aggregate value of contracts (including any anticipated extensions or additional work) to calculate the estimated contract value and the appropriate route to market as advised in these PPR, advice can be provided by the Monitoring Officer to undertake this review;
- (l) not use any information received during the course of business and in particular, the quotations or tendering procedure for personal advantage; and
- (m) not disclose to a third party information except for anti-fraud purposes or in accordance with the provisions of the Freedom of Information Act 2000 or other relevant legislation. In cases where there is uncertainty as to whether a particular course of action complies with the ethical standards, the advice of the Monitoring Officer needs to be sought.

3. **Scope**

3.1 These PPR apply to:

- (a) the purchase, leasing and hiring of goods, provision of services and the execution of works for and on behalf of the Combined Authority;
- (b) any procurement where Tenders are invited by the Combined Authority on behalf of any partnership, consortium, collaboration group, association or similar body of which the Combined Authority is a member;
- (c) all procurement activity, including activity where third parties are involved in spending public monies on behalf of the Combined Authority (unless agreed otherwise); and
- (d) all contracts entered into by the Combined Authority by an Officer on behalf of the Combined Authority.

3.2 These PPR shall not apply to:

- (a) employment contracts;
- (b) contracts relating solely to the acquisition or disposal of land or any other estates matters. (The Land Procedure Rules shall apply in such circumstances);
- (c) contracts relating to the disposal of furniture, goods, vehicles, plant and equipment which are deemed surplus to requirements. (The Corporate Disposal Procedures shall apply in such circumstances);
- (d) Treasury management activity. (The Treasury Management Policy shall apply in such circumstances); and/or
- (e) any contract referenced in paragraph 10 below.

3.3 All procurement activity and any procurement exemptions may NOT be made retrospectively and no exemption can be used if the Regulations apply to the contract unless such exemption is permitted under such Regulations;

3.4 NO exceptions from any of the provisions contained herein shall be made otherwise than as set out in these PPR or the Scheme of Delegation or by the direction of the Combined Authority duly noted in their minutes.

4. **Commissioning**

- 4.1 Commissioning is not procurement.
- 4.2 These rules apply to Officers undertaking Commissioning for all purchases of goods services and works over £20,000.
- 4.3 It is essential that Officers responsible for Commissioning consider the following factors and undertake the appropriate steps as a pre requisite to commissioning:-
- (a) undertake consultation with other officers affected by the project;
 - (b) undertake a Contract Review if a contract has been or is currently being provided;
 - (c) take appropriate advices from the Head of Service for the area affected and the relevant support functions ie Legal, IT, Finance, HR and PMO;
 - (d) have prepared and documented an estimate of the cost of the contract including, where appropriate, any maintenance ongoing and future costs;
 - (e) consulted with Finance and be satisfied that adequate budget provision for the contract (and the future costs for the life of the goods, services or works to be procured) exists;
 - (f) prepare a specification that will form the basis of the contract;
 - (g) consider the potential staffing implications of the contract and in particular TUPE considerations, and discuss with the Head of People and Organisational Development and the Monitoring Officer;
 - (h) consider risk, including any risks to the Combined Authority's broader strategic objectives, reputational risks and risks to the local economy and supply chain;
 - (i) for contracts where there is evident risk and for all High Value and High Risk Procurements produce and maintain a risk register for the procurement process and the eventual contractual relationship. As a minimum this should analyse all risks, identify how the risks will be managed and the responsible Officer;
 - (j) comply with all statutory requirements in respect of completion of equality impact assessments;
 - (k) consider dividing any potential contracts into lots to encourage SME participation;
 - (l) ensure that all specifications for IT goods, services or works are ratified at the Commissioning Stage by the Head of IT; and
 - (m) consider any mechanisms to recover Social Value from the contract.

5. **Pre-tender Market Research and Consultation**

- 5.1 Prior to the issue of an ITT Officers may, with the agreement and support of the Monitoring Officer, consult potential tenderers in general terms about the nature, level and standard of the goods services or works to be provided, contract packaging and other relevant matters. Such consultation should not be anti-competitive or a breach of transparency and non-discrimination principles and must be in compliance with the Regulations.
- 5.2 Officers are required to ensure that where a potential tenderer has been involved in pre-tender market research to help inform a procurement all such

relevant information needs to be shared with all tenderers to ensure a level playing field.

6. Procedures Applicable to all Procurements after Commissioning

6.1 The application of PPR is dependent on value thresholds and risk. Officers shall calculate the anticipated value of the contract ie its “whole life” costs to determine the correct category of PPR. For support in determining whole life costs the advices of the Monitoring Officer can be sought.

6.2 There are 3 categories of procurements:-

- (a) Low Value Procurements;
- (b) Intermediate Value Procurements; and
- (c) High Value and High Risk Procurements.

The EPS shall be utilised for all Intermediate Value Procurements and High Value Procurements.

6.3 Officers shall after the completion of Commissioning, consult the Monitoring Officer at an early stage in determining the most appropriate route to market for contracts likely to be economically significant in regard to the regional or national economy.

6.4 All contracts should be let for a clearly defined period or with appropriate termination provisions. Where a service has no definable end date, the contract value shall normally be determined as the total value of the service estimated over a four year period.

6.5 In the case of joint purchasing arrangements the value shall be the value of both parties' purchases. Officers shall not seek to divide potential procurements in order to avoid the requirements of the Regulations and these PPR.

6.6 Procurements will impact on other areas of the organisation. It is important, therefore that goods services and works are only procured after effective Commissioning and due consultation with the relevant Head of Service regardless of value. The relevant Head of Service shall be responsible for the procurement of the following Services:

- (a) All IT equipment and IT services, whether hardware or software infrastructure or services by the Head of IT;
- (b) Communication and marketing services by the Head of Communications, Engagement and Marketing;
- (c) Health and Safety equipment by the Head of People and Organisational Development/Head of Asset Management (as appropriate);
- (d) Professional services (consultancy) by the relevant Head of Service for the discipline concerned;
- (e) Training by the Head of People and Organisational Development;
- (f) Asset Management Services, including electrical, plumbing, construction or other construction and maintenance services by the Head of Asset Management;

- (g) Legal services including advices on employment law matters by the Monitoring Officer (as appropriate);
 - (h) Financial matters by the Head of Finance.
- 6.7 Goods, services or works should in appropriate circumstances, be obtained via existing arrangements wherever possible. These arrangements include:
- (a) in-house services;
 - (b) existing Framework Agreements or Dynamic Purchasing Systems (internal or external);
 - (c) existing Select Lists or Register; and
 - (d) established corporate contracts.
- 6.8 Officers shall consult and obtain approval from the Monitoring Officer if they do not consider an existing arrangement to be suitable.
- 6.9 Nominated subcontracts shall be awarded in accordance with the procedures outlined above.
- 6.10 Officers shall give due consideration to the provisions of the Public Services (Social Value) Act 2012 prior to the commencement of a procurement process for any services contracts.
- 6.11 Heads of Service shall notify the Monitoring Officer of any planned Intermediate and High Value Procurement at the commencement of each financial year.

7. Procedure Applicable to Low Value Procurements

- 7.1 For Low Value Procurements, Officers are obliged to:-
- (a) anticipate purchases in good time and make use of existing arrangements through the Monitoring Officer;
 - (b) ensure that Value for Money is obtained;
 - (c) ensure that a transparent and fair procurement process is applied;
 - (d) consider that a Low Value Procurement may still be extremely significant for potential suppliers and could be subject to challenge;
 - (e) retain evidence to be able to demonstrate, if required, how Value for Money has been secured or by demonstrating that the goods, services or works to be procured is proprietary or otherwise unique in nature; and
 - (f) consider using the EPS.
- 7.2 All Low Value Procurements require the approval of the Head of Service. Such approval shall be obtained using the Purchase Order system.

8. Procedure Applicable to Intermediate Value Procurements

- 8.1 Officers are required to notify the Monitoring Officer of all Intermediate Value Procurements prior to commencement of the procurement. This is so that, where possible, the Combined Authority can make use of existing arrangements such as Framework Agreements or Dynamic Purchasing Systems as this greatly reduces the cost of procurement activity while still providing the optimum balance of Value for Money and risk. All Intermediate Value Procurements shall be undertaken by the Procurement team.

- 8.2 For Intermediate Value Procurements a minimum number of three separate quotations or Tenders shall be invited from suppliers in the relevant market. More quotations/Tenders should be obtained where the Monitoring Officer and the relevant Head of Service believes there is a reasonable level of competition or variety of solutions. If less than three quotations or Tenders are received then Officers shall (in consultation with the relevant Head of Service and the Monitoring Officer) ensure that they can demonstrate Value for Money before proceeding to award of contract.
- 8.3 (a) Officers shall take advice from the Monitoring Officer in respect of the most appropriate route to market, this could be using a Framework Agreement, Dynamic Purchasing System, Central Purchasing Body, collaborative arrangement, Electronic Auction or Select List;
- (b) Officers shall prepare a clear specification of requirements;
- (c) Officers shall specify the outcomes and outputs. Inputs should only be included in specifications where these are material to the contract or where social and environmental considerations apply;
- (d) Officers shall specify the goods, services or works to be provided approved by the relevant Head of Service and outline the terms and conditions of contract determined by the Monitoring Officer;
- (e) Officers shall prepare evaluation criteria and undertake such evaluations;
- (f) Officers shall determine the risk to the Combined Authority posed by a contract and, where applicable shall only invite to tender or enter into a contract with a supplier if it is satisfied as to the supplier's financial standing;
- (g) In the event that there are any concerns about any of the tenderers Officers shall seek advice on:-
- (i) economic and financial standing from the Head of Audit;
- (ii) technical and/or professional ability by references; and
- (iii) insurance from the Head of Audit .
- (h) If an Absolute or Qualified Exemption from PPR is required, the advice of the Monitoring Officer should be sought, it shall be clearly stated and the justification for the exemption and demonstrate how Value for Money has been assured.
- 8.4 The Monitoring Officer shall:
- (a) ensure that all Intermediate Value Procurements over £25,000 are advertised on Contracts Finder;
- (b) determine the appropriate procurement route to secure the best value;
- (c) assist the Officers in determining the basis for evaluating the Tenders if requested to do so;
- (d) determine appropriate terms and conditions of contract; and
- (e) Administer the EPS.
- 8.5 All Intermediate Value Procurements require approval by a Delegated Decision of the Combined Authority. This will be completed in a manner that is consistent with the Combined Authority's Scheme of Delegation and will demonstrate due consultation with the relevant Officers, Heads of Service and Directors.

- 8.6 The Officer (or the Monitoring Officer if EPS is used) shall retain a formal record of the process, to include:
- (a) the Officer(s) undertaking the procurement;
 - (b) the rationale for the procurement route chosen;
 - (c) a copy of the specification;
 - (d) all quotations or Tenders;
 - (e) a copy of the evaluation process and reasons for the decision as to the acceptance or rejection of a tenderer's quotation or Tender;
 - (f) the award letter and any communications to unsuccessful tenderers;
 - (g) copy of the final contract;
 - (h) ongoing review and monitoring documentation;
 - (i) an appropriate record of the decision; and
 - (j) any supporting evidence in respect of 8.3 above.

9. **Procedures Applicable to High Value and High Risk Procurements**

- 9.1 All High Value Procurements are to be notified to the Monitoring Officer prior to commencement of the procurement. This is so that, where possible, the Combined Authority can make use of existing arrangements such as Framework Agreements and Dynamic Purchasing Systems as this greatly reduces the cost of procurement activity while still providing the optimum balance of Value for Money and risk. All High Value Procurements shall be undertaken by the Procurement team.
- 9.2 Officers shall carry out the following steps:-
- (a) undertake a formal risk assessment prior to commencement of the procurement process to identify any risks relevant and proportionate to the goods, services or works to be procured by the Combined Authority such risk assessment shall be continually reviewed, copies retained and updated during the tender process and the contract period;
 - (b) take advice from the Monitoring Officer in respect of the most appropriate route to market, this could be using a Framework Agreement, Dynamic Purchasing System Central Purchasing Body, collaborative arrangement, Electronic Auction or Select List;
 - (c) consult with the Monitoring Officer in respect of other required documentation to enable the Monitoring Officer to undertake the Procurement utilising the EPS;
 - (d) prepare a clear specification of requirements;
 - (e) specify the outcomes and outputs. Inputs should only be included in specifications where these are material to the contract or where social and environmental considerations apply and the Monitoring Officer has agreed;
 - (f) specify the goods, services or works to be provided approved by the relevant Head of Service and outline the terms and conditions of contract determined by the Monitoring Officer;
 - (g) comply with the Regulations in addition to these PPR. Guidance on the Regulations including the relevant thresholds is available through One Place or by contacting the Monitoring Officer;
 - (h) prepare evaluation criteria and undertake such evaluations;
 - (i) in the event that there are any concerns about any of the tenderers shall seek advice in respect of:

- (i) economic and financial standing from Head of Audit of Merseytravel;
- (ii) technical and/or professional ability by references; and
- (iii) insurance from the Head of Audit;
- (j) if an Absolute or Qualified Exemption from PPR is required, the advice of the Monitoring Officer should be sought, it shall be clearly stated and the justification for the exemption and demonstrate how Value for Money has been assured.

9.3 The Monitoring Officer shall:

- (a) ensure that all High Value Procurement shall be advertised on Contracts Finder when advertised elsewhere;
- (b) determine the appropriate procurement route and the mechanism in the Regulations to secure the best value for the Combined Authority ;
- (c) assist the Officers in determining the basis for evaluating the Tenders;
- (d) determine appropriate terms and conditions of contract; and
- (e) Administer the EPS.

9.4 All High Value Procurements require the approval of the Combined Authority. This will be completed in a manner that is consistent with the Combined Authority's Scheme of Delegation (as appropriate) and will demonstrate due consultation with the relevant Officers, Heads of Service and Directors.

9.5 Officers shall, unless a report has been submitted in accordance with paragraph 9.6 below, prepare a formal report through the Modern.Gov system to seek approval by a Decision of the Combined Authority to award a contract for all High Value Procurements. The Monitoring Officer will provide a Procurement Summary which will be attached to the report.

9.6 At the commencement of the procurement process an Officer can submit a Pre-Procurement Report to the Combined Authority outlining the proposed project with outline specification, budget, procurement route, evaluation criteria and respective weightings and a detailed breakdown of expenditure in respect of a project. If such a report was submitted and endorsed by the Combined Authority then Officers are only required to obtain a Delegated Decision of Combined Authority to seek approval to award a contract for such High Value Procurements.

9.7 The Monitoring Officer shall retain a formal record of the process, to include:

- (a) the Officer(s) undertaking the procurement;
- (b) the rationale for the procurement route chosen;
- (c) a copy of the specification;
- (d) all Tenders;
- (e) a copy of the evaluation process and reasons for the decision as to the acceptance or rejection of a Tender;
- (f) the award letter and communications to unsuccessful tenderers;
- (g) copy of the final contract;
- (h) ongoing review and monitoring documentation;
- (i) an appropriate record of the decision; and
- (j) any supporting evidence in respect of 9.2 above.

10. **Absolute Exemptions from PPR**

10.1 The following procurements are **Absolute** Exemptions from the requirement to obtain quotations or Tenders under these PPR:

- (a) contracts specified in 3.2 above;
- (b) the execution of work or the supply of services which can only be carried out by a particular public utility undertaking, statutory undertaker, local authority or similar body; and
- (c) any contract that is exempt under the Regulations.

10.2 Absolute Exemptions under 10.1 (b) shall be supported by a formal Decision depending on the value of the contract being exempt. A Delegated Decision of the Combined Authority is required for Absolute Exemptions for Intermediate Value Procurements. A Decision of the Combined Authority is required for Absolute Exemptions for High Value Procurements. The Treasurer of the Combined Authority shall be consulted on all Absolute Exemptions for High Value or High Risk Procurements and such shall be subject to a Decision of the Combined Authority.

11. **Qualified Exemptions from PPR**

Qualified Exemptions shall apply in certain circumstances and should be supported by a formal decision, depending on the value of the contract being exempt from PPR.

The following procurements are **Qualified Exemptions** from the requirement to obtain quotations or Tenders under these PPR:-

- (a) contracts where the goods, services or works are proprietary articles which (and any acceptable substitutes for which) are supplied only by one person or firm or are sold at a fixed price and where the relevant Head of Service is satisfied that there is no reasonable satisfactory alternative;
- (b) contracts where the price of the goods is wholly controlled by government order/statutory body or otherwise and no reasonably satisfactory alternative is available;
- (c) for other reasons there would be no genuine competition or where the requirements of competition as required by statute have already been met;
- (d) the goods, services or works are to be supplied constitutes an extension to an existing contract and subject to the Head of Service deciding that it would not be in the interests of the Combined Authority to tender the contract provided that:-
 - (i) the amount being considered shall not exceed the original value of the contract (unless approved by the Head of Service);
 - (ii) the Officer is satisfied that such extension will achieve Value for Money and is reasonable in all the circumstances;
 - (iii) the Officer ensures that any additional funding required is available;
 - (iv) if the original contract was subject to the Regulations, the contract is only being extended within the parameters identified in the original OJEU advert;
 - (v) if the contract was not subject to the Regulations, the extension must not take the total value of the contract above the EU thresholds;
 - (vi) if the contract was awarded as a Framework Agreement, the total contract period, including the extension, does not exceed four years;
 - (vii) the decision making route relates to the total amount of the contract including all extension(s); and
 - (viii) due consideration has been given to alternative market competition.

- (e) the contract is for the execution of work or the supply of goods or services certified by the appropriate Head of Service to be required so urgently as to preclude a competitive exercise. This Qualified Exemption shall only apply to unforeseen and unforeseeable events and does not apply where there has been a failing to act in a manner which would have permitted a full competitive exercise to take place;
- (f) the purchase of a named or propriety product required to be compatible with an existing installation; and
- (g) urgent action under Section 91(2) of the Transport Act 1985 for Subsidised Service Contracts.

12. **Tenders**

12.1 ITT shall include:-

- (a) all details of the specification as determined by the Officer reviewed by the relevant Head of Service or if required by the relevant support service;
- (b) terms and conditions of contract as determined by the Monitoring Officer;
- (c) a specific date and time by which Tenders must be returned;
- (d) advice to tenderers that quotation documents, responses and any communication in respect of an ITT can only be submitted utilising the mechanism specified in the documentation;
- (e) advice to tenderers that Tenders and any communication in respect of an ITT must be submitted utilising the EPS;
- (f) explicit instructions to tenderers on the basis of Tenders requested;
- (h) the criteria to be used to evaluate Tenders and the basis of award, which shall have been agreed in advance by the Officer and the Monitoring Officer; and
- (i) the capacity to receive alternate Tenders if required and agreed in advance by the Officer and the Monitoring Officer.

12.2 **Late Tenders**

No Tender received after the closing date and time shall be considered unless there are exceptional circumstances in which case it may be considered at the discretion of the Head of Audit in conjunction with the Monitoring Officer.

12.3 **Tender Evaluation**

Tenders

- (a) received for contracts that are subject to the Regulations will only be evaluated only in accordance with the Regulations and the evaluation criteria set out in the ITT or Contract Notice;
- (b) received for contracts not subject to the Regulations whether by value or by the nature of the contract, shall similarly be evaluated in accordance only with the evaluation criteria notified to tenderers in the ITT;
- (c) shall only be evaluated using the predetermined and advertised evaluation criteria, in order of importance and incorporating appropriate weightings (where possible or where required by the Regulations);

- (d) evaluation shall only be evaluated by suitably experienced Officers or other experienced persons and shall not be conducted by anyone who has any conflict of interest with a tenderer. Officers should, in such circumstances, comply with the Code of Conduct for Employees and declare such conflict and take no further part in the procurement process.

12.4 Quotations/Tenders shall be accepted as follows:

- (a) the lowest quotation/Tender if payment is to be made by the Combined Authority;
- (b) the highest if payment is to be received by the Combined Authority;
- (c) the quotation/Tender which represents the Most Economically Advantageous Offer (MEAT) to the Combined Authority where specified in the ITT; or
- (d) under any such alternative evaluation criteria as will achieve best value for the Combined Authority in such circumstances, subject to the approval of the Monitoring Officer

13 **Award of Contract**

13.1 Award of Contract shall only take place if

- (a) sufficient budget provision exists, and that such sums of money have been notionally identified to be spent on that service/good in advance;
- (b) the terms and conditions of contract have been agreed to by the tenderer;
- (c) a decision to award has been made in accordance with this Constitution; and
- (d) for a contract tendered pursuant to the Regulations the 'standstill' period has been complied with and there has not been a legal challenge or other such obstacle preventing the award.

13.2 For a contract that has been tendered pursuant to the Regulations that a contract award notice will be published in the OJEU no later than 30 days after the date of award of the contract;

13.3 The Monitoring Officer shall provide feedback to unsuccessful tenderers for contracts subject to the Regulations on written request. The relevant Head of Service shall provide the necessary information to the Monitoring Officer to provide this feedback.

14. **Form of Contract**

14.1 Every contract which exceeds £20,000 shall be in writing in a form approved by the Monitoring Officer.

14.2 An Officer shall not instruct a contractor to commence works, supply goods or provide services which is subject to a contract in writing until the contract has been signed and any performance bond secured. However if a Head of Service, in consultation with the Monitoring Officer, determines that there is

an urgent need for the supply of goods, provision of services or execution of works which does not permit time for the execution of a written contract then the contract can be commenced. However, the Officer shall ensure that a contract in writing is put into place as soon as practicable.

14.3 All written contracts shall:

- (a) specify the goods services or works to be provided;
- (b) provide details of prices to be paid including a statement of discounts or other reductions;
- (c) state the period or times within which the contract is to be performed and, where appropriate, the amount of liquidated damages that may otherwise become due; and
- (d) contain the terms and conditions of contract which are applicable.

15. **Authentication of Documentation**

15.1 Where any document is necessary to any legal procedure or proceedings on behalf of the Combined Authority it will be signed by the Monitoring Officer unless any enactment otherwise authorises or requires .

15.2 Any contracts over £150,000 shall be a formal agreement made in writing and executed as a Deed by the affixing of the Common Seal of the Combined Authority in the presence of the Monitoring Officer.

15.3 The Monitoring Officer shall be entitled to delegate signature of such documentation provided such delegation is in writing.

15.4 All other contracts may be signed by the Monitoring Officer or Directors of the Combined Authority.

15.5 If the Common Seal is to accompany the signature of the Monitoring Officer, an entry of every sealing of a document shall be made and consecutively numbered in a book provided for the purpose and open to inspection by every member of the Combined Authority. Each entry shall be signed by the signatory who signed the sealed document.

15.6 If any Directors sign contracts on behalf of the Combined Authority a copy of the contract shall be forwarded to the Monitoring Officer of the Combined Authority for their records.

16. **Termination of Contract**

Any termination of a contract arising from a High Value Procurement shall be approved by the Monitoring Officer. Contracts of a lesser value may be terminated earlier than the expiry date by agreement or in accordance with the termination provisions in the contract. Legal advice should be sought as appropriate.

17. **Legal Proceedings**

The Monitoring Officer of the Combined Authority is authorised to institute, defend or participate in any legal proceedings in any case where such action is considered

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necessary to give effect to decisions of the Combined Authority or in any case where such action is considered necessary to protect the Combined Authority's interests.