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# Procurement Procedures

# Finance & Strategy

# September 2019

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## Procurement and Contract Procedure Rules - For the Supply of Goods, Provision of Services and Execution of Works

## 1. Definitions

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| --- | --- | --- |
| In these Rules the following words and expressions will have the following meanings assigned to them:  **Defined term** | **Definition** | |
| Award Criteria | Shall mean the criteria by which the Contract is to be awarded to the successful Supplier | |
| Award Decision | Shall mean the procedure by which the Officer is able to decide to award the Contract to a particular Supplier/s | |
| Call-off Contract | Shall mean a Contract awarded under a Framework Agreement or Dynamic Purchasing System | |
| Candidate | Shall mean any and all suppliers participating or expressing an interest in participating in the University’s Quick Quotes, Quotations, Selection Questionnaire and ITT activity | |
| Chief Finance Officer | Shall mean the member of staff employed in the position of Chief Finance Officer  or such member of staff as they may duly authorise to act on their behalf | |
| Collaborative procurement  Competitive Procedure with Negotiation | Shall mean to deliver greater efficiencies through combined purchasing power, and with other public bodies/parties,  Shall mean as referred to in regulation 29 of the 14.1.a | |
| Contract | Shall mean a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which the University engages a Supplier to provide Goods, Works or Services and where the context requires a Contract shall refer to an order made/call-off contract entered into under a Framework Agreement. All Contracts are let on behalf of the University as a whole and no service, team, unit or other part of the University has the legal capacity to enter independently into any Contract | |
| Contracting Authority | Shall mean University or any entity over which University has control | |
| Contracts Finder | Shall mean the web-based portal provided for the purpose of publicising contract opportunities under the EU Threshold by or on behalf of the Cabinet Office | |
| Contracts Register | Shall mean the University’s repository of Contracts as held on the University’s Electronic Tendering System | |
| Dynamic Purchasing System | Shall mean as referred to in regulation 34 of the 14.1.a | |
| Electronic Tendering System | Shall mean the system approved by Procurement for the purposes of conducting Procurement activities electronically | |
| EU | Shall mean European Union | |
| EU Threshold | Shall mean the relevant threshold as set out in either:  1. Regulation 9 of the Concessions Contracts Regulations 2016 where those rules apply; or otherwise  2. Regulation 5 of the Public Contracts Regulations 2015 | |
| European Commission | Shall mean the body responsible for promoting the general interest of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget | |
| Financial Instructions | Shall mean the Financial Regulations and Financial Procedures, and any subsequent guidance, outlining the member of staff’s responsibilities for financial matters as issued by Chief Finance Officer | |
| Framework Agreement | Shall mean an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies | |
| Goods | Shall mean physical products purchased or manufactured on request | |
| Grant | Shall mean a direct non-commercial financial contribution, by way of donation, to a specific beneficiary to help achieve an objective in the public interest | |
| Innovation Partnership | Shall mean as referred to in regulation 31 of the 14.1.a | |
| Invitation to Tender (ITT) | Shall mean the document in the form required by these Rules to seek Tenders from Suppliers | |
| Legal Services | | Shall mean the University’s internal legal advisory department |
| Light Touch Regime | | Shall mean the statutory procedure set out in the Regulations (Regulations 74 to 76) regulating the award of Contracts for services listed in Schedule 3 of the Regulations |
|  | |  |
| Most Economically Advantageous Tender (MEAT) | | Shall mean evaluation criteria that reflect the qualitative, technical and sustainable aspects of a Tender submission as well as price, which can be used when reaching a Contract award decision |
| Negotiated Procedure without Prior Publication | | Shall mean as referred to in regulation 32 of the 14.1.a |
| Non-commercial Considerations | | Shall mean factors that must not be taken in to account at the Award Decision stage, such as the introduction of Selection and Award Criteria that have not been disclosed out the outset of the procurement or that do not meet the principle of MEAT |
|  | |  |
| Staff | | Shall mean a person employed by the University whose responsibility it is to procure Goods, Services or Works or ensure that members of staff that they have line or matrix management responsibility for procuring Goods, Services or Works in accordance with these Rules; and Shall also mean Procurement Officer |
| OJEU | | Shall mean the Official Journal of the European Union |
| Open | | Shall mean as referred to in regulation 37 of the 14.1.a |
|  | |  |
| Procurement Documents | | Shall mean the documents provided to Suppliers at the outset or during the procurement process, the purpose of which is to explain the procurement opportunity, the Selection and Award Criteria, the means of making an Award Decision, the submission requirements  and the terms and conditions of contract |
| Procurement Officer | | Shall mean a University member of Staff which is employed to the Procurement Team |
|  | |  |
| Quotation | | Shall mean the document in the form required by these Rules to seek Quotations from Suppliers |
| Relevant Contract | | Shall mean a Contract to which these Rules applies, which includes:  the supply or disposal of Goods;  the hire, rental or lease of Goods or equipment, the provision of Works and the supply of works materials,  the provision of Services, including consultancy services, the granting of Works Concessions or Services Concessions Contracts |
| Relevant Legislation | | Shall mean the Acts of Parliament referred at section *14. Relevant Legislation* and the Treaty Principles and includes any new and amending legislation |
| Relevant Policy | | Shall mean the policy referred to in section *Relevant Policy* and any documents superseding that referred to |
| Restricted | | Shall mean as referred to in regulation 38 of the 14.1.a |
| Scheme of Delegation | | Shall mean the high level overarching scheme contained within the Financial Regulations “Scheme of Delegation” which sets out the level of delegations below the main scheme and covers staff delegations |
| Selection Criteria | | Shall mean the University’s minimum requirements by which the Tenderer is to be assessed as being suitable to be invited to Tender, as set out in the Selection Questionnaire |
| Selection Questionnaire | | Shall mean the questions to be asked of Suppliers to assess their suitability as issued by the Crown Commercial Services, an executive agency of the Cabinet Officer; and/or  the first stage document of a two-stage procurement process used to assess applications for inclusion in the shortlist of Suppliers who will be invited to submit a final proposal in every Restricted procedure |
| Services | | Shall mean the supply of time, effort, and/or expertise instead of a tangible product |
| Services Concession Contract | | Shall mean a Contract concluded in writing where the payment is simply that the concessionaire has the right to profit from the Works/Services that are the subject of the Contract |
| Social Value | | Shall mean additional benefit to social and environmental effects on society over and above the direct purchasing of Goods,  Services and outcomes |
| Standstill Period | | Shall mean the minimum ten (10) day period between the notification date of unsuccessful Suppliers and the date of contract award |
| State Aid | | Shall mean any advantage granted by the University through its resources on a selective basis to any organisations, the result of which could potentially distort competition in the EU |
| Supplier | | Shall mean the successful Candidate |
| Sustainable Procurement | | Shall mean the consideration of economic, social and environmental benefits within the procurement process |
| Tender | | Shall mean the document in the form required by these Rules to seek Invitations to Tender from Suppliers |
|  | |  |
| Total Contract Value | | The whole of the value or estimated value (in money or equivalent value) for a single purchase or Contract |

|  |  |
| --- | --- |
| Transfer of Undertaking (Protection of Employment) (“TUPE”)  Value for Money | Shall mean the legislation that applies where responsibility for the delivery of Works or Services for the University is  transferred from one organisation to another and where the individuals involved in carrying out the work are transferred to the new employer  and which seeks to protect the rights of employees in such transfers  Shall mean the duty on the University to secure continuous improvement in a way which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the University. |
| Works | Shall mean the construction of structures of all kinds, such as buildings, highways, bridges, as well as structural renovations, extensions, and repairs |

## SECTION A: General Information

## 2. Introduction

2.1. These Procurement and Contract Procedure Rules (the “Rules”) are the Contracting Authority’s (the “University”) rules for the buying, renting and leasing of Goods, Services and Works and apply to all Relevant Contracts made by the University unless otherwise specified herein.

2.2. The aim of these Rules is to assist members of staff in achieving value for money practice and lawful Procurement to ensure that the University fulfils its duty of delivering Value for Money for its University taxpayers and excellent outcomes for its service users.

2.3. The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the University’s reputation from any suggestion of dishonesty or corruption.

2.4. These Rules apply to all members of staff of the University or any companies or organisations within the University’s control. They are part of the University’s Financial Regulations and therefore members of staff have a duty to ensure they have fully understood them and have sufficient authority prior to commencing any Procurement or contracting activity (see section *10. Pre-Procurement authorisations*).

2.5. Staff must also ensure that any persons or organisations acting on behalf of the University fully comply with these Rules (e.g. Consultants).

2.6. These Rules are mandatory and shall govern and regulate the University’s procurement and contract award procedures. Staff must also refer to the Procurement Team (“PROCUREMENT”) for more detailed guidance throughout the procurement process.

2.7. These Rules must be complied with and in any case of doubt advice must be sought from Procurement. Failure to follow these Rules may be dealt with as a breach of the University’s standards of conduct and in certain instances may be treated as gross misconduct and give rise to action under the University’s disciplinary policy and procedure (see section *57. Non-compliance to the Rules* 57).

2.8. If upon reading the Rules staff discovers a lack of clarity or wishes to ensure their comprehension and compliance, they must consult with Procurement for advice and guidance. Staff shall not be excused from these Rules on grounds of a lack of understanding.

2.9. The administration, monitoring and governance of these Rules shall be the responsibility of Procurement.

## 3. Basic principles

3.1. All Procurement and contracting activity and Contract and supplier management must:

a. comply with these Rules and Financial Instructions;

b. achieve Value for Money for public money spent;

c. be consistent with the highest standards of integrity;

d. comply with the Relevant Legislation (including the University’s statutory duties and powers);

e. comply with any relevant University policies;

f. support the University’s corporate and departmental aims; and

3.2. All Procurements must comply with the following principles of EU and UK Procurement law and policy (the “Treaty Principles”):

a. free movement of Goods and Services;

b. non-discrimination;

c. openness and transparency

d. equal treatment for all; and

e. proportionality.

## 4. Staff responsibilities

4.1. The member of staff member is responsible for the Procurement and contracting activity and Contract and supplier management and must:

a. comply with and ensure that their staff comply with these Rules and Financial Instructions;

b. comply with the Relevant Legislation;

c. ensure that any persons or organisations acting on behalf of the University also fully comply;

d. take account of all necessary Legal, Financial, Procurement, Technical and any other professional advice; and

e. complete any required procurement training available through either e-learning tool or face to face sessions.

4.2. Prior to commencing a Procurement or contracting activity the member of staff must:

a. consider options for delivery of the required Goods, Services or Works;

b. ensure that there is appropriate University authority to procure and sufficient budgetary provision approved and in place;

c. identify the size, scope, commercial principles, term and specification of the Goods, Services and Works required;

d. check whether the University already has an available and appropriate Contract in place in the Contracts Register, or an appropriate national, regional or other collaborative contract, Framework Agreement or Dynamic Purchasing System is available for use, by reference to Procurement;

e. check whether any employee, either of the University or of a service provider, may be affected by any transfer arrangement and ensure that any Transfer of Undertaking (Protection of Employment) (“TUPE”) issues are considered and obtain legal and HR advice;

f. for Procurement processes with a Total Contract Value at and above £50,000 Threshold there must be an accompanying Procurement strategy in line with section*13. The Procurement strategy*.

*g*. Determine there is no conflict of interest in line with the University policy. http://www.exeter.ac.uk/cgr/researchethics/codesandpolicies/

## 5. Procurement Officer responsibilities:

5.1 To provide a customer focused, professional and ethically responsible procurement service which delivers statutory compliance, minimise procurement risks (in respect of public procurement regulations) and achieves maximum value on all non-pay expenditure, thereby assisting the University to meet its strategic objectives.

## 6. Prevention of corruption and collusion

6.1. All Staff have a duty in law to avoid any form of behaviour that might distort or restrict competition, or call in to question the award of a Contract.

6.2. Staff must always comply with the University’s standards of conduct and must not offer, promise, give or receive any gift or reward in respect of the award or performance of any Contract.

6.3. Staff are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010, the Fraud Act 2006 and any amending legislation, and all legislation relating to money laundering may be dealt with as a breach of the University’s standards of conduct and in certain instances will be treated as gross misconduct and give rise to action under the University’s disciplinary policy and procedure, such as dismissal. Such activity may also be reported to the police.

6.4. Staff are advised to take practical steps to reduce the risk of anti-competitive behaviour, as highlighted by the Office of Fair Trading:

a. include non-collusion clauses in Contracts;

b. ensure sufficient credible Suppliers, where practicable;

c. identify and investigate for suspicious bidding patterns; and

d. keep notes of all discussions with Suppliers.

## 7. Conflicts of interest

7.1. All Staff and stakeholders involved in a procurement exercise must declare any conflicts of interests (<http://www.exeter.ac.uk/cgr/researchethics/codesandpolicies>) relating to the Procurement activity where they, or their spouse or civil partner, or person with whom they are living as husband and wife or civil partner, have a vested interest that could conflict with the best interests of the University.

7.2. Where a conflict of interest exists the member of staff shall ensure that appropriate and sufficient mitigation(s) are put in place to ensure that such conflicts do not compromise the outcome of the Procurement exercise.

7.3. Staff shall maintain a record of all declarations of interest and mitigations in a Procurement exercise as notified by Procurement Team and shall return the declarations of interest record form to Procurement. Further advice and guidance can be obtained from Procurement.

## 8. Social Value, Modern Slavery Act and IR35

8.1. Staff should take into account Social Value and social impact work through procurement practices and the supply chain. For procurement processes above EU threshold, where appropriate Suppliers shall l be asked to provide details of contract(s) in the past year(s) to demonstrate delivered improvements to the economic, social and environmental well-being of the relevant area.

8.2 Staff should take into account Modern Slavery Act (MSA) through procurement practices and the supply chain. In particular to critically observe the University’s supply chain; assess the risk of modern slavery and trafficking for each tender project, and include appropriate measures in the procurement plan and procedure.  These will include specific MSA terms and conditions within contracts and MSA due diligence tests within supplier selection procedures

8.3 Staff should take into account IR35 through procurement practices and the supply chain. In particular upon completion of the IR35 process [see: [http://www.exeter.ac.uk/staff/employment/tempworkers/selfemployed/](https://eur03.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.exeter.ac.uk%2Fstaff%2Femployment%2Ftempworkers%2Fselfemployed%2F&data=02%7C01%7CD.Fitzgerald%40exeter.ac.uk%7Cf717ca6f1b40429e7e7708d71c0ee7a8%7C912a5d77fb984eeeaf321334d8f04a53%7C0%7C0%7C637008722664747166&sdata=s3M7Gkge%2BLSTVgRLbjLmOz2HIa2fecaB%2BhwONvX9j6A%3D&reserved=0)], staff must issue a letter of engagement with contract terms & conditions [see: [http://www.exeter.ac.uk/staff/employment/tempworkers/selfemployed/](https://eur03.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.exeter.ac.uk%2Fstaff%2Femployment%2Ftempworkers%2Fselfemployed%2F&data=02%7C01%7CD.Fitzgerald%40exeter.ac.uk%7Cf717ca6f1b40429e7e7708d71c0ee7a8%7C912a5d77fb984eeeaf321334d8f04a53%7C0%7C0%7C637008722664757154&sdata=vzKvmJV%2BhXQ6%2BveAiQgrp3aF0SNugX3avoxENVJ1bok%3D&reserved=0) for template documents] and a purchase order to the person being hired e.g. supplier.

The purchase order must reference the letter of engagement & People Services ‘AD’ reference number.

The letter of engagement must clearly state:

* the scope of work/service to be supplied including delivery deadlines & outputs and, or tasks to be completed by each deadline;
* People Services’ ‘AD’ reference number [links here to the IR35 documents retained by them for audit purposes] and
* the purchase order number that the fee/s should be quoted on all invoices including the total fee excl. of VAT is to be paid for the services;
* how payment for the service will be paid by staff  e.g. the stated total sum [service cost] broken down into lesser amounts will be paid upon satisfactory completion of each output, task etc. by the relevant delivery deadline date, or the total stated sum will be paid upon satisfactory completion of all outputs/tasks by the stated delivery deadline date.

## SECTION B: Pre-Procurement

## 9. Market engagement

9.1. The member of staff may, prior to commencing the procurement process, consult potential Suppliers in general terms about the nature, level and standard of the supply and contract and seek market views and intelligence that can be used in the planning and during the Procurement process provided that this does not result in the violation of the Treaty Principles, prejudice any other interested supplier/s not consulted and/or have the effect of distorting competition, which might manifest itself as:

a. a conflict of interest;

b. evidence of collusion; or

c. a situation which it is incapable of being resolved as a result of providing information to other potential Suppliers.

9.2. The member of staff shall take appropriate measures to ensure that competition is not distorted during the Procurement process, including:

a. communicating to all Suppliers any relevant information provided to potential Suppliers consulted as part of market engagement activities; and

b. fixing adequate time limits for the receipt of Tenders, once the procurement process has been commenced.

9.3. The member of staff shall take advice from Procurement to ensure that the proposed method of engaging the market or particular potential Suppliers does not preclude them from participating in any subsequent Procurement activity so as to ensure that the approach does not undermine value for money, lead to the award of a dissatisfactory contract or increase the risk of a Procurement legal challenge.

9.4. Suppliers consulted during market engagement activities shall only be excluded from the Procurement process where there are no other means to ensure compliance with this section in its entirety. Potential Suppliers must be given the opportunity to prove that their involvement in market engagement activities is not capable of distorting competition. Further advice can be obtained from Procurement.

## 10. Pre-Procurement authorisations

10.1. Staff must ensure, before entering into any process that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works, be it capital or revenue, that:

a. adequate financial provision is included in the University’s approved revenue budget or capital programme and that such expenditure continues to be available in accordance with the Financial Regulations;

b. the University does not already have an available and appropriate existing Corporate Contract, Framework Agreement or Dynamic Purchasing System;

c. there is no other available and appropriate Contract, Framework Agreement or Dynamic Purchasing Systems that has been procured on the University’s behalf:

(i) through collaboration with other public bodies, where a competitive process has been followed that complies with the rules of the lead organisation and any Relevant Legislation, but which does not necessarily comply with these Rules; or

(ii) by a regional or national contracting authority or buying consortia where the process has been conducted in compliance with any Relevant Legislation; and

d. the University is not already undertaking a Procurement process that is within the scope of the proposed Procurement;

## 11. Total Contract Value

11.1. The Total Contract Value is calculated as the whole of the value or estimated value of the Contract as follows:

a. the total amount payable, exclusive of VAT, as estimated by the University and including any additional options, lots, considering all of the associated costs, to include lots, initial purchase costs, operating and maintenance costs, costs of associated consumables, any associated training costs and the cost of disposal, and/renewals or extensions;

b. where the Contract period is indefinite or uncertain, the value shall be calculated on the basis that the Contract will be for a period of four years and be based on the value of contracts of the same or similar type awarded during the preceding period;

c. the estimated value of a Framework Agreement or Dynamic Purchasing System shall be the total value, exclusive of VAT, of all Contracts that may be awarded against that Framework Agreement or Dynamic Purchasing System;

d. the value of a Concession Contract shall be a best estimate of the financial value to the Contractor that shall be made over the life of the arrangement;

e. the estimated value of an Innovation Partnership shall be the total value, exclusive of VAT, of the research and development activities to take place during all stages of the envisaged partnership, as well as the Goods, Services or Works to be developed and procured at the end of the envisaged partnership.

11.2. The general rules when calculating the Total Contract Value are as follows:

a. purchases of the same or similar type must be aggregated wherever practicable. The value of the Contract shall not be calculated with the intention of excluding it from the scope of the Rules;

b. where there is a common requirement across the University, the Total Contract Value shall be the aggregate of all purchases across the whole University;

c. a Contract shall not be sub-divided with the effect of preventing it from falling within the scope of the Rules; and

d. the estimated value shall be calculated as at the moment at which the advertisement is sent or when the University commences the procurement procedure, whichever is later, unless;

e. the estimated value at the point that a Concession Contract to which the Relevant Legislation applies is awarded is more than 20% higher than the previous estimate, in which case the higher value applies.

## 12. Thresholds

12.1. The Financial Regulations 12.4 (<http://www.exeter.ac.uk/media/universityofexeter/financeservices/secure/Finance_Regulations_Feb_2019_-_2.pdf>) sets out the University’s competition requirements and Thresholds and the award procedure and advertising requirements.

PLEASE NOTE Financial Regulations (<http://www.exeter.ac.uk/media/universityofexeter/financeservices/secure/Finance_Regulations_Feb_2019_-_2.pdf>) 12.5 states - Separate thresholds apply to Estate Services (works contracts only) and to expenditure funded by European Structural Investment Funds (ESIF). Details are in the Procurement Procedures document.

## 13. The Procurement strategy

13.1. For Procurement processes with a Total Contract Value £50,000 and above the member of staff must consult with Procurement to develop the Procurement strategy.

13.3. The Procurement strategy must, as a minimum, appraise a proposed procurement in a manner commensurate with its complexity, risk and value, by:

a. taking into account the requirements from any relevant Best Value review;

b. taking in to account any lessons learned from any market engagement activities and/or audit findings;

c. defining the key commercial principles, objectives of the procurement, taking into account user requirements and all Relevant Policy and Relevant Legislation;

d. considering any related risks and impacts;

e. considering the need to obtain specific assurances regarding any incumbent contractor’s business continuity plans and arrangements;

f. appraising the need for the expenditure and its priority;

g. considering all of the associated costs, to include initial purchase costs, operating and maintenance costs, costs of associated consumables, any associated training costs and the cost of disposal;

h. taking in to account any tax or VAT issues that may arise;

i. when the purchase of new Goods is proposed, assessing the alternative options for repair, re-use or recycling; and

j. considering all means of achieving the anticipated outcomes.

13.4. The Procurement strategy shall result in clear recommendations, as follows:

a. the proposed scope, key commercial principles and the Procurement route to be followed;

b. the relevant evaluation criteria, including the MEAT ratios;

c. the relevant timescales;

d. the means by which the Contract shall be monitored and managed; and

e. the resources required.

13.5. The Procurement strategy shall be signed off in line with the Financial Regulations Scheme of Delegation (http://www.exeter.ac.uk/media/universityofexeter/aboutusresponsive/documents/Delegation\_Framework\_FOR\_PUBLICATION\_(Current\_web\_version\_May\_2019).pdf).

13.6. Where a change is required to a Procurement strategy that has already been signed off, such changes shall be incorporated in as a variation to the original, agreed between the parties and signed off by the member of staff and Procurement.

13.7. A template Procurement strategy can be obtained from Procurement.

## 14. Relevant Legislation

14.1. When planning and preparing all Procurement and contracting activities the member of staff shall have regard to the Relevant Legislation, including, but not limited to, the following:

a. Public Contracts Regulations 2015 (PCR 2015); [2]

b. Concession Contracts Regulations 2016 (CCR 2016); [3]

c. Public Services (Social Value) Act 2012; [4]

d. Freedom of Information Act 2000; [5]

e. UK Data Protection Regulation (GDPR) and the Data Protection Act 2018; [6]

f. Equality Act 2010; [7]

g. Modern Slavery Act 2015; [8]

h. Transfer of Undertakings (Protection of Employment) Regulations 2006 [9]; and

i. any industry or sector specific legislation pertaining to the subject matter of the Contract.

14.2. The aims and objectives outlined in the Relevant Legislation shall, where appropriate, be incorporated into the Procurement strategy, award methodology and terms and conditions of contract.

14.3. The member of staff shall consult with Procurement for guidance when considering Sustainable Procurement and Social Impact within their Procurement and contracting activities. They and should also consult with internal Legal team to agree the form of contract to be included within the procurement documentation.

## 15. Relevant Policy

15.1. When planning and preparing all Procurement and contracting activities the member of staff member shall have regard to the University’s Relevant Policy and duties.

15.2. The aims and objectives outlined in the Relevant Policy shall, where appropriate, be incorporated into the Procurement strategy, award methodology and terms and conditions of contract.

15.3. The member of staff shall consult with Procurement for guidance when considering Sustainable Procurement and Social Impact within their Procurement and contracting activities.

## 16. Collaborative Procurement

16.1. Where the University takes the lead Procurement role in a collaborative Procurement with other bodies/partners these Rules shall apply, as a minimum.

16.2. No Staff shall take part in or oblige the University to take part or lead in a collaborative Procurement without the prior agreement of the Chief Finance Officer.

16.3. Where another public body takes the lead Procurement role the rules of the lead organisation and any Relevant Legislation shall apply.

16.4. Where the University enters into any formal collaborative Procurement arrangements any related collaboration agreement must protect the University to a level proportionate to the complexity, risk and value involved, whilst at the same time providing the basis for the collaborative approach and delivery of Value for Money. As a minimum the collaboration agreement should clearly state:

a. the nature and extent of the arrangement;

b. legal roles and responsibilities;

c. arrangements for governance, accountability and dispute resolution;

d. the exit strategy;

e. the auditing arrangements;

f. the cost sharing mechanisms; and

g. the process for the induction of new partners.

16.5. Where the University takes the lead Procurement role in a collaborative Procurement the member of staff shall liaise with legal services regarding the preparation of a collaboration agreement and ensure that it is countersigned by all partner organisations.

16.6. Where no such formal collaboration agreement exists the member of staff must consider how the arrangements meet the requirements of these Rules, which must be documented and approved by the appropriately empowered staff as set out in the Financial Regulations Scheme of Delegation.

## SECTION C: The Procurement Process

## 17. Framework Agreements

17.1. A Framework Agreement is an agreement between one or more contracting authorities (bodies governed by public law) and one or more suppliers, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may be established by the University, or by other public bodies, or public sector buying consortia, as arrangements through which the University, along with other public bodies, may make specific purchases.

17.2. The term of a Framework Agreement must not exceed four (4) years. There must be one (1) (single-provider framework), or more than two (2) (multi-provider framework) suppliers awarded a place on a Framework Agreement.

17.3. When the University has concluded a Framework Agreement with more than one (1) supplier or seeks to meet its requirements through an already established Framework Agreement a Contract may be awarded:

a. by the application of the terms laid down in the Framework Agreement without re-opening competition; or

b. by ‘further competition’ between each capable supplier in full accordance with the Relevant Legislation.

17.4. Staff may not select more than one Framework Agreement to procure a single Contract and only suppliers that appear on the Framework Agreement may be approached to provide the Contract.

17.5. Where expressly permitted by the Framework Agreement Contracts may be awarded beyond the life of a Framework Agreement provided that such Contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a Contract that significantly exceeded the life of the Framework Agreement where it was not common practice or expected by the market to do so or where a Contract is awarded for a significant period towards the end of the term of the Framework Agreement.

17.6. When a further competition takes place for Goods, Services or Works, that exceeds the EU Threshold the Standstill Period shall apply.

17.7 The terms of the Framework Agreement must be fully followed, including all of the contractual terms. Where a purchase is being made from a Framework Agreement, guidance must be sought from Procurement to check the validity of the Framework.

17.8 Frameworks must be checked to ensure that there is enough value left in the framework to allow for you to procure the required goods and services

17.9 Once a contract has been awarded via a framework a contract award notice must be published on contract finder.

## 18. Dynamic Purchasing Systems

18.1. A Dynamic Purchasing System is similar to a Framework Agreement, save for the fact that it is operated as a completely electronic process, additional suppliers can be added throughout the life of the arrangement and the term can be for a period that is proportionate to the nature of the Goods, Services or Works to be procured under it.

18.2. Dynamic Purchasing Systems may be established by the University, or by other public bodies, or public sector buying consortia, as arrangements through which the University, along with other public bodies, may make specific purchases.

18.3. In opening up access to suppliers to the Dynamic Purchasing System the member of staff must:

a. offer unrestricted, direct and full access to the Procurement Documents by electronic means at all times throughout the life of the Dynamic Purchasing System;

b. allow new applications to be submitted throughout the life of the Dynamic Purchasing System;

c. complete the evaluation of a newly submitted application within ten days of its receipt;

d. admit to the Dynamic Purchasing System all new suppliers that satisfy

e. the Selection Criteria, and

f. notify suppliers of their admission to the Dynamic Purchasing System or rejection of their application.

18.4. In awarding a Contract under the Dynamic Purchasing System the member of staff must:

a. place an advertisement for the Contract to all suppliers admitted to the Dynamic Purchasing System or to those admitted to a specific lot, where relevant;

b. seek Tenders from suppliers and award the Contract in accordance with the Relevant Legislation.

## 19. Use of Framework Agreements and Dynamic Purchasing Systems

19.1. Where a Framework Agreement or Dynamic Purchasing System has been approved as suitable by Procurement the member of staff must use it for the making of the proposed purchase.

19.2. The use of a Framework Agreement or Dynamic Purchasing System may be appropriate where:

a. Quotations or Tenders are regularly obtained for the same or similar types of Goods, Services or Works; and

b. it is not practical or appropriate that the Goods, Services or Works in question be aggregated into a single requirement and/or competed under one Procurement; and

c. the Total Contract Value of the Goods, Services or Works, if aggregated (total contract value), would exceed the EU Threshold.

19.3. Where the University seeks to establish a Framework Agreement or Dynamic Purchasing System it shall be let and used in full accordance with the Relevant Legislation and terms of the Framework Agreement or Dynamic Purchasing System.

## 20. Standard Procurement Documents

20.1. Staff must use standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents to conduct any Procurement or contracting activity that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works.

20.2. Standard Procurement Documents are stored and maintained by the Procurement and can be obtained in consultation with a Procurement Officer.

20.3. Where it is necessary to vary the standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents member of staff must consult with Procurement.

20.4. Where it is necessary to vary the standard terms and conditions of contract or relevant Framework Agreement or Dynamic Purchasing System documents the staff must consult with Legal Services.

20.5 A Supplier’s standard terms and conditions should not be used. Where a Supplier seeks to engage on their standard terms and conditions or other contracting basis Officers should liaise with Procurement for further guidance.

## 21. Procurement process for lower value purchases.

21.1. This procedure should be used for Contracts for Goods and Services up to and including the Threshold “Total Contract Value” as set out in the Financial Regulations 12.4 (<http://www.exeter.ac.uk/media/universityofexeter/financeservices/secure/Finance_Regulations_Feb_2019_-_2.pdf>) where there is a suitable Framework Agreement, Dynamic Purchasing System or Contract approved by Procurement that Framework Agreement, Dynamic Purchasing System or Contract shall be used, provided that such a course of action achieves the principles of Value for Money.

21.2. Where no suitable Framework Agreement, Dynamic Purchasing System or Contract is available then achieving Value for Money is the primary objective and member of staff is required by these Rules to achieve a minimum of one written Quotation to demonstrate compliance.

21.3. Where compliance with the principle of Value for Money cannot be demonstrated by seeking one (1) written Quotation, Staff shall seek more than one (1) to demonstrate compliance.

21.4. Staff may choose to either:

a. place an order with the selected supplier on the basis of a pre-quoted price (such as in a supplier’s catalogue) having satisfied themselves that the price to be paid represents Value for Money; or

b. select a minimum of one potential Candidate to be invited to submit a Quotation.

21.5. Where the member of staff is unable to select a potential Candidate and/or demonstrate Value for Money the procedure set out at *section 22.* must be followed.

21.6. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the University’s standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these. Staff should liaise with Procurement and/ or Legal Services in this case.

21.7. Unsuccessful Suppliers shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Suppliers.

21.8. Staff must document their decision-making process to demonstrate compliance with this *section 21. Procurement process for lower value purchases*.

21.9. Staff must inform Procurement of the Contract details, such that a record can be made on the University’s Contracts Register.

## 22. Request for Quotation

22.1. This procedure should be used for Contracts for Goods and Services up to and including the Threshold as set out in the Financial Regulations 12.4 (<http://www.exeter.ac.uk/media/universityofexeter/financeservices/secure/Finance_Regulations_Feb_2019_-_2.pdf>) where there is a suitable Framework Agreement, Dynamic Purchasing System or corporate Contract approved by the Procurement that Framework Agreement, Dynamic Purchasing System or corporate Contract shall be used.

22.2. Where no suitable Framework Agreement, Dynamic Purchasing System or corporate Contract is available then achieving Value for Money remains the primary objective and the Staff is required by these Rules to achieve a minimum of three Quotations.

22.3. If the Staff cannot obtain three Quotations the Staff must satisfy themselves that they have achieved Value for Money and must seek approval from the appropriately empowered staff as set out in the Financial Regulations Scheme of Delegation. Justification and approval to proceed must be recorded and available for inspection.

22.4. The Procurement Documents should (but taking into account proportionality in relation to the value) include:

a. the University’s standard terms and conditions of contract, the standard form of contract and/or bespoke terms;

b. the specification;

c. the pricing schedule;

d. the ordering procedures;

e. commercially confidential information schedules;

f. completion requirements;

g. the Selection Questionnaire;

h. the Award Criteria;

i. the submission requirements; and

j. a named contract manager.

22.5. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the University’s standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these.

22.6. Unsuccessful Suppliers shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Suppliers.

## 23. Procurement processes requiring Invitations to Tender

23.1. This procedure should be used for Contracts for Goods and Services or for Works up to and including the Threshold “Total Contract Value” as set out in the Financial Regulations 12.4 (<http://www.exeter.ac.uk/media/universityofexeter/financeservices/secure/Finance_Regulations_Feb_2019_-_2.pdf>) but less than the EU Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by Procurement that Framework Agreement or Dynamic Purchasing System shall be used.

23.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available Staff is required by these Rules to invite Tenders from any and all qualified Suppliers by advertising the opportunity via the University’s Electronic Tendering System and in Contracts Finder.

23.4. The advertisement must include:

a. the time period within which interested parties may express an interest in Tendering; and

b. the method by which such interest shall be expressed.

23.5. All parties who have expressed an interest will be provided with access to the tender documents, specifying a reasonable period for Tenders to be returned.

23.6. The Procurement Documents must include:

a. instructions to Suppliers;

b. the University’s standard terms and conditions of contract and/or bespoke terms;

c. form of tender;

d. certificate of non-collusion;

e. the specification;

f. the pricing schedule;

g. commercially confidential information schedules;

h. completion requirements;

i. the Selection Questionnaire;

j. the Award Criteria;

k. the submission requirements; and

l. a named contract manager.

23.7. The successful supplier and unsuccessful Suppliers shall be notified of the outcome by issue of a letter sent electronically via the University’s Electronic Tendering System. Unsuccessful Suppliers shall at their request be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Suppliers.

23.8. A Purchase Order must be raised.

23.9. A Contract award record must be made on the University’s Contracts Register and Contracts Finder.

## 24. Procurement processes over the EU Threshold

24.1. For Contracts at and above the EU Threshold for Goods and Services or for Works where there is a suitable Framework Agreement or Dynamic Purchasing System approved by Procurement that Framework Agreement or Dynamic Purchasing System shall be used.

24.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available the Staff is required by these Rules to invite Tenders from any and all qualified Suppliers by advertising the opportunity via the University’s Electronic Tendering System, in Contracts Finder and in the OJEU.

24.3. In most cases, the Open procedure, shall be used, but in certain specialist cases, Restricted procedure or Competitive Procedure with Negotiation, the Negotiated Procedure without Prior Publication, Competitive Dialogue procedure or Innovation Partnership procedure shall apply. The Procurement Officer will determine which procurement procedure will be followed based on the value, complexity & risk associated with the planned spend t in conjunction with Legal Services.

24.4. In all cases the Relevant Legislation shall be followed to conduct the Procurement and contracting activity.

24.5. The Procurement Documents must include:

a. instructions to Suppliers;

b. the University’s standard terms and conditions of contract, the standard form of contract and/or bespoke terms;

c. form of tender;

d. certificate of non-collusion;

e. the specification;

f. the pricing schedule;

g. commercially confidential information schedules;

h. completion requirements;

i. the Selection Questionnaire;

j. the Award Criteria;

k. the submission requirements;

l. any other requirements as mandated by the Relevant Legislation; and

m. a named contract manager.

24.6. The successful supplier and unsuccessful Suppliers shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.

The form of Contract should be agreed with Procurement and/ or Legal Services and issued with the Procurement Document.

24.7. A Purchase Order must be raised. Additionally, where a separate Contract (as opposed to the standard Terms and Conditions) has been agreed as part of the procurement process, on conclusion of the Procurement, this will need to be signed and dated [reference contract signing guidance], and a signed copy of which should be held by Legal Services, the University customer/s & the suppliers.

24.8. A Contract award record must be made on the University’s Contracts Register, in Contracts Finder and in the OJEU.

## 25. Light Touch Regime

25.1. Certain Services Contracts and determined Threshold, as defined in the Relevant Legislation, are not subject to its full rigour. However, the University will remain bound by the Treaty Principles and therefore Staff must ensure that the procedure used is compliant in all respects.

25.2. As a minimum the Staff must invite Tenders from any and all qualified Suppliers by advertising the opportunity via the University’s Electronic Tendering System, in Contracts Finder and in the OJEU where determined Threshold applies.

25.3. Where the Staff believes that their Contract falls within the Light Touch Regime they must consult with Procurement prior to commencing any Procurement or contracting activity.

## 26. Selection Criteria

26.1. The Selection Questionnaire shall be used to assess a Candidate’s ability to meet the University’s requirements or minimum standards of suitability, capability, legal status or financial standing.

26.2. Subject to this *section 26. Selection Criteria* for all Contracts over the Total Value of £50,000 the Staff shall include the Selection Questionnaire within the Procurement Documents.

26.3. For Contracts with a Total Contract Value of less than or equal to £50,000 the Staff may choose to include the Selection Questionnaire within Quotations and may take advice from Procurement where necessary.

26.4. In any case where the Selection Questionnaire (SQ) is used its use must be relevant and proportionate to the subject matter of the Contract (going no further than is needed to achieve the University’s objective). In particular, where the Total Contract Value is less than the EU Threshold, the Staff must make an assessment of the requirements of the Contract and decide how far it would be appropriate to use any or all of the questions in the Selection Questionnaire. Should the Staff propose to add additional questions to the SQ this should be agreed with the Procurement Team. Any derogations to the standard SQ should be reported to Crown Commercial Services.

26.5. Where the Total Contract Value is at or above the EU Threshold the questions in Part 3 of the Selection Questionnaire are optional and should be used only if each such question is:

a. relevant to the subject-matter of the Procurement; and

b. proportionate.

26.6. Selection Criteria must not include:

a. Award Criteria;

b. Non-commercial Considerations;

c. criteria that is not related and proportionate to the subject matter of the Contract.

Staff shall consult with Procurement for advice and guidance on the appropriate use of the Selection Questionnaire and Selection Criteria prior to issuing the Procurement Documents.

26.7. The selection of Suppliers shall only be on the basis of the Selection Questionnaire and only where the Selection requirements are made available to potential Suppliers within the Procurement Documents.

26.8. Staff may reject Suppliers that fail against the mandatory and discretionary criteria as detailed within the Selection Questionnaire only in conjunction with Procurement and Legal Services, where relevant.

## 27. Award Criteria

27.1. Staff must include the Award Criteria within the Procurement Documents.

27.2. The Award Criteria shall be used to assess a Candidate’s ability to deliver the University’s requirements under the Contract, achieving Value for Money.

27.3. The Contract shall be awarded to the Candidate whose Tender best meets the Award Criteria.

27.4. Contract Award must be made on the basis of MEAT, taking criteria that are proportionate to and linked to the subject matter of the Contract, which might include:

a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;

b. organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;

c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion; and

d. whole life costs (the initial price, running costs, maintenance, disposal, etc. for the duration of the Contract).

27.5. Staff shall consult with Procurement for advice and guidance on the appropriate use of the Award Criteria prior to issuing the Procurement Documents.

27.6. For Quotations up to and including Total Contract Value of £49,999 the successful supplier may be selected on the basis of lowest price. If you have concerns regarding the preparation of the specification ,please liaise with Procurement.

27.7. The award of the Contract shall only be on the basis of the Award Criteria and only where the Award requirements are made available to potential Suppliers within the Procurement Documents.

## 28. Most Economically Advantageous Tender

28.1. Award Criteria shall be comprised of both commercial and quality considerations, which shall be set out in the Procurement Documents and is normally a ratio of 60 Quality: 40 Price with agreed sub criteria and weighting); weighted in favour of Quality, although Staff, in agreement with Procurement may vary the given ratio.

## 29. Performance bonds and parent company guarantees

29.1. Staff must consult the Deputy Director Operations and Procurement (who will consult with Legal) concerning whether a performance bond is needed where:

a. the Total Contract Value is at or above 1,000,000; or

b. where it is proposed to make stage or other payments in advance of receiving the whole of the Contract and there is a concern about the stability of the Candidate.

29.2. Staff must consult the Deputy Director Operations and Procurement (who will consult with Legal) concerning whether a parent company guarantee is needed where:

a. the Total Contract Value exceeds the EU Threshold; or

b. the award of the Contract is based on the evaluation of the parent company or there is some concern about the stability of the Supplier.

## 30. Terms and conditions of Contracts

30.1. All Contracts, regardless of value, shall be accompanied either by the University’s:

a. standard terms and conditions of contract; or

b. the standard form of contract; or

c. bespoke terms.

30.2. Whilst some of the terms of the Contract are able to be amended or removed, the following is a list of all of the terms that are deemed to be mandatory and must therefore be included any variation from the model Terms should be discussed with Procurement and Legal first:

a. no assignment of the Contract without the written consent of the University;

b. no sub-contracting of the Contract without the written consent of the University;

c. cancellation in the event that gratuities, inducements or any other type of consideration in relation to the Contract are offered to an employee, member or any persons or organisations acting on behalf of the University;

d. compliance with all Relevant Legislation, including, but not limited to:

(i) Data Protection Act 2018

(iii) Fraud Act 2006

(iv) The Equality Act 2010

(v) The Bribery Act 2010

(vi) Modern Slavery Act 2015

(vii) Legislation pertaining to money laundering;

(viii) and any subsequent legislation that seeks to amend or replace the Relevant Legislation;

e. a statement of the University’s obligations towards its transparency requirements under the Freedom of Information Act 2000;

h. Insurance;

i. protection of personal data – including, where relevant, reference to export of data outside the European Economic Area (Privacy Shield USA) and/or the General Data Protection Regulation (GDPR;

j. confidentiality of sensitive commercial information;

k. dispute procedure;

l. governing law and jurisdiction should be English Law and the Courts of England;

m. prompt payment and the obligation for Suppliers to pay their sub-contractors promptly, in accordance with the Small Business, Enterprise and Employment Act 2015;

n. where the Contract is for the employment of persons or organisations acting on our behalf, a statement that obliges them to fully comply with these Rules, as per *section 1.5*.

30.3. Where the Contract provides for the appointment of a nominated sub-contractor Staff will ensure that the terms and conditions of contract are passed to the main contractor in a way that ensure that they are responsible for ensuring that the nominated sub-contractor is subject to and meets the same requirements as the main contractor, including, but not limited to, the following:

a. the mandatory clauses identified in these Contract Procedure Rules and Standing Orders;

b. supporting the local economy and promotion of local employment; and

c. vetting to Enhanced Disclosure level where required.

## 31. Protection of personal data

31.1. Staff must take all reasonable steps, including incorporation of clauses into Contracts with Suppliers, to ensure that the personal data of individuals is protected in accordance with the Data Protection Act 1998, allied legislation and Codes of Practice from the Information Commissioner’s Office (ICO). Staff must ensure the University’s obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Data Protection & Freedom of Information Team.

## 32. Confidentiality of sensitive commercial information

32.1. Staff must take all reasonable steps, including incorporation of clauses into Procurement Documents and Contracts with Suppliers, to ensure that the confidentiality of sensitive business information such as details of pricing and trade secrets are protected in accordance with the Relevant Legislation and guidance. Staff must ensure the University’s obligations and risks, in respect of the business information of both the University and Suppliers, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services.

## 33. Submission, receipt and opening of Tenders

33.1. All Contracts at and above the Total Contract Value of £50,000 shall be submitted electronically through the University’s Electronic Tendering System.

33.2. Tenders received after the stated date and time shall not be accepted by Procurement Team under any circumstances. For the purposes of these Rules the time will be deemed to be 12(noon) as set out in the ITT.

33.3. Submissions shall be verified and opened on the University’s Electronic Tendering System by a Procurement Officer as set out in Financial Regulations Scheme of Delegation.

## 34. Evaluation of Quotations and Tenders

34.1. All submissions received for Contracts at and above the Total Contract Value of £50,000 shall be evaluated in accordance with the pre-determined Selection and Award criteria, as set out in the Procurement Documents.

34.2. Staff shall ensure that subject-matter experts or appropriately experienced staff evaluate all submissions in accordance with the pre-determined Selection and Award criteria. For Procurement processes with a Total Contract Value at and above £50,000 Staff engage with a Procurement Officer for assistance in managing the evaluation procedure.

34.3. Staff is obliged to check the arithmetic calculations in compliant submissions. Where arithmetical errors are found they must be notified to the Candidate, who must be requested to confirm or withdraw their submission.

34.4. Staff must notify all Suppliers in writing simultaneously and as soon as possible of the intention to award the Contract. Where the Total Value of the Contract is in excess of the EU Threshold then the Relevant Legislation shall be adhered to in respect of the content of the letter and the Standstill Period.

34.5. Apart from the debriefing required or permitted by these Rules the confidentiality of submissions and the identity of Suppliers must be preserved at all times and information about one Candidate’s submission must not be supplied to another.

34.6. The results of the Tender evaluation must be recorded and retained on the Tender file within the e-Tendering System.

## 35. Presentations, demonstrations and site visits

35.1. Where it is decided to hold a presentation, demonstration or site visit Staff must consult the Procurement for advice.

35.2. Where used, all Suppliers must be invited to present or be included in any site visits and Staff must prepare any questions to be asked of Suppliers in accordance with the Treaty Principles and where appropriate send to them in advance, unless presentations, demonstrations and site visits will be a key part of a complex Procurement route, in which case Staff may invite only shortlisted Suppliers to participate (a complex Procurement route shall mean a restricted, competitive procedure with negotiation, competitive dialogue or innovation partnership, as defined by the Relevant Legislation).

## 36. Abnormally low bids

36.1. Staff may reject a Tender as being abnormally low, but only after they have first:

a. been presented with the supplier’s commercial information from Procurement and consulted with a Procurement Officer;

b. requested in writing an explanation from the supplier for those parts of the Tender considered abnormally low;

c. taken account of the evidence provided in response to such a request;

d. verified to the suppliers those parts of the Tender considered abnormally low;

e. and only where the explanation provided by the suppliers does not satisfactorily account for the low price or costs proposed.

36.2. Where Staff establishes that the Tender is abnormally low because the Candidate has obtained State Aid, the Tender will be rejected on that basis, but only after Staff has first:

a. consulted with the supplier;

b. consulted with Legal Services; and

c. where the supplier is unable to prove that the aid in question is compatible with the regulations governing State Aid.

36.3. Where the Staff rejects a Tender on the basis of its incompatibility with the State Aid regulations they will inform the European Commission, following consultation with the Legal Services and Procurement.

## 37. Contracts exceeding the written estimate

37.1. Where the lowest Quotation or Tender obtained exceeds the threshold under which the Procurement activity has been conducted the Staff must consult with Procurement for approval to proceed or restart the process.

## 38. Clarification

38.1. Seeking clarification of a Tender to Suppliers is permitted with the approval of Procurement:

a. in writing via the University’s Electronic Tendering System;

b. at a meeting, provided that a written record is made of the meeting; and

c. in a way that is fair, transparent and equal to all Suppliers.

38.2. There must be no significant variation of the Procurement Documents or standard terms and conditions of contract following such clarification.

38.3. Where a clarification results in a fundamental change to the specification, terms and conditions of contractor value of the Contract must not be awarded but re-tendered.

## 39. Post-Tender negotiation

39.1. Discussions with Suppliers after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content must be the exception rather than the rule.

39.2. Staff must seek approval from Procurement to proceed to post-Tender negotiation.

39.3. Any approved negotiation must be conducted in line with the relevant Legislation and Treaty Principles.

39.4. Negotiations must be conducted by a team of at least two staff, one of whom must be from a team or department independent to that leading the negotiations, preferably a member of Procurement. Where the second staff chosen to participate in the negotiations is not a member of the Procurement. Staff must request the Procurement’s approval of the proposed personnel.

39.5. Wherever practicable Staff must ensure that there are recorded minutes of all post-Tender negotiation meetings and that both parties agree actions in writing, which will assist the University in significantly reducing the risk of successful legal challenges on the grounds of discriminatory negotiation.

39.6. Where a post-Tender negotiation results in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered.

## 40. Electronic auctions

40.1. Electronic auctions may be used as part of the Procurement process as a means of driving additional commercial benefits and as part of the Award Criteria.

40.2. The use of electronic auctions must be specified within the Procurement Documents and the Award Criteria associated with the auction must be clearly defined.

40.3. Where the University uses an electronic auction to enable Suppliers to adjust their Tender price in the light of information from the Tender prices submitted by competing Suppliers then all such alterations to Suppliers’ pricing will be accepted as permitted by the auction process.

## 41. Freedom of Information Act 2000 and Environmental Information Regulations 2002

41.1. There is a presumption that contractual information should be made available for disclosure if requested in accordance with the Freedom of Information Act 2000 and allied legislation unless a relevant exemption is engaged. However, Staff should be aware of; the potentially anti- competitive implications of disclosing detailed contractual information in the period around a Procurement process taking place, and the confidentiality specifically applied to some business information identified in some Contract documentation.

41.2. Before responding to requests for information Staff must seek guidance from the Data Protection & Freedom of Information Team and Legal Services.

## SECTION D: Contract Award

## 42. Intention to award a Contract

42.1. For Contracts over the EU Threshold, Procurement Officers must allow Suppliers a mandatory minimum Standstill Period of ten (10) calendar days for electronic Tenders from notification to all Suppliers before entering into a contractually binding agreement with the successful Supplier(s). It is most important that any communication with the preferred supplier(s) does not constitute a Contract award, conditional or otherwise.

42.2. Following any Standstill Period, if appropriate, an OJEU award notice must be placed by Procurement.

42.3. All Suppliers must be simultaneously notified in writing of the award and all letters to informing them of the outcome of the Tender must comply with the Relevant Legislation.

42.4. Additional written or verbal debriefing must not be offered to Suppliers. Where debriefing is requested by Suppliers, Staff must seek advice from Procurement before responding to the request.

42.5. Any complaints, correspondence threatening challenge or formal court proceedings challenging the decision, received from unsuccessful Suppliers or other third parties must be immediately submitted to Procurement and Legal Services for review and response. The ITT should set out the named member of Staff for any formal Court proceedings should be sent to safeguard the University’s response as being appropriate, timely & led/guided by Legal.

42.6. A Standstill Period is not necessary for Tenders below the EU Threshold or where they have been subjected to the Light Touch Regime. However, Staff may use their discretion and include such a period as is required. Such discretion shall only be granted where Staff has consulted with the Procurement. Where Procurement advises that a Standstill Period is necessary to minimise the risk of a legal challenge, Staff will include the period in the Procurement process. In any case, all Suppliers must be simultaneously notified in writing of the outcome of the Tender.

42.7. Where an unsuccessful Suppliers requests debrief information Staff may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on Staff to do so for under EU Threshold Tenders.

## 43. Approval to award

43.1. Approval to award a Contract, Framework Agreement or Dynamic Purchasing System can only be given as set out in the Financial Regulations Scheme of Delegation.

## 44. Signing of Contract

44.1. Staff must ensure that all the necessary permissions are in place (e.g. funding commitments, licences, and leases) before the Contract is entered into.

44.2. All Contracts made on behalf of the University must be in writing and cannot be made by an email. Staff must ensure that:

a. for Contracts up to and including the Total Contract Value of £49,999 a Purchase Order referring to the University’s standard terms and conditions of contract; or

b. for Contracts over the Total Contract Value of £50,000 a Purchase Order and a signed Contract, is in place before any Goods, Services or Works are requested or allowed to begin.

44.5. Staff responsible for securing signatures must ensure that the person signing on behalf of the Supplier has the authority to bind it.

44.6. A Contract is to be executed as a Deed (under seal) where:

a. the University may wish to enforce the Contract more than six (6) years after its end (e.g. construction works); or,

b. the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works (e.g land, construction and where there is no consideration e.g. settlement agreement);

44.7. The Deed must be sent to Legal Services to be sealed and signatures obtained as set out in the Financial Regulations and Scheme of Delegation.

## 45. Letters of intent

45.1. Letters of Intent shall only be used in exceptional circumstances and may only be signed by members of Staff with delegated authority to do so under the University’s Scheme of Delegation. Such exceptional circumstances shall only be determined by Procurement in conjunction with Legal Services and as such Staff must seek advice on their acceptable use.

## 46. Early Termination of Contract

46.1. The date on which the Contract will terminate, and the terms on which the Contract may be terminated early (e.g. for breach of Contract) must be clearly described within the Contract.

46.2. Contracts may only be terminated early in accordance with their terms and conditions of contract, with approval in accordance with the University’s Scheme of Delegation.

## 47. Variation, extension, assignment and novation

47.1. Variation

a. A variation to a Contract may involve:

(i) a change to the specification,

(ii) a one-off item of work or particular service, or

(iii) change in terms affecting the Contract.

b. Variations must not exceed the scope, financial value or duration of the advertised Contract or EU regulations governing this.

c. Where Staff considers that a proposed variation may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the Procurement

d. Variations to Contracts must be approved and signed by the relevant member of Staff in accordance with the University’s Scheme of Delegation.

47.2. Extension

a. Extensions of Contracts may only be made where the additional duration is documented in the contract and:

(i) there is budgetary provision; and

(ii) Value for Money can be clearly demonstrated; and

(iii) for Contracts below the EU Threshold:

(iv) the extension is within the scope (description of Goods, Services or Works, duration and Total Contract Value); and

* there is a provision stipulated in the original Contract for an extension;
* the extension does not cause the Total Contract Value to exceed the relevant EU Threshold; or
* a waiver request form is completed where no specific provision exists in the Contract;

for Contracts at or over the EU Threshold:

* the extension is within the scope (description of Goods, Services or Works, duration and Total Value) of the original Contract; and
* the original Contract Notice advertised and the Contract permits the extension.

b. Where Staff considers that a proposed extension may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the Procurement.

c. Extensions to Contracts must be approved and signed by the relevant staff in accordance with the University’s Scheme of Delegation.

47.3. Assignment and Novation

a. In the event of Staff becoming aware that a Supplier is entering into a change of control, insolvency, bankruptcy, receivership or liquidation Staff must inform the Procurement and Legal Services immediately. The Supplier shall only be permitted to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the University. The University reserves the right to decline a Supplier that is deemed to be not suitable. If a suitable alternative is not identified the Contract must be re-Tendered.

47.4. General

a. Any approved variation or extension must be by deed or Contract variation, which will be contractually binding on both parties.

b. Variations, extensions, assignments and novations must only be signed by staff with the delegated authority to do so by reference to the University’s Scheme of Delegation.

c. For Contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in additional costs exceeding 10% of the original contract value should seek advice from Legal Services.

e. Staff responsible for securing the signature/s must ensure that the person signing on behalf of the Supplier has authority to bind it.

f. Staff are responsible for ensuring that all variations, extensions, assignments and novations are stored with the original signed a dated Contract.

## 48. Records of Tenders and Contracts

48.1. Procurement staff must keep and maintain records in respect of each Tender and Contract (such records should include the materials pertaining to all of the stages of the Procurement cycle: from the time the project begins prior to Procurement until the point at which the Contract is signed or a decision is made not to award a Contract).

48.2. Staff shall ensure that original and signed copies of the Contract and Tenders received are safely stored, with Legal Services and accessible in the event of a Procurement audit or where reference to it needs to be made for contract management purposes. An electronic version of the contract should be made and this should be stored with the procurement documents

48.3. A Contracts Register shall be held by Procurement with details of Contracts, Framework Agreements or Dynamic Purchasing Systems entered into by the University. It will be the responsibility of Staff to ensure that details of Contracts, Framework Agreements or Dynamic Purchasing Systems are provided to Procurement for entering onto the Contracts Register.

48.4. Staff must ensure that originals and copies of all Tender and Contract documentation adhere to the University’s retention schedule (<http://www.exeter.ac.uk/media/level1/academicserviceswebsite/it/recordsmanagementservice/Records_Retention_Schedules_May_2018_.xlsx>).

## SECTION E: Contract Management

## 49. Contract manager

49.1. A contract manager must be appointed for all new Contracts and named in the Procurement Documents and Contract.

49.2. Contracts shall be managed in accordance with best practice in the area of supplier relationship and contract management and contemporary advice and guidance provided by Procurement and Legal Team.

## 50. Contract Management

50.1. The contract manager shall ensure that all Contracts with a Total Contract Value over the EU Threshold have a suitable written contract and implementation plan in place before signing the Contract, which shall be prepared to a level of detail proportionate to the risk and value of the Contract.

50.2. As a minimum the contract manager shall monitor the Contract in respect of:

a. performance;

b. compliance with the specification and terms and conditions of contract;

c. cost and Value for Money;

d. user satisfaction;

e. financial standing;

f. insurances; and

g. licenses and permissions to complete the Contract.

## 51. Risk management

51.1. The contract manager must maintain a risk register in line with the University Risk Policy during the contract period highlighting the risk and mitigation strategy for the Contract and, for identified risks, must ensure contingency or risk mitigation measures are in place.

## 52. Payment

52.1. The contract manager shall make arrangements for the Supplier to receive payment in accordance with the terms and conditions of contract.

## 53. Liquidated and ascertained damages

53.1. Liquidated and ascertained damages must be deducted for all periods of delay in line with the terms and conditions of contract.

## 54. Dispute

54.1. The contract manager shall consult with the Deputy Director of Operations and Procurement and Legal Services when they become aware that any significant dispute or claim may arise in relation to a Contract.

54.2. No liability shall be accepted without the approval of staff with the delegated authority to do so under the University’s Scheme of Delegation and as set out at *section*

*43. Approval to award.*

54.3. For the purposes of this *section 54. Dispute* significant shall mean:

a. any dispute that is unable to be resolved via consensual procedures, such as mediation or negotiation and therefore where adjudicative procedures, such as arbitration or litigation are required; and/or

b. any dispute that is likely to lead to a financial claim against the University for a sum exceeding that set out as University limitation of liability within the applicable Contract terms and conditions.

## 55. PCW Waivers

55.1 Under certain limited circumstances staff can seek a waiver from the University’s procurement requirements through seeking a Procurement Competition Waiver (PCW) authorisation. The limited circumstances where this can be applicable are:

a. there is a clear benefit from maintaining continuity with an earlier project. The benefits must outweigh any potential financial advantages to be gained by competitive tendering.

b. the required timescale for delivery precludes competitive tendering and was outside of the University’s control. This condition cannot be applied because of poor internal planning relating to timelines or programme management.

c. the Goods/Services/Works can only be provided by a single particular supplier due to technical reasons.

d. the maintenance or repair of equipment by the manufacturer to maintain warranty, compliance or output consistency (i.e. warranty would be invalided if the equipment was to be maintained or repaired by a party other than the manufacturer) is necessary.

## 56. Non-compliance to the Rules

56.1. Staff are required to comply with the Procurement Procedures at all times.

56.2. 56.3. Where, in consultation with the Procurement and Legal Services, it is determined that the breach can be remedied by taking appropriate steps or measures Staff shall comply with the proposed course of action.

56.4. Where the breach has given rise, or is likely to give rise, to illegality or maladministration **and any breach by a member of staff may be treated as a disciplinary offence.**

56.5. In the event that these Rules are not complied with, this will not invalidate any Contract entered into by or on behalf of the University, except where the Relevant Legislation provides to the contrary.

## SECTION F: Other Relevant Considerations

## 57. State Aid

57.1. In all cases where there is a possibility of the University providing State Aid Staff must seek the advice of the Procurement and Legal Services.

## 58. Development agreements

58.1. In all cases where there is a possibility of the University entering a development agreement Staff must seek the advice of the Innovation Impact and Business (where commercial exploitation opportunities), Procurement and Legal Services.