

SUPPORTING PACK TO EXECUTIVE REPORT

UPDATING THE COUNCIL'S PROCUREMENT AND CONTRACT PROCEDURES (July 2018)

PROCEDURAL NOTE

- **Commercial Assurance and Authorisation**
- **Concessions**
- **Exemptions**
- **Late Submissions**
- **Missing and Omitted Material**

Procedural Note: Commercial Assurance and Authorisation

NOTE: This Procedural Note forms part of the Procurement and Contract Procedures and shall be read in conjunction with those Procedures and any associated Procedural Notes

Background

- 1) The purpose of this Procedural Note sets out the Commercial Assurance and Authorisation Procedure related to third party spend, e.g. what due diligence is necessary and proportional and how contractual spend decisions are to be authorised.
- 2) This Procedural Note does not negate the requirement to follow the Council's formal decision making process. The required decision making process shall be determined in advance.
- 3) All parties involved in the Commercial Assurance and Authorisation Procedure shall give due regard to the Council's Constitution in particular "Delegation to Officers and Deputies" to ensure they have appropriate responsibilities to authorise.
- 4) Assurance and Authorisation is required only at the establishment of the formal overarching contractual arrangements, hence in the case of a framework agreement it would be required to confirm the setting up of the framework but not for the intended subsequent call off's from that framework.

Commercial Assurance and Authorisation Procedure

Authorisation

- 5) Authorisation will be required at three key stages, firstly signing off on the business case stage (the decision for the Council to self-deliver or purchase via a third party), second state at any contract award stage (e.g. decision to appoint preferred supplier), and for higher value spend a third stage of Benefits Realisation. More details are outlined in Table 1 below.
- 6) As part of the Authorisation process consideration shall be made around relevant areas of due diligence. The areas of assurance required will vary depending on the subject matter of the contract.
- 7) The Responsible Officer shall be responsible for carrying out appropriate due diligence to understand proportional risks related to the spend and ensure relevant and proportional means of mitigation are considered. This is to be done in conjunction with relevant Specialist Subject Matter Officers to consider risks and mitigations relevant to their area of expertise. This may include representatives from relevant functional areas of the Council and may include, as appropriate: legal, HR, finance, health and safety, ICT, asset management and others.
- 8) Outcomes shall be documented on the Commercial Assurance Summary.

TABLE 1 – Summary of minimum required Commercial Assurance and Authorisation

Authorisation Levels - Supplies, Works and Services	Authorisation Points	Completion of Endorsement Form required and what stages?	Completion of Commercial Assurance Summary
Total Contract Value Below £25,000	The Responsible Officer with budget responsibilities in the Service area with the requirement will be responsible for taking a proportional approach to justifying the spend and holding all supporting documentation for audit and reporting purposes.	Optional	Optional ¹
£25,000 – below £75,000	Responsible Officer (Service Lead) in consultation with the appropriate Corporate Manager / Senior Management Board (SMB) Member. Service Lead to holding all supporting documentation for audit and reporting purposes.	Yes, both for Business Case and contract award. Optional for benefits realisation	Optional – but preferred if completed ¹
75,000 to Official Journal of European Union (OJEU) for Services Threshold	Appropriate Corporate Manager / SMB Member in conjunction with Corporate Manager – Commercial and Procurement	Yes, both for Business Case and contract award. Optional for benefits realisation	Yes
Above OJEU Threshold for Services up to £500,000	Director / SMB member authorisation and / or Executive Committee	Yes, all stages (e.g. Business Case, contract award, and benefits realisation).	Yes
Over £500,000	Full SMB authorisation and / or Executive Committee	Yes, all stages (e.g. Business Case contract award, and benefits realisation).	Yes

⁻¹ Appropriate Assurance to be undertaken and this may include completion of a Commercial Assurance Summary by the Responsible Officer.

Authorisation Sign off

- 9) Authorisation sign off shall be made using the Commercial Endorsement Form and shall be endorsed by the responsible authorised officers as outlined in Table 1. Where authorisation is via formal board sign off (e.g. Senior Management Board sign off or Executive Committee) then this shall be a record of the date when discussed and any minute reference. Details of the formal decision to be captured in the appropriate minutes.
- 10) In exceptional circumstances, a senior Officer without direct responsibility for the contract may endorse on behalf of the Responsible Officer (e.g. because of absence or logistical urgency). In such cases where endorsing on behalf of the Responsible Officer, then the Responsible Officer with direct responsibility for the contract shall be notified that this has happened. Notification shall be made within 5 working days and shall include a justification for their actions.
- 11) In the case of query or dispute, a then it will be a case of escalating the matter to next Authorisation level point shall be made.

Procedural Note: Concession arrangements

NOTE: This Procedural Note forms part of the Procurement and Contract Procedures and shall be read in conjunction with those Procedures and any associated Procedural Notes

1. Background

- 1 This Procedural Note shall apply in all situations where Concession arrangements are to be considered.
- 2 In the consideration of Concessions the Council will be the “grantor” granting a person or supplier (the concessionaire) the right to operate - usually as the sole seller of certain goods or services – as a business within a premises or other asset belonging to the grantor in return for an appropriate fee. The concessionaire pays the grantor.
- 3 What could be considered as a Concession arrangement:
 - i. A concession contract is a mutually binding contract for buying works or services by the Grantor entrust the delivering of outcomes to one or more concessionaire.
 - ii. Consideration in a Concession arrangement consists in the right to exploit the work, or services, that are the subject of the contract, or that right to exploit together with a payment.
 - iii. The transfer to the concessionaire of the right to exploit the works or services shall always imply an operating risk of economic nature involving the possibility that it will not recoup the investments made and the costs incurred in operating those works or services. This means that under the contract, the concessionaire should not enjoy a guarantee of breaking even on investments and costs incurred.
 - iv. The concessionaire must be exposed to a potential loss on its investments and costs, and it should not be merely nominal or negligible risk.
 - v. Concession arrangement may involve a transfer of ownership to the Council.
 - vi. The Council will always obtain the benefits of the works or services in question rather than the concessionaire.
- 4 What is not a concession?
 - i. Activities covered by other legislation for example the Public Contracts Regulations or Utilities Regulations.
 - ii. An outsourcing contract or privatisation.
 - iii. A land lease contract.
 - iv. The financing for works or services i.e. a grant.
 - v. If customers have a choice between providers that are delivering the same service.

- vi. Licenses where Government or public authorities (not contracting authorities) establish conditions and an economic operator can withdraw from provision of that service, are not concessions but would fall under Directive 2006/123/EC Service Directive.
 - vii. When an economic operator has a right to exploit public domains such as maritime, inland ports or the airport sector. These involve general conditions for their use without the procurement of specific works and services.
 - viii. An agreement that grants the right of way covering the utilisation of public immovable property, fixed lines or networks.
 - ix. Where no payments are made but the contract is remunerated on the basis of regulated tariffs calculated to cover all costs and investments borne by the concessionaire for providing the service.
 - x. A contract is not a concession if the contracting authority or utility relieves the concessionaire of any loss by guaranteeing minimal revenue equal or higher to the investment made and the costs the economic operator has to incur.
- 5 There are several commercial drivers behind concessions considerations:
- i. To seek or generate future commercial income or revenue for the Council.
 - ii. To derive community benefit or contribute to the quality of life for the people living in, or visitors.
 - iii. To sustain business and employment.
 - iv. To improve well-being by enabling people to use public open space.
 - v. To improve security of assets through public presence.
- 6 Examples of Concession arrangements are but not limited to catering (cafés, kiosks, restaurants, mobile catering) sports (water sports, tennis coaching, fitness classes, cycle speedway) play (miniature railway, crazy-golf,) and clubs (bowling, surf lifesaving, rowing, etc).

2. General

- 7 In consideration around whether to pursue a Concession arrangement relevant due diligence shall be undertaken to establish the scale of any opportunity and value of any possible concession, and as such this should include any relevant market research.
- 8 The Council shall:
- i. Apply the principles of equal treatment, non-discrimination and transparency in its approach to consideration of concession arrangements, and in doing so assessing and managing any conflicts of interests.

- ii. Maintain confidentiality in respect of consideration of potential concessionaire proposals and any resulting concession awarded, but in doing so not to prejudice wider requirements of disclosure of information, for example in provision of Notice of award in the case of the case of above threshold concessions, Transparency Agenda requirement to publish contract details and wider Freedom of Information (FOI) requirements.
 - iii. Seek to openly and proportionally advertise any proposed concession arrangement – and allow suitable time for potential concessionaires to submit any proposals taking into account complexities and risks.
 - iv. Whilst no duty on the Council to advertise outcomes of below threshold awards the Council shall seek to apply an approach where details are advertised, and captured onto the Contract Register.
 - v. Undertake all necessary due diligence that it has the authority and jurisdiction to enter into a concession – in doing so consideration of the Council’s Commercial Assurance Summary should also be applied, seeking to ensure that all relevant subject matter experts are engaged in the overall process.
- 9 At the time of advertising a Concession arrangement all required information is provided to enable due consideration by potential concessionaries to undertake related to any proposed submission, to include:
- i. Clearly set out the subject matter of any proposed concession.
 - ii. Setting out any proposed conditions and caveats on potential concessionaires – including setting out any mandatory exclusion grounds related to entities looking to make a submission.
 - iii. Timeframes around any award, including options to extend.
 - iv. Details on the process to be followed and how concession submissions are to be considered and evaluated. The award criteria shall be proportional to the subject matter of the Concession arrangement.
 - v. Setting out risks and liabilities related to any resulting concession and where and how these are to be aligned in the granting of any concession.
- 10 Ensure that where a concession is granted that it is supported by a formal contract. The contract shall include:
- i. Capture details set out in the concession pack and the submission (and any resulting clarifications) from the concessionaire.
 - ii. Details on term of the concession and termination including any grounds for early termination.
 - iii. Grounds and procedure to be followed in consideration of any moderation or variation under the contract – noting that any variation beyond 10% of the commercial value shall be deemed as a material change and not permitted under the current contract.
 - iv. Consideration of risks and liabilities seeking to reduce risk exposure for both parties.
 - v. Contract management arrangements need to be proportional.

- 11 If a concession opportunity does not require investment from the concessionaire then the recommended maximum duration of the concession contract shall be no longer than 5 years.
- 12 For concession contracts lasting more than 5 years, the maximum duration of the concession contract shall not exceed the time that a concessionaire could reasonably be expected to take to recoup the investments made in operating the service together with a return on invested capital taking into account the investments required to achieve the specific contractual objectives.
- 13 The investments taken into account for the purposes of the calculation of the time period include both initial investments and investments during the life of the concession contract.

Value of Concession at or above threshold

- 14 The Council shall observe and apply the Concessions Contract Regulations 2016 (CCR16) where the values applies to concession contracts with a value greater than the threshold of as set out and calculated in line with Regulation 9 of CCR16– regardless of categorisation (works or services), see http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi_20160273_en.pdf

Below Threshold Concessions

- 15 The principles set out in this Procedural Note shall apply for Concession arrangements not covered by CCR16, with proportional consideration of CCR16 requirements taken into account.

Other Points of Consideration

- 16 In the context of business premises, the key issue is whether or not the business occupation might attract the protection of the Landlord and Tenant Act 1954 (“LTA 1954”), either utilizing a protected or unprotected lease.
- 17 Matters related to occupancy, leases and any implications on Tenancy and considerations on any Licencing matters shall be referred to Property Services.
- 18 Concession arrangements shall be considered in conjunction with both the Council’s Procedural Note: Commercial and Assurance Procedure.
- 19 To minimise risks and benefits for the Council, the Responsible Officer is responsible for consulting and seeking specialist support, the following service areas as a minimum are required to be consulted at the outset of any work in relation to Concession arrangements:
 - i. Procurement Team
 - ii. Property Team
 - iii. Legal Services

Procedural Note – Exemptions

NOTE: This Procedural Note forms part of the Procedures and shall be read in conjunction with the Procedures and any associated Procedural Notes

Background

1. This Procedural Note outlines the steps to be undertaken where the Procedural are not able to be followed for a specific reason.
2. Where this is the case, this Exemption Procedural Note is intended as a means of providing formal authorisation for “exemption” from specific elements of the Procedures.
3. The approval of an Exemption does not remove the requirement for procurements to follow the Council’s formal decision making processes.
4. Any Exemption granted over the [OJEU Threshold](#) approves only the anticipated non-compliance with the Council’s Procedures. It does not mitigate the risks associated with non-compliance with the UK Public Contract Regulations or the EU Procurement Directive as applicable.

Overview of the process

General

5. This Procedural Note shall:
 - i. Help to mitigate risks of challenge from third parties in how the Council procures Supplies, Works and Services.
 - ii. Improve transparency and probity in how decisions are made.
 - iii. Help to manage, control and mitigate other risks.
6. Having relevant contract management arrangements and/or forward plans in place identifying future needs will help to minimise the need for Exemptions.
7. In the majority of cases, Exemptions shall only be considered for periods of 12 months or less. If arrangements are required beyond 12 months this shall be justified in the Exemption Form for consideration and will be subject to an annual review should the Exemption be approved.
8. In all cases Exemptions shall be completed in advance of committing spend. Where this is not the case then the Commercial Manager – Commercial and Procurement shall be informed.
9. Where the Exemption relates to a significant and serious failure to comply with the Procedures then a breach of the Procedures shall be considered.
10. Every effort shall be taken to ensure that the details included and signed off within the Exemption are accurate and sufficient for the intended purposes. If during the Exemption period there is any change, this should be updated as part of the recording process.

11. Exemptions shall be completed using the most recent template which is available on the Intranet page.
12. Exemptions should not be used to overcome poor planning of activities leading to the procurement.
13. Exemptions shall only be granted on the following grounds:
 - i. **Increased cost / loss of income:** The Council will incur unforeseen, significant and avoidable costs or lose significant income that cannot be mitigated in compliance with the Procedures.
 - ii. **Limited markets:** The market is a monopoly or no competition is likely to be stimulated through a formal procurement process. There is a requirement to demonstrate that the market is limited and not able to be suitably stimulated to create competition within the Regulations. Justification may include market intelligence including soft market consultation although risk related to over OJEU contract values is significantly reduced where open competition has been sought and a Voluntary Transparency Notice (VTN) has been published. Further guidance is available in the Pre-Procurement Market Consultation Guidance.
 - iii. **Reputational damage:** Failure to act promptly would have a serious, damaging and long term impact on the reputation of the Council, that from a time perspective the Council cannot afford to be mitigated through a formal tendering process

Procedure and Approval

14. The Responsible Officer within the Service shall be required to explore the suitability of the use of an Exemption, giving due consideration to:
 - i. Options and alternatives
 - ii. Risks, and associated mitigating actions
 - iii. The rationale for the Exemption and what will happen to avoid the need to seek further Exemptions on expiry
15. The Responsible Officer shall complete the relevant up to date [Exemption Form](#) and will send it to the Procurement Team for review and comment.
16. In completing the Exemption Form, the Responsible Officer shall be responsible for providing the relevant factual and supporting information.
17. On completion of the Exemption Form, the Responsible Officer seeks the appropriate authorisation sign off dependent on the value of the Exemption as explained below.

Exemption value	Required Service approval signed in this order;
£10k and under	No formal Exemption Form required (although Responsible Officer will be required to have suitable evidence to justify decision for audit / transparency purposes).
Over £10k up to £25k	Responsible Officer and Corporate Manager / SMB representative for the Service area.
Over £25k up to OJEU value for Services*	Corporate Manager / SMB member for the Service area, and Commercial Manager – Commercial and Procurement.
Over OJEU value for Services*	Director / SMB member for the Service area, Portfolio Holder and Corporate Manager – Commercial and Procurement.

*For the purpose of Exemptions this OJEU threshold also applies to Supplies and Works

18. If the Corporate Manager – Commercial and Procurement considers the grounds for the Exemption not suitable then they shall seek to resolve this directly with the Responsible Officer, clearly stating what steps they consider necessary to either make the sign off appropriate or what alternative actions would need to be undertaken.
19. Where this cannot be resolved then the matter shall refer the matter to the Section 151 Officer to determine an agreed position.
20. Once signed off and approved all Exemption forms shall be forwarded to Procurement Team for retention and registration of relevant details on the Exemption Register.
21. Following approval of the Exemption by all required parties the Responsible Officer shall ensure that the resulting Contractual arrangements are put in place, this may include but not limited to:
 - i. Signed / sealed contract
 - ii. Contract management arrangements
 - iii. Specification
 - iv. Intention to award communications
 - v. Contract Variation
 - vi. Key performance indicators

Reporting

22. Exemptions (including those that are retrospective), are reported to Senior Management Board, the Portfolio Holders, Section 151 and Monitoring Officer on a quarterly basis.

Appendix 1 Roles and responsibilities

Table 1 below highlights the respective roles and responsibilities of the signatories to the Exemption Approval Form.

SIGNATORIES	ROLES AND RESPONSIBILITIES
Corporate Manager	<ul style="list-style-type: none"> • Acknowledgement and acceptance of the existence and details as set out in the Exemption form. • Understanding the position as set out within the Exemption form and being satisfied that the recommendation is appropriate and that suitable due diligence has taken place in the development of the Exemption (and any supporting information). Where relevant this may also include challenging the position as outlined. • Taking ultimate accountability and ownership of the recommended course of action outlined in the Exemption.
Corporate Manager – Commercial and Procurement	<ul style="list-style-type: none"> • Providing relevant and proportional scrutiny and due diligence around the procedural matters. • Providing relevant, proportional and constructive challenge with respect to commercial matters related to the Exemption. • Providing relevant support and advice to the Responsible Officer to ensure the process and recommendation is appropriate and that risks are highlighted as part of the overall considerations. • Signing off the Exemption form alongside the other identified parties and in doing so enabling the recommended course of action to be implemented. • Considering whether the Exemption is appropriate and whether suitable due diligence has taken place in the development of the Exemption (and any supporting information). Where relevant this may also include challenging the position as outlined. • Ensuring that the Exemption is in line with this Procedural Note and if not, highlighting this to the Section 151 Officer and Monitoring Officer including the reasons, value, and why this is the case.
Portfolio Holder	<ul style="list-style-type: none"> • Maintaining a strategic overview of Exemptions which have been signed off within their Portfolio. • Reviewing approved Exemptions on a quarterly basis to ensure they are satisfied that suitable due diligence has taken place in the development of the Exemptions. Where relevant this may also include challenging the position, and setting out recommendations to improve the overall process in the future. • Signatory on the Exemption Approval Form for contracts over the applicable OJEU Threshold

SIGNATORIES	ROLES AND RESPONSIBILITIES
Procurement Team)	<ul style="list-style-type: none"> • Scanning and storing the signed Exemption Forms electronically in a central file and sending a link to that file for the relevant Commercial Manager to attach any supporting information. • Recording the Exemption and relevant details on the central register. • Issuing 6 month reminders prior to expiry of signed off Exemptions to the Responsible officer(s) around ensuring any necessary plans are in place (or being progressed) in time for the expiry (so as not to risk service failure or continuity of service). • Compiling and distributing of the Quarterly reports under the direction of the Corporate Manager – Commercial and Procurement.
Responsible Officer	<ul style="list-style-type: none"> • Ensuring the Exemption process is complied with and adhered to. • Obtaining and completing the latest version of the Exemption form and providing any necessary supporting evidence and information. • Clearly and concisely outlining the “what, why, when, who” in completing the Exemption form. • Taking ownership that the details put forward are relevant, accurate and factual. • Ensuring risks are identified, considered and any necessary mitigation measures put in place. • Openly considering and documenting the advantages / disadvantages of all relevant options and confirming that the recommendation put forward is the most appropriate way forward (considering all relevant information and advice sought). • Ensuring timely due diligence discussions have taken place and relevant advice has been sought with key stakeholders (e.g. the Procurement Team, Finance, Legal, Health and Safety, etc.) prior to seeking signatures of other key parties. • For over £25k exemptions ensuring that the Procurement Team is involved prior to obtaining signatories. • Ensuring plans are in place both to implement and adhere to the intended outcomes of the recommendation (this will include ensuring suitable plans are in place to formalise contractual matters arising from the Exemption sign off, plus plans outlined for the period following the Exemption expiry) at the point when any Exemption forms are ‘Signed Off’ • Ensuring that all signed off Exemptions are provided to Procurement Team for formal registration.

SIGNATORIES	ROLES AND RESPONSIBILITIES
Section 151	<ul style="list-style-type: none"> • Reviewing any matters referred to them by the Corporate Manager – Commercial and Procurement with regards to Exemptions considered outside of the recognised procedures and taking what actions they consider necessary within their role as Section 151 Officer. • On occasions acting as arbiter when exemptions are referred to them by Commercial Manager – Commercial and Procurement.

Procedural Note: Late Quotation / Tender Submissions

NOTE: This Procedural Note forms part of the Procurement and Contract Procedures and shall be read in conjunction with those Procedures and any associated Procedural Notes

Background

- 1) This Procedural Note outlines the steps to be taken where a quotation or tender is submitted late (i.e. beyond the published specified time or date for submission).

General

- 2) Where a Quotation or Tender is received late, the default position will be for the tender not to be evaluated or taken further in the procurement process.
- 3) In such cases it will be necessary to carry out the following actions to establish the reasons why this may be the case to ensure as far as possible from the information to hand that the cause of the Quotation or Tender being late was not as an error on the part of the Council:
 - i. Establish when the documentation was received by the Council (including whether submitted or attempted submission via e-tendering, or email accounts / email filters, or physically and the key entry points such as building receptions, dispatch / post room, plus colleagues likely to deputise for receipt of mail / documents in event of absence).
 - ii. If appropriate, obtain further information from the supplier who submitted the quotation / tender to confirm when they submitted, how submission was made and to whom.
 - iii. The evaluation process shall be put on hold until it is possible to make a determination on whether or not the Quotation / Tender is deemed to have been submitted late.
- 4) If, following identification of reasons around a suspected late submission, on the balance of probabilities it is considered that the Quotation / Tender would have been in the Council's possession at the required specified time and date, then the Responsible Officer / Procurement Team shall record justification for this position before taking forward the Quotation / Tender for evaluation.
- 5) In the event of issues arising from electronic submissions, an understanding of the reasons will be critical around this. For example, in particular late submissions due to technical issues reasonably expected to be beyond the control of the supplier such as issues with the electronic system or wider network issues by service providers, as opposed to matters which could otherwise have been avoided (e.g. supplier attempting to upload large volumes of data near to or their bid submission on or near to the closing time of the Quotation / Tender submission).
- 6) Considerations around Late Submissions shall be carried out in the most expedient manner possible, and seek to consider a resolution as efficiently as possible within four working days.

- 7) Where, following investigation, it is deemed that the Quotation/Tender was not received by the required submission deadline and is confirmed as having been submitted late, the following procedures apply:
- i. The Responsible Officer / Procurement Team lead shall inform the supplier as soon as practically possible as to the decision (and justification) to exclude their Quotation / Tender from further consideration in the process.
 - ii. In any such communication the supplier shall be informed of their right to appeal the decision using the Appeals Process detailed in Sections 8 and 9 of this Procedural Note.

Appeals Process around Late Submission

- 8) Where a Quotation / Tender is deemed as received late then it shall not be accepted or considered for evaluation, however the supplier who's quotation / tender is deemed to have been late shall have the right to appeal the initial decision, and the following process shall be followed in relation to the Appeals Process:
- i. Where a supplier considers that their quotation / tender was not late (or there are reasonable and justifiable grounds for it to be considered not late, they shall notify the Responsible Officer leading on the procurement process as to the wish to exercise the Appeals Process and provide all necessary supporting information in writing within 3 working days of being notified of the decision.
 - ii. Where an appeal is sought this shall be notified to the Corporate Manager – Commercial and Procurement who shall seek to determine the circumstances behind the late receipt.
 - iii. Where the Corporate Manager – Commercial and Procurement is satisfied that the grounds are exceptional, that could not reasonably have been otherwise avoided, and there is no chance of the information within the response being unfairly disclosed or made available, then the response may be taken forward for evaluation where following all considerations it is appropriate to do so.
 - iv. Where the Corporate Manager – Commercial and Procurement upholds the decision to exclude the tender then the response shall not be considered further and the supplier concerned shall be informed of the Council's decision not to further consider their response.
 - v. The justification for the Corporate Manager – Commercial and Procurement decision shall be recorded and available for disclosure on request.
- 9) Any further appeal from the supplier should be considered a formal complaint and conducted using the Council's Complaint process.

Procedural Note: Missing and Omitted Materials in a Quotation / Tender

NOTE: This Procedural Note forms part of the Procurement and Contract Procedures and shall be read in conjunction with those Procedures and any associated Procedural Notes

Background

- 10) This Procedural Note outlines the steps to be taken if there appears to be an error in the information provided within a Quotation or Tender.
- 11) The process outlined relates to Quotations /Tenders above £75k, but where such situations occur for spend below that then a proportional application of the process is recommended to be followed.

General

- 12) Where it appears that there is an error in the information submitted within the Quotation / Tender, including missing or omitted material, the relevant supplier shall be made aware of the apparent error.
- 13) The supplier shall be asked to confirm acceptance as to this position or highlight that the information required is actually included in their original response.
- 14) Considerations and resolutions around missing or omitted material shall be carried out in the most expedient manner possible, usually within 3 working days.

Overall process – over £75k

- 15) On becoming aware of missing / omitted material, the Procurement Team shall contact the supplier clearly highlighting what information is considered missing / omitted.
- 16) The supplier shall be given the opportunity to provide the information typically by return and no later than within one working day of the contact being made.
- 17) When contacting the supplier the following information shall be provided to them:
 - i. What information is considered missing / omitted.
 - ii. The time limit within which a response is required, e.g. by return and no later than one working day.
- 18) The following two statements shall also be included:
 - i. “The advertised submission deadline has now elapsed; any delays in responding to this request for further information may render your tender non-compliant and result in your exclusion from the procurement process.”
 - ii. “No assurance can be given as to whether any information provided would be eligible to include within any evaluation of tender / quote.”

- 19) If, following the response from the supplier, it is deemed a genuine error / omission has occurred, and that the information has not in any way been compromised, the Corporate Manager – Commercial and Procurement may agree to include the information and take the tender / quote from the supplier forward for evaluation.
- 20) Where the information latterly submitted is not in a format that would have been ready and available at the time of the submission, then the Corporate Manager – Commercial and Procurement shall deem the submission incomplete and it shall then be evaluated on that basis, or if necessary disqualified, accordingly.
- 21) In making the decision to include information received, it shall consider the significance of the missing / omitted information, and the risks its inclusion could pose to the overall process. Where appropriate the escalate this decision to the Corporate Manager – Commercial and Procurement.
- 22) If it is deemed inappropriate to include the information latterly submitted then it shall not be accepted or considered in the evaluation and the following process shall be followed:
 - i. The supplier shall be informed as soon as practically possible as to the decision (and justification) not to consider the additional information.
 - ii. Where the missing or omitted information has resulted in the suppliers exclusion from the procurement process this shall be clearly articulated.
 - iii. In any such communication the supplier shall be informed of their right to appeal the decision.
 - iv. In the event of an appeal, this shall be referred to the relevant Director to review.
- 23) The justification around decisions to include or not information missing or omitted in the original tender / quote submission shall be recorded in the evaluation and available for legal and audit purposes on request.

Appeals process

- 24) On receipt of the formal appeal, the relevant Director shall seek to decide and communicate this within 5 working days.
- 25) In considering the appeal, the Service Director shall obtain all additional evidence or relevant information they require.
- 26) In making the formal decision the Service Director shall be required to assess the proportionality of upholding the original decision.
- 27) In concluding an appeal the Service Director shall formally notify the Responsible Officer and Corporate Manager – Commercial and Procurement who shall, in turn, notify all other relevant parties of the reasons as to why a decision has been made.