

Part 4

Section 7

Contracts Procedure Rules

1. Introduction

- 1.1 These Contracts Procedure Rules (CPRs) set out the key responsibilities and actions that Council staff must follow when buying or undertaking procurements on behalf of Winchester City Council (the Council).

Under Section 135 of the Local Government Act 1972 the Council must make standing orders with respect to contracts for the supply of goods and services or for the execution of works which provide for:

- a) securing competition; and
- b) regulating the manner in which tenders are invited

- 1.2 They support staff to meet legislative requirements, and to meet the Council's ambitions for procurement and related policies and procedures. They support staff to deliver effective procurement.
- 1.3 CPRs **are a legal requirement and** constitute standing orders for the purpose of s135 of the Local Government Act 1972.
- 1.4 A range of procurement templates is also available. Further support and guidance on these CPRs is available from the Head of Procurement.

Non-compliance with CPRs, Financial Procedure Rules or UK and European Union legal requirements can have serious consequences for the Council. Following CPRs allows the Council to comply with both procurement and data transparency legislation and Officers should be aware that any non-compliance may result in disciplinary action by the Relevant Chief Officer.

2. Compliance

- 2.1 Every procurement undertaken by or on behalf of the Council and every contract entered into by the Council will comply with:
- a) The Public Contracts Regulations 2015 (PCR 2015) and all relevant guidance and statutory provisions;
 - b) These Contracts Procedure Rules, and the Council's Financial Procedure Rules;
 - c) The Council's strategic objectives and policies and the Council's Employee and Members Code of Conduct and
 - d) The Council's Constitution including Part 2 (Articles), Part 3 (Functions), Part 4 Procedure Rules, particularly the Executive and Decision Making Procedure Rules and Part 5 (codes and protocols).
- 2.2 These Contract Procedure Rules will apply to all procurements except Exempt Contracts (CPR34).
- 2.3 The term 'procurement' in these CPRs includes any arrangement whereby a new, replacement, amended or extended contract for the supply of goods, works or services is to be put in place. This includes circumstances where more than one provider is invited to tender and also where goods, works or services are procured through a negotiation with a single provider. This includes the award of concessions (a concession contract is the grant by the Council of the right to exploit something that the Council owns or controls. The Council will receive some form of benefit and the person who is granted the concession will exploit the opportunity at their own risk). Grant funding arrangements should be considered carefully to decide whether they are in fact a procurement for the purpose of these CPRs¹. A genuine grant funding arrangement is not a procurement. However, officers should consider whether the purpose that the grant is being provided for could be achieved through a procurement.
- 2.4 The following are not procurements for the purposes of these CPRs:
- a) provided that the Public Contracts Regulations do not apply, a joint or shared services arrangement with another public body;
 - b) an arrangement with a statutory body (e.g. the police) to provide a service that only the statutory body can legally provide; and
 - c) a contract or other arrangement with a company that is controlled by the Council (whether wholly or jointly with another public body.)
- 2.5 Where any Agents or Consultants are acting on behalf of the Council in connection with the letting of a contract, the Officer must ensure that the Agent or Consultant agrees in writing to comply with these CPRs.

¹Guidance on this matter is available on the national audit office website
<http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/>

3. Requirements for Procurement and Contracts

- 3.1 The principles underpinning these Procedure Rules are:-
- a) the need to ensure that competition and propriety are present in the Council's procurement and the award of contracts;
 - b) the need to secure best value from procurement;
 - c) the need to maintain fairness, transparency, equality and integrity in the Council's procurement activity; and
 - d) the need to comply with applicable legal requirements.
- 3.2 All procurement by the Council shall comply with the Council's statutory duties in respect of equality (including age, gender, race, and disability) with the objective of eliminating unlawful discrimination and promoting equality of opportunity. At all times during the procurement, the Council shall consider and implement the principles of non discrimination, equal treatment and transparency.

4. Achieving Best Value

- 4.1 Every procurement process and contract must be designed to achieve best value for the Council, in accordance with applicable procurement guidance issued by the Head of Procurement.
- 4.2 Before undertaking a new procurement process or awarding a new contract the Head of Team must establish whether the Council's requirement can be met through any existing contract, and ensure that the estimated value can be met from the appropriate budget.
- 4.3 In relation to all contracts, the Head of Team concerned shall consider matters of quality and reliability as well as price and shall not accept, or recommend acceptance of, the lowest tender or quotation if the Head of Team is not satisfied that it is likely to represent the best value for money.

5. Social Value

- 5.1 The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of any service contract and service Framework Agreement (including good and works contracts procured in combination with services) above EU Thresholds:
- a) how the proposed procurement may improve the economic, social and environmental wellbeing of an area;

- b) how the contracting authority may act with a view to securing that improvement in conducting the process of procurement; and
- c) whether to undertake any community consultation on the above

5.2 Appropriate records should be kept of these considerations, including the reason for any decision regarding the matter of community consultation.

5.3 The Council has granted The Living Wage Foundation Accreditation, (this differs from the National Living Wage) and this applies to both our own employees and our suppliers. The Living Wage will form part of our social value criteria and where relevant;

- a) Existing contractors should be encouraged to apply the Living Wage Foundation rates of pay;
- b) New suppliers should be encouraged to pay the living wage foundation rates of pay and should be required to submit a plan on how they will implement the Living Wage Foundation rates of pay should they be awarded the contracts, when bidding for contracts.

6. Interests of Officers in Contracts and Other Matters

6.1 All officers engaged in a procurement process shall comply The Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of a contract. High standards of conduct are obligatory.

6.2 In addition to his/her duty under Section 117 of the Local Government Act 1972 (direct or indirect pecuniary interests in a contract) notice shall be given to the Monitoring Officer, if it comes to the knowledge of any officer of the Council that he/she has a personal and prejudicial interest in any contract which has been, or is proposed to be, entered into by the Council, or in some other matter which is to be considered by the Council, the Cabinet, any committee or sub-committee, or by a Portfolio Holder under the scheme of delegation in the Constitution and which (in either case) is not

- (a) the contract of employment (if any) under which he/she serves to the Council, or
- (b) the tenancy of a dwelling provided by the Council,

he/she shall as soon as practicable give notice in writing to the Monitoring Officer of the fact that he/she is interested therein.

6.3 For the purpose of this Procedure Rule, a personal and prejudicial interest is an interest that, if the officer were a member of the Council and if the contract or other

matter were to be considered at a meeting of the Council at which he/she were present, he/she would have to disclose under the Model Code of Conduct for Councillors in Part 5 of this Constitution prior to providing such advice.

- 6.4 The Head of Legal shall keep a record for the purpose of particulars of any notice of pecuniary or personal and prejudicial interest given by an officer of the Council under Section 117 of the Local Government Act 1972 or Rule 6.2 of this Rule. The record shall be open for inspection by members of the Council during the ordinary office hours of the Council.
- 6.5 Where an officer submits a report to a meeting on a matter in which he/she has declared an interest under Section 117 of the 1972 Act or paragraph 6.2 he/she shall state that such declaration has been made, and give brief details of it, in a separate paragraph at the commencement of the report.
- 6.6 Where any officer advises orally a meeting of the Council, the Cabinet, a committee or a sub-committee, on any contract, grant, proposed contract or other matter and has declared a personal and prejudicial interest in that matter, whether under the requirements of Section 117 of the Local Government Act 1972 or Rule 6.2, he/she shall remind the meeting orally of that interest.

7. Joint Procurement / Collaboration

- 7.1 Any joint procurement for the benefit of the Council together with one or more public bodies will be formally approved by the relevant Strategic Director as a Delegated Decision before the procurement commences.
- 7.2 Where the Council conducts the procurement on behalf of itself and one or more other public bodies these CPRs will apply and the Head of Team must ensure the other public bodies that are to be included in that arrangement are listed in the OJEU advertisement and contract documents individually or as an identified class. The estimate of contract usage given must include the potential usage of that joint arrangement by those public bodies listed.
- 7.3 Where the Council is going to take part in a procurement that is conducted by another public body the procurement must be carried out in accordance with the procuring body's procurement rules and the Public Contracts Regulations, but the Head of Team will in any event comply with the need to demonstrate and secure best value and of the principles of openness, fairness and transparency.

8. Estimating the Contract Value / Aggregation

- 8.1 Contract values should be calculated by working out the annual price and multiplying it by the contract length (including any possible contract

extensions) and, in any event, in accordance with the Public Contracts Regulations with particular regard to the rules on aggregation. For consistency, these rules should be followed even when the Public Contracts Regulations are not applicable.

8.2 Where the period of a contract is indefinite or cannot be ascertained, it shall be assumed to be for a period of four years for the purpose of these CPRs.

8.3 The Head of Team will ensure that values are not split (dis-aggregated) in an attempt to avoid the applicability of these CPRs, the Public Contracts Regulations or the Executive and Decision Making Procedure Rules (Part 4 of the constitution).

9. Pre-Contract and Budget Approval

9.1 Before commencing a procurement process the Head of Team undertaking a procurement must ensure that:

The procurement is properly authorised either:-

- d) By Council, Cabinet a Committee or a Portfolio Holder Decision Notice, OR
- b) In accordance with the Scheme of Delegation to Officers

9.2 The value of the procurement has been calculated in accordance with these CPRs and that appropriate budgetary provision is available;

10. Pre-Market Engagement

10.1 Before commencing a procurement process, it may be beneficial to conduct market consultations in order to:

- a) establish the supply market and/or market interest;
- b) gauge whether the proposed procurement will be affordable;
- c) determine the most appropriate procurement process;
- d) assist with the development of documentation; and
- e) inform potential bidders of the nature of the procurement

10.2 In the event of a procurement process proceeding following Preliminary Market Consultation, the Bidders who anticipated will be notified of the opportunity.

11. Framework Agreements

11.1 Frameworks are normally used where it would be useful to have a pool of pre-selected bidder to draw from, as the bidder quality assessment procedure has already taken place.

- 11.2 A Framework Agreement is an agreement with one or more bidders that sets out the terms and conditions under which specific purchases can be made (or 'called off') throughout the term of the agreement.
- 11.3 Framework Agreements may be established by the Council, or by other public bodies or public sector buying consortia as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 11.4 The use of a Framework Agreement should be considered prior to commencing any procurement process.
- 11.5 Advice should be sought from the Head of Procurement on whether it is appropriate to use a Framework Agreement and, if so, how it should be accessed or put in place.
- 11.6 Where a framework is used, The Head of Legal must be consulted on the proposed contractual terms and conditions before they can be accepted.

12. Dynamic Purchasing System (DPS)

- 12.1 A DPS is similar to a Select List or Framework Agreement but is an entirely electronic system that admits all suppliers able to meet the defined selection criteria.
- 12.2 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.
- 12.3 New applicants meeting the requirements must be evaluated and admitted to set timescales at any point during the duration of the DPS. Call-off contracts from a DPS invite all suppliers on the DPS or relevant category of it to submit a tender and must have a Contract Award Notice published in the OJEU.
- 12.4 As with Framework Agreements, there are a number of established central purchasing bodies who DPS which the Council can utilise.
- 12.5 The use of a 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
- 12.6 Advice on setting up or using an established DPS should be sought from the Head of Procurement or the Head of Legal Services.

13. Procurement Thresholds

13.1 The procedure to be adopted in relation to contracts shall be in accordance with the following table:

	Estimated Total Value of Contract	Procedure / Tender Requirement
A	£10,000 or less	Obtain single verbal or written quotation, or use suitable framework agreement in accordance with the framework terms and PCR 11. The Head of Team concerned may enter into such contract with any person that he considers competent for the purpose (subject to complying with the achievement of Best Value.
B1	Over £10,000 but not more than £100,000	The Head of Team concerned shall:
B2	Over £10,000 but not more than £250,000 Works contracts ONLY	<ol style="list-style-type: none"> 1) determine the evaluation criteria and model (based on either price <i>or</i> most economically advantageous tender) and obtain any necessary approval prior to inviting quotations; 2) invite a minimum of three written quotations either 3) accept the quotation which scores highest by applying the evaluation model <p>Or use suitable framework agreements in accordance with the framework terms and PCR 11.</p>
C1	Over £100,000 (but outside scope of Public Contracts Regulations	No contract may be entered into unless formal competitive tenders have been invited either:

	Estimated Total Value of Contract	Procedure / Tender Requirement
C2	2015)Over £250,000Works contracts ONLY	<ul style="list-style-type: none"> • by Public Invitation to Tender (Open Tender) in accordance with CPR 16 or • Use of a suitable framework agreement in accordance with the framework terms and PCR 11
D	<p>Over the EU Thresholds</p> <p>EU Thresholds effective from 1 January 2018:</p> <p>Works Contracts – £4,551,416</p> <p>Supplies Contracts - £181,302</p> <p>Services Contracts - £181,302</p> <p>Light Touch Contracts – £615,278</p>	<p>Where the value exceeds the EU Thresholds, the procurement must be undertaken in accordance with one of the following procedures as defined by the Public Contract Regulations 2015:</p> <ul style="list-style-type: none"> • Open • Restricted • Competitive with Negotiation • Competitive Dialogue • Innovation Partnership <p>The Head of Team may select the Open or Restricted Procedure without Member approval, and shall select an evaluation method in accordance with PCR 29.</p> <p>In all other cases the choice of Procedure and the evaluation model must be approved prior to inviting tenders either by Cabinet or by the relevant Portfolio Holder under the scheme of delegation in the Constitution.</p> <p>Use of a suitable framework agreement is also permitted in accordance with the framework terms and PCR 7.</p>

14. Contracts up to £100,000 / £250,000 - (Band A and Band B1 and B2)

- 14.1 For contracts of a value below £10,000 (Band A) at least one written quotation should be sought.
- 14.2 For contracts valued at £10,000 – £100,000 where there are a sufficient number of providers, at least three written quotations should be sought and a detailed brief / specification should be issued, along with the evaluation criteria.
- 14.3 A Framework Agreement or DS may also be used as an alternative to inviting quotations. See CPR 7 and 8.
- 14.4 Where quotations are sought, the Procuring Officer must always consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would, at least one of the organisations invited to quotation should be local suppliers and/or third sector organisations.
- 14.5 Quotations should be invited via an e-procurement system where it is available, or by e-mail (unless it is a requirement of a Third Party Agreement that another means be used i.e. an alternative e-procurement system.)
- 14.6 Where relevant, a third party pre-qualification system such as Construction Line may be used to invite a minimum of three quotations in accordance with the relevant terms. Use of a pre-qualification system should be reviewed by the Head of Procurement and The Head of Legal to ensure that it is a legally viable option and allows the Council to demonstrate best value.
- 14.7 For the avoidance of doubt the return of a single bid does not require the Authorised Officer to seek a waiver of this CPR but consideration should be given to why only a single bid has been received and the requirements of the specification reviewed to establish if viable changes would encourage more competition

15. Contracts Over £100,000 / £250,000 – (Band C1 and C2)

- 15.1 The Head of Procurement must be notified of the commencement of all new Band C and procurements.
- 15.2 For contracts valued above £100,000 but below EU thresholds (see CPR 9), an ‘open’ tender procedure must be followed or a suitable framework agreement or DPS utilised (See CPR 7 and 8).

16. Open Tender Procedure

- 16.1 Under the 'open' tender procedure, any bidder can respond to an advert and submit a tender. However it is permitted to include 'suitability' questions in the tender documents.
- 16.2 A Contract Notice (advert) must be placed on Contracts Finder² and the South East Business Portal (or any other electronic advertising portal as determined by the Head of Procurement).
- 16.3 The Contract Notice shall:
- a) express the nature and purpose of the contract;
 - b) invite tenders for its execution;
 - c) state where tender documents may be obtained;
 - d) state either the last date and time when tenders will be received or the last date when applications for tender documents will be accepted;
 - e) state the full evaluation criteria and scoring model
- 16.4 All Invitations to Tender must include instructions to tenderers stating that the Council reserve the right to accept a tender other than the lowest, or to accept no tender at all. The process for receiving tenders shall be either a paper process or an electronic process (See CPR 28).

17. Above EU Thresholds – (Band D)

- 17.1 The Head of Procurement must be notified of the commencement of all new Band D and procurements
- 17.2 Where a procurement process is being carried out for an EU Procedure contract the procedures set out in the EU Procurement Directive and [Public Contracts Regulations 2015](#) (PCR2015) as well as these CPRs must be followed.
- 17.3 For tenders above the EU Threshold, the following additional procedures are available:
- a) Restricted
 - b) Competitive Dialogue
 - c) Competitive with Negotiation
 - d) Innovation Partnership
- 17.4 Use of the Competitive Dialogue and Competitive Negotiation procedures should only be used where certain criteria (as prescribed by the EU Procurement Directive and PCR2015) are met, including where the contract requirement is complex or cannot be purchased 'off the shelf'.
- 17.5 Before adopting any of the above procedures, guidance must be obtained from the Head of Procurement and the Head of Legal.

² The Governments Contracts Finder website can be found here - <https://www.gov.uk/contracts-finder>

18. Restricted procedure

18.1 Under the 'restricted' procedure a number of bidders are selected from those who express an interest in response to an OJEU Contract Notice. It is similar to the open procedure, except that:

- a) The Contract Notice shall state that a restricted tendering procedure will be used;
- b) The notice/contract should specify that information is to be provided by interested parties for the short listing process, either by specifying the information required in the public notice/advert or by their completion and return of a standard selection questionnaire (SQ). A draft ITT must also be published at this stage which includes the specification, evaluation award criteria and contract
- c) At the end of the period specified in the public notice, an invitation to tender shall be issued to tenderers selected by means of predetermined and objective selection criteria.

18.2 Guidance should be sought from the Head of Procurement on this process.

19. Competitive with Negotiation Procedure

19.1 Under this procedure a selection is made from those bidders who respond to an OJEU Contract Notice and only they are invited to submit an initial tender for the contract requirement. The Council may then open negotiations with the tenderers in order to seek improved offers.

20. Competitive Dialogue Procedure

20.1 Under this procedure a selection is made from those bidders who respond to an OJEU Contract Notice and the Council enters into dialogue with potential bidders, to develop one or more suitable solutions for its contract requirements and on which chosen bidders are then invited to tender.

21. Innovation Partnership Procedure

21.1 Under this procedure a selection is made from those bidders who respond to an OJEU Contract Notice. The Council may then use a negotiated approach to invite bidders to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on available from the market. The Council would be allowed to award partnerships to more than one 'partner'.

22. Reserved Contracts for Mutuals

- 22.1 The EU Procurement Directives permit competition for certain contracts, mainly in the social and health sectors, to be 'reserved' to such organisations as mutual and social enterprises meeting certain limited criteria. The 'Light Touch' procedure would be used and tenders would only be allowed from organisations meeting the mutual and social enterprise criteria. Any contract awarded under this procedure would be limited to a term of 3 years and could not be limited to a term of 3 years and could not be awarded to an organization who had been awarded a previous contract for the services concerned by the Council within the previous 3 years.
- 22.2 Use of this procedure would require the prior approval of the relevant Portfolio Holder and/or Cabinet.

23. Light-Touch Contracts

- 23.1 There are specific rules in PCR2015 covering contracts for social and other specific services. These include certain health, social, educational and other services. Above the threshold set out in CPR 9 these services must be procured following the placement of an OJEU contract notice or Prior Information Notice (PIN) and using a selection process that follows the principles of transparency and equal treatment and in particular covers the following:
- a) conditions for participation must be clear;
 - b) time limits must be clear; and
 - c) the award procedure must be clear
- 23.2 Advice should always be sought from the Head of Procurement to ascertain whether the service you are procuring needs to be advertised in accordance with PCR2015 and how procurement for these services should be run.
- 23.3 Officers conducting above threshold procurements of goods, works and services should note that they must consider dividing contracts in to lots and justify any decision not to do so in either the procurement documents or an evaluation report and that all procurement documents must be published at the time that the OJEU Contract Notice is published in accordance with PCR2015.

24. Contract Notice

- 24.1 The requirement for advertising opportunities is summarised in the table below:

Total Contract Value	South East Business Portal (SEBP)	Contract Finder	OJEU	Publication / Trade Journal
< £100,000 (B1) / £250,000 (B2)	Optional	Optional	Optional	Optional
> £100,000 (C1) / £250,000 (C2)	Mandatory	Mandatory	Optional	Optional
Above EU Threshold	Mandatory	Mandatory	Mandatory	Optional

24.2 Where an advert is used it should always be placed on the SEBP and Contract Finder. Other media may be considered as appropriate.

24.3 Failure to publish on the SEBP and Contracts Finder will lead to the Council being in breach of data transparency legislation.

25. Bidder Suitability

25.1 In all EU procurements the Council will only enter into a contract with a Contractor if it is satisfied as to the Contractor's eligibility, financial standing and technical capacity. The initial suitability of Bidders shall be assessed by way of self-declarations of preliminary evidence in accordance with the EU Procurement Directive and PCR2015.

25.2 A standard Selection Questionnaire (SQ) is used to assess a tenderer's ability to perform the contract in question (selection criteria) and must not be used to assess how a contractor will perform the contract (award criteria).

25.3 A bidder who is considered for contract award will be required to provide certificates and supporting documents at this stage.

25.4 In all below EU threshold procurements, Officers need to decide whether it is necessary to assess a supplier's eligibility, financial standing and technical capacity. If it is decided that this assessment is an SQ is not allowed at this level of spend. Instead, suitability assessment questions must be included as part of the tender assessment.

26. Invitation to Tender (ITT)

26.1 Bidders should ordinarily be allowed not less than four weeks for the return of tenders. This can be amended accordingly to reflect the complexity of the procurement or where the period is set by agreement with the bidders. Above EU Threshold procurements are subject to statutory timescales. Further guidance can be sought from the Head of Procurement.

- 26.2 Where using a Framework Agreement, this may provide for carrying out a mini-tender exercise. In such cases, the rules of the Framework Agreement will govern the process where there is any conflict with these CPRs.
- 26.3 The Officer will ensure that tenders are invited and Contracts are entered into on the Council's terms and conditions. These must be included with each purchase order or ITT. Where this is not possible, because the Council's terms and conditions are not suitable or the a Third Party Framework Agreement is being used, and other terms and conditions are proposed, those terms and conditions must be approved by the Head of Legal Services before they can be accepted.

27. Pre-tender submission clarification

- 27.1 Prior to the tender submission deadline either the Council or a tenderer may seek to clarify any aspects of the issued tender documentation. Adequate time must be allowed for both the clarification question and the response.
- 27.2 Both the clarification question and response must be in writing and recorded in a log. A minimum of 5 days should be allowed between the last clarifications question or response issued by the Council and the tender submission date (although note that different timescales apply to procurements that are subject to the PCR2015 and have required the publication of a Contract Notice). Except for a very limited set of circumstances both the question (anonymised) and the response should be issued to everyone who has been invited to tender.

28. Submission, Receipt, Opening and Recoding of Tenders

- 28.1 The use of e-procurement is encouraged for all procurements for an efficient and transparent process but is not mandatory for non-EU tenders.
- 28.2 Electronic signatures on e-tenders are acceptable.
- 28.3 Invitations to tender for procurements that have a value of £100,000 (C1) / £250,000 (C2) or more should be transmitted electronically using an e-procurement system as determined by the Head of Procurement. This includes mini competitions under Third Party Framework Agreements.)
- 28.4 Invitations to tender for procurements that have a value in excess of EU procurement thresholds must be transmitted electronically using an e-procurement system as determined by the Head of Procurement. This includes mini competitions under Third Party Framework Agreements.)
- 28.5 E-mailed Tender Documents or tender submissions are not acceptable for procurements that have a value of £100,000 (C1) / £250,000 (C2) or more.

- 28.6 In the event of a fault or failure with the e-tendering procurement system, paper tenders may be received in accordance with guidelines given by the Head of Procurement. If appropriate, the time and date for receipt of tenders may be extended to allow sufficient time for paper tenders to be received.
- 28.7 Officers who have been involved in preparing Tender Documents for procurements that have a value of over £100k must not be involved in the recording or opening of tenders.
- 28.8 Tender submissions for procurements that have a value of over £100k will be opened by the Head of Legal in the presence of at least two Officers nominated by the Head of Legal. An immediate record will be made of the Tender submissions received including names, addresses, value and the date, time of opening and reference number (where e-tendering is used). The record shall be signed by all persons present.

Hard Copy Tendering

- 28.9 Where hard copy tenders are being accepted (below EU procurement threshold only) they must be addressed to The Head of Legal Services and sent in a plain envelope with no identifiable markings, clearly labelled as a Tender and as private and confidential.
- 28.10 Paper tenders shall remain in the secure custody of the Head of Legal, and electronic tenders will not be accessible, until the time appointed for their opening.
- 28.11 Where a tender is accidentally opened prior to the formal tender opening, the person opening the tender shall make a full report and submit such report, the tender (and the envelope in the case of paper tenders) to the Head of Legal. The tender shall then be retained by the Head of Legal until the formal tender opening, when it shall be processed as set out above, and a note of the accidental opening added to the tender record.

29. Tender Evaluation

- 29.1 The Head of Team may select an evaluation model based on:-

- (i) lowest price (or highest bid in contracts where payment is to be made to the Council) alone; or
- (ii) Most Economically Advantageous Tender (MEAT) - a combination of price and up to and including 40% for quality, technical capability and other similar criteria, up to a maximum contract value of £250,000.

In all other cases, the evaluation model must be approved prior to inviting quotations or tenders either by Cabinet, Committee or the relevant Portfolio Holder under the scheme of delegation in the Constitution;

- 29.2 Selection and award criteria must be distinguished and fully disclosed, along with weightings, as part of the tender documentation. The evaluation criteria will be predetermined and approved as required. Published criteria may not be changed and will apply throughout all stages of a procurement. The evaluation criteria and methodology must be set in accordance with the PCR 2015 (including an assessment of cost effectiveness such as lifecycle costing).
- 29.3 For contracts which are to be evaluated using the “MEAT” criteria, the evaluation is to be carried out by a minimum of two appropriate officers nominated by the relevant Head of Team. A moderation meeting will be should be held to agree the scores in each area and the evaluation comments. An evaluation report should be produced post the moderation meeting and should provide a full audit trail of the decision reached.
- 29.4 Elected Members shall not participate in the tender evaluation procedure but may in appropriate cases be invited to attend any presentations given by tenderers and to review submission documents. Any such Elected Member participation shall be on the basis that Elected Members shall treat all information as commercially sensitive and confidential.
- 29.5 All contracts must be awarded on the basis of the offer which represents Best Value to the Council.

30. Errors in Tender Submissions

- 30.1 Where a tenderer has made a genuine error they may be given an opportunity to correct that error prior to tender evaluation. If correction is permitted the tenderer must submit, supplement, clarify or complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make the correction.
- 30.2 If a tender submission is incomplete or has specific documents missing and correction is permitted the tenderer must submit, supplement, clarify or complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make the correction.
- 30.3 Other errors in tender submissions must be dealt with either by asking the tenderer to confirm that they will honour their tender submission despite the error or if not withdraw the tender from the procurement process.
- 30.4 If a tenderer uploads documents onto an e-procurement system which cannot subsequently be opened by the Council at the tender opening ceremony, the Authorised Officer should ask the tenderer to re-submit its documents to them in a format that can be accessed by the Council.
- 30.5 Tender Documents must state how errors in tenders will be dealt with.

Whichever process is followed it must be transparent and fair to all tenderers.

- 30.6 If a Contractor agrees to stand by an error which will cast doubt on its ability to perform the contract, or to the standard required, or may result in legal dispute, consideration should be given to dealing with this as an abnormally low tender.

31. Post Tender Clarification and Negotiation

- 31.1 Post tender submission the Council may ask tenderers to clarify any aspects of the submitted tender but only if it is genuinely unclear. If the submission is clear but wrong this is not clarification. If any amended or new documentation is submitted as part of a clarification response it must only clarify the original response and not contain any new information. Anything that is submitted and goes above and beyond clarification must be disregarded in the evaluation and a note made to that effect. All clarifications and responses must be in writing and recorded in a log.
- 31.2 There are specific rules in PCR2015 dealing with the negotiated procedure without publication of a notice, the competitive procedure with negotiation, the competitive dialogue procedure, the innovation partnership procedure and the procurement of Social and Other Specific Services (as defined in PCR 2015).
- 31.3 Officers are expected to take advice from the Head of Procurement and the Head of Legal when using these procedures. The Council may clarify, specify and fine tune final tenders and submissions that are received through the competitive dialogue procedure and (for this procedure only) can enter into negotiations with the best value tenderer to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, provided this does not have the effect of materially modifying essential aspects of the tender and does not distort competition or cause discrimination.

32. Awarding Contracts

- 32.1 A contract will only be awarded subject to the tender evaluation criteria.
- 32.2 The results of the tender evaluation process must be recorded.
- 32.3 A contract may only be awarded and signed by an officer Authorised to do so under the scheme of delegation in the Constitution, or by the Head of Legal subject to them having produced and/or approved a suitable set of contract conditions.
- 32.4 Contracts procured under an EU Procedure must be awarded in accordance with the procedure set out in PCR2015. Guidance on this can be obtained from the Head of Procurement or the Head of Legal Services.

32.5 Once a contract has been awarded the Head of Procurement must be notified by e-mail of the following so that the Corporate Contract Register and Contracts Finder* can be updated:

- (a) Contract Title;
- (b) Supplier Name;
- (c) Description of Services
- (d) Contract term including details of any provisions for extension;
- (e) Contract Start Date;
- (f) Total contract value;
- (g) Whether the successful contractor is local and/or a small and medium enterprise (SME) and/or a voluntary, community, social enterprise (VCSE) organization and;
- (h) Name of Contract Manager.

32.6 If an existing Framework Agreement is utilised the Head of Procurement must be notified of the following in addition so that a record can be held:

- (a) Framework title and Reference Number (if applicable);
- (b) Lead buying organisations name;

32.7 Following completion of the tender evaluation process, all tenderers must be notified in writing of the results in accordance with PCR 2015 and the principles of openness, fairness and transparency.

32.8 Where the winning Contractor has identified itself as being within the scope of IR35 Legislation via the tender process the Officer must check the Contractors employment status for tax on the HMRC website to determine whether the Contractor should be paid via the Council's payroll system or via the raising of an invoice on the Financial Management System. Advice must be sought from the Finance Manager if there is any doubt about the application of this.

33. Documentation, Liquidated Damages, Insurance, and Bonds

Documentation

33.1 Every contract or order exceeding £10,000 in value or amount shall be in writing, and shall specify

- (a) the work, services, materials, matters or things to be furnished had or done including the required standard and/or the relevant specification;
- (b) the price to be paid with a statement of discounts or other deductions;
and
- (c) (where appropriate) the time or times within which the contract is to be performed and whether the time or times so specified is or are to be of the essence of the contract.

33.2 The Head of Legal shall be informed of every proposed contract which exceeds £50,000 in value or amount and if he/she so determines a formal contract shall be prepared or approved by him/her.

Liquidate Damages

33.3 Every contract for the execution of works which exceeds £100,000 in value or amount shall, unless otherwise agreed by the Head of Finance, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. The value or formula for calculating liquidated damages shall be specified in the contract.

Insurance

33.4 Unless otherwise agreed by the Head of Finance, every contract for the execution of works exceeding £100,000 in value or amount shall require the contractor to produce satisfactory insurance policies in respect of employers liability, third party and fire risks in a sum of not less than £5,000,000 (or such other sum as may be specified in the Council's adopted Insurance Guide) in respect of any one accident. Such policies shall be maintained by or on behalf of the contractor during the term of the contract. The Head of Finance shall be consulted and a risk assessment carried out before a lower level is agreed.

Bonds³

33.5 For contracts estimated to be greater than £1,000,000 and/or deemed to be 'high risk' the contractor shall be required to provide a bond for ten per cent (10%) of the contract sum. In the case of term contracts the bond value will be based on the total value of the contract, but reduced pro-rata on each anniversary date of the contract term. To amend or waive this requirement, the Head of Team should seek authority from the s151 Officer.

For contracts estimated to be greater than £500,000 and/or deemed to be 'medium risk' consideration should be given to requiring a bond and a written record made of the decision by the Head of Team in consultation with s151 officer or a Finance Manager.

³ Procurement Policy Notes PPN 02/13 Supplier Financial Risk Issues - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/137569/PPN_Supplier_financial_risk_Feb-18.pdf

The purpose of the bond is to provide financial surety against which the Council may claim for financial loss incurred because of default action or non-action by the contractor. The bond shall cover the period of the contract up to the issue of the certificate of practical completion or end of the contract term, as appropriate.

A bond shall only be acceptable from a Bank or an approved Insurance Company authorised and regulated by the Financial Services Authority (FSA) (or equivalent for non-UK companies), as determined by the Corporate Head of Resources.

Where a bond is required, the Head of Legal Services shall ensure that this is in force before the contract commences.

For all other 'medium risk' contracts consideration should be given to requiring a parent company guarantee and a written record made of the decision by the Head of Team.

In addition, where a bidder's financial stability is not satisfactorily evidenced by a financial appraisal (either by using a credit rating report or submitted company accounts); a parent company guarantee may be sought.

The purpose of a parent company guarantee is to secure continuity of the contract and/or indemnify the Council against any losses.

34. Prevention of Corruption

- 34.1 In every formal contract a clause shall be inserted to secure that the Council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) or, if in relation to any contract with the Council the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under the provisions of Section 117 of the Local Government Act 1972.

35. Partnering Arrangements

- 35.1 No Partnership or Joint Venture Arrangement shall be entered into by the Council except with the approval of Cabinet or under the Portfolio Holder Decision Notice Scheme except:
- (a) where there is no on-going commitment by the Council and the payment by the partner(s) to the Council does not exceed £25,000 or
 - (b) any payment by the Council does not exceed £25,000 and is provided for in existing budgets and
 - (c) The Section 151 Officer has been consulted.

36. Contracts Register

- 36.1 A contracts register shall be maintained by the Section 151 Officer, containing details of:
- a) Any contract that is for a finite period, that will need to be reviewed at the end of that period, regardless of value;
 - b) Any other contract that is above the value of £25, 000.
- 36.2 The Head of Team who is responsible for any particular procurement shall ensure that details of any contracts in 21.1 above entered onto the Contracts Register within two weeks of the contract being entered into.
- 36.3 The contracts register will also be published quarterly on the Council's website as part of the Government's transparency agenda.

37. Contract Management

- 37.1 The Head of Team must ensure that all contracts are monitored and managed throughout the contract period, and the performance of contractors is reviewed regularly.
- 37.2 For each contract over £100,000, the Head of Team must designate an appropriate lead officer as primary contact and Contract Manager. Contracts must be managed in accordance with any guidance issued by the Head of Procurement.
- 37.3 In particular, the Head of Team shall ensure that where the contractor has been required to submit Health and Safety Policies in accordance with these Contracts

Procedure Rules, the contract monitoring process includes monitoring of the implementation and effectiveness of such Health and Safety Policies.

- 37.4 Records of review meetings or site meetings (as applicable) shall be kept on the contract file.
- 37.5 Where contracts include retention of monies provision the Head of Team shall ensure that release of such monies is managed in accordance with the contract terms.
- 37.6 The Head of Team shall monitor contract expenditure and report on any contractual overspend in accordance with the relevant provisions of the Financial Procedure Rules.
- 37.7 The Head of Team must ensure that contracts are reviewed within adequate timescales to agree and implement any action required i.e. re-tender, implement exit management plan etc.

38. Contract Extension and Variations

Extensions

- 38.1 Contract extensions are only permitted if they are put in place before the contract expiry date and where the proposed extension is in accordance with the contract terms. Prior to seeking approval from the relevant Chief Officer to take up a contract extension the Head of Team must comply with the requirements to establish whether the extension will deliver Best Value. This process must be recorded in writing.
- 38.2 Any Contract extension must be approved by and dealt with by the relevant Chief Officer. The s151 Officer must be consulted if the extension relates to a High Risk project. The decision to extend a contract will be treated as a new decision that is not a consequence of the initial decision to procure, it may be an Administrative or Significant Operational or Key decision, depending on value and impact of the decision.
- 38.3 All extensions to any Council contracts must be in writing and reported to the Head of Procurement in order that the Corporate Contracts Register and Contracts Finder can be updated.

Extensions of a Contract that are categorised as “variations” in the Contract terms and conditions will be governed by rules 31.5 to 31.9 and CPR 31.1 and 31.2 will not apply.

- 38.4 Once a Contract has expired it cannot then be extended.

Variations

- 38.5 Variations to contracts will be dealt with in accordance with these Contracts Procedure Rules and the Council's Financial Regulations.
- 38.6 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not allowed.
- 38.7 All Contract variations must be in writing and signed by both the Council and the provider except where different provisions are made within the Contract documentation. The value of each variation must be assessed by the Head of Team and a Delegated Decision taken by the relevant Chief Officer. The s151 Officer must be consulted if:
- (i) the variation relates to a high risk contract and involves a change to the terms and conditions of the contract (rather than the scope or price); and
 - (ii) if there is any possibility that CPR 31.9 might apply.
- 38.8 Where appropriate (taking into account any change in contract value, contract term, range of services provided etc.) contract variations must be reported to the Head of Procurement in order that Corporate Contracts Register and Contracts Finder can be updated.
- 38.9. A new procurement is required in case of material change where one or more of the following conditions are met:
- 38.9.1. The variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;
 - 38.9.2. The variation increases the value of the contract or the framework agreement substantially in favour of the provider in a manner which was not provided for in the initial contract or framework agreement;
 - 38.9.3. The modification extends the scope of the contract or framework agreement considerably.
- 38.10. You must consult the Head of Legal if you are considering varying a Contract that you have procured under CPR 13.

Transfer of contracts – novation and assignment

- 38.11 Transfer, assignment and novation of contracts can only be carried out by the Head of Legal.

39. Termination of Contract

- 39.1 Any Contract will only be terminated early if this action is authorised by the relevant Chief Officer through a Delegated Decision. A copy of the report and decision for termination of any contract exceeding £100k in value must be sent to the s151 for monitoring purposes. All termination letters under this rule will be drafted and issued via The Head of Legal in conjunction with the Head of Team.

40. Nominated and Named Sub-Contractors

- 40.1 If a sub-contractor or sub-consultant is to be nominated or named to a main Contractor, they must have been procured in accordance with these Contracts Procedure Rules and the terms of the tender and appointment must be compatible with the main contract.
- 40.2 It shall be a condition of the employment by the Council of any person (not being an officer of the Council) to supervise a contract that in relation to such contract, he shall comply with the requirements of Contracts Procedure Rules as if he were an officer of the Council.

41. Exceptions to Contracts Procedure Rules

- 41.1 Every contract shall comply with these CPRs and no exception from any of the following provisions of these CPRs shall be made except in exceptional circumstances where it can be demonstrated that:
- a) there is an urgent requirement to secure the provision of works, services or supplies and it is not practical to seek competitive quotations or tenders;
 - b) by applying the Procedure Rules, it would not be possible to obtain genuine competition;
 - c) the works, services or supplies required are of a specialist nature, such that competitive prices cannot be obtained;
 - d) professional services, such as Counsel, are required urgently;
 - e) by extending the term (either by exercising an option within the contract or otherwise), or varying and/or extending the scope an existing contract, it is in the best interests of the Council;
 - f) by appointing a bidder to carry out further work in connection with a main project following provision by such contractor of feasibility or initial work, it would be advantageous to the successful delivery of the main project; or

- g) by applying the Procedure Rules, it would not be possible to satisfy the best interests of the Council in terms of delivering social, economic or well-being benefits.
- h) The works, services or supplies are legally required to be provided by a specific supplier.
- i) When carrying out security works where the publication of documents in the tendering process could prejudice the security of the work to be done.

41.2 Approval for an Exception shall only be given by the following persons:

Contract value (or additional contract value where approval is being sought pursuant to paragraphs 3.1 (e) and (f))	Authorised person
< £100,000	Corporate Head of Service within whose area of responsibility the contract falls
> £100,000 - £200,000	Strategic Director of Resources
> £200,000	Portfolio Holder / Cabinet

- 41.3 CPRs cannot be waived where the contract value is in excess of the relevant EU threshold.
- 41.4 A waiver of CPRs may not be sought retrospectively, unless it can be demonstrated to be essential for reasons of business continuity or recovery.
- 41.5 A request to waive CPRs must be made in writing (using the Exception Form) to the Head of Procurement in the first instance, who will then seek approval from the person authorised under CPR 34.2. The request must be accompanied by full reasons as to why the waiver is required, together with evidence and supporting information to demonstrate that the issue of the waiver will not prevent best value being obtained.
- 41.6 Any decision to waive CPRs must be made in writing by the person authorised under Procedure Rules 34.2 and no action shall be taken to enter into the contract until such time as a request has been submitted and properly approved.
- 41.7 If any approval to waive these CPRs falls within the key decision criteria then that procedure must be also be followed.
- 41.8 The Council is subject to legal requirements to ensure fair competition for contracts of a value exceeding EU thresholds and subject to obligations under EU treaty to ensure that all contracts are awarded having regard to the need to avoid any action that is discriminatory, improper or which distorts competition. It is therefore expected that the waiver of these Procedure Rules will be limited.

42. Contract Disputes and Claims

- 42.1 Planning, relationship management, risk management and active contract management should be used to keep contract disputes to a minimum. The dispute resolution procedure set out in the Contract should be followed in the event of a contract dispute arising.

43. Contract Exit

- 43.1 An Exit Plan, which can cover one or more Contracts, must be prepared for every Contract well in advance of contract expiry. It is recommended that this should be put in place at least 6 months in advance in order to allow for the approvals and pre-planning process and any re-procurement.

44. Retention of Contractual Documents

- 44.1 All procurement documentation (successful or unsuccessful) and contracts must be kept in accordance with the Council's adopted Records Retention Policy.

45. Concessions

- 45.1 The Concession Contracts Regulations 2016 apply to concessions with a value exceeding approximately five million euros and can be found here:
<http://www.legislation.gov.uk/ukxi/2016/273/introduction/made>
- 45.2 Officers should note that if the resulting contract would be a mix of services, works and a concession, the PCR2015 shall apply.
- 45.3 When letting concessions you must comply with the Concession Contracts Regulations 2016 where they apply. If there is any inconsistency between the CPRs and these regulations, the regulations apply.