

Part 4.7 - Contract Procedure Rules

1. Introduction

- 1.1 The 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 With the exception of procurements in Bands A1 and A2, B1 and B2 (as detailed in Table 1)("Low Value Transactions"), officers must not engage with a supplier without first engaging with the Procurement Team.
- 1.5 Strategic Directors are responsible for ensuring that their officers comply with these Rules.
- 1.6 The Procurement Team will advise on whether and how the Rules apply in any particular case. Where appropriate, the Procurement Team may seek legal advice from the Council's Legal Team.
- 1.7 A range of procurement templates are also available. Further support and guidance on these CPRs is available from the Service Lead - Corporate Support.

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 Strategic Director or Statutory 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:

2.1.1 All applicable EU and UK Legislation This is specifically (but not limited to):

- a) The Local Government Act 1972
- b) Public Contract Regulations 2015 (PCRs)
- c) Concession Contracts Regulation 2016 (CCRs)
- d) Equality Act 2010
- e) Bribery Act 2010
- f) Localism Act 2011
- g) Social Value Act 2012
- h) Modern Slavery Act 2015
- i) General Data Protection Regulation (GDPR) 2016
- j) Freedom of Information Act 2000
- k) Transparency Code 2015
- l) TUPE 2006 (Staff Transfers)
- m) Council Regulations 2015 (State Aid)
- n) Landlord & Tenants Act 1985, Section 20
- o) Housing Grants, Construction & Regeneration Act 1996 –(Pay Less Notice)

2.1.2 These Contracts Procedure Rules, and the Council's Financial Procedure Rules;

2.1.3 The Council's strategic objectives and policies and the Council's Employee and Members Code of Conduct; and

2.1.4 The Council's Constitution in particular; Part 2 (Articles of the Constitution), Part 3 (Responsibility for Functions), Part 4 (Rules of Procedures, Part 3.4 (The Scheme of Delegation to Officers) and Part 5 (Codes and Protocols).

2.2 Where there is a discrepancy between these CPRs and legislation, the legislation is the dominant authority.

2.3 Central Government Procurement Policy Notes (PPNs) are to be treated as "best practice" –they do not override these rules.

2.4 These Contract Procedure Rules apply to all procurements except those set out below in 2.4 and Exempt Contracts (CPR41).

2.5 Safeguarding Obligations

Before commencing a procurement process, the following need to be considered

- a) Is the interaction in a public or private setting
- b) Is the interaction on an individual or group basis
- c) Is the target group known to be covered under the classification of 'vulnerable' adults or children
- d) What risks does the contract create for 'vulnerable' individuals
- e) How can the identified risks be mitigated
- f) Is a Safeguarding Policy and process required.

2.6 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 procurement for the purpose of these CPRs. A genuine grant funding arrangement is not procurement. However, officers should consider whether the purpose that the grant is being provided for could be achieved through procurement.

2.7 The following are not procurements for the purposes of these CPRs:

- a) A joint or shared services arrangement with another public body; (provided that the Public Contracts Regulations 2015 do not apply),
- 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.)
- d) Employment contracts
- e) Sponsorships
- f) Grants and funding arrangements
- g) Disposal of land

h) **Services excluded under PCR2015 Reg 10.**

- 2.4 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.

Guidance 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.

- 3.3 All contracts shall be executed in accordance with **Articles 14.03 and 14.04 of this Constitution.**

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 Service Lead - Corporate Support.
- 4.2 Before undertaking a new procurement process or awarding a new contract the Service Lead 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 Service Lead 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 Service Lead 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 **Public Procurement** 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 been 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.
- 5.4 Additional guidance is available from the Procurement Team to ensure compliance to the Council's Procurement and Contract Management Strategy in relation to evaluating social value.

6. Interests of Officers in Contracts and Other Matters

- 6.1 All officers engaged in a procurement process shall comply with 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 their 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 they have a personal and/ or 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 Cabinet Member under the scheme of delegation in the Constitution and which (in either case) is not:

- a) The contract of employment (if any) under which they serve to the Council, or
- b) The tenancy of a dwelling provided by the Council,

They shall as soon as practicable give notice in writing to the Monitoring Officer of the fact that they are interested therein.

- 6.3 For clarity under these Contract Procedure Rules, 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 they were present, they would have to disclose under the Members' Code of Conduct in Part 5 of this Constitution prior to providing such advice.
- 6.4 The Monitoring Officer 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 they have declared an interest under Section 117 of the Local Government Act 1972 or paragraph 6.2 of these Contract Procedure Rules, then they 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 of these Contract Procedure Rules, they 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 approved by the relevant Strategic Director 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

Service Lead must ensure the other public bodies that are to be included in that arrangement are listed in the **Find a Tender Service** FTS 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 Service Lead will in any event comply with the need to demonstrate and secure best value and of the principles of openness, fairness and transparency.

8. Assessing the need and estimating the Contract Value / Aggregation

- 8.1 With the exception of Low Value Transactions, the Service Lead wishing to undertake a procurement must engage with the Procurement Team as soon as a need which may result in a procurement is identified.

- 8.2 Prior to commencing a procurement, the following options for delivery of the need must be considered:

1. The consequences of not buying the goods or services or having the works done at all;
2. The Council making the goods or delivering the services or works in-house;
3. The Council providing the goods, services or works as part of a partnership arrangement with another party;
4. The Council commissioning jointly with another contracting authority;
5. The Council participating in a shared services arrangement with another council or other public sector entities for services delivery;
6. The Council utilising a pre-existing Council Contract to fulfil the requirement; or
7. The Council achieving delivery through any combination of the above.

- 8.3 Where the assessment of the need determines that a procurement is required, the appropriate procedure shall be undertaken in accordance with Table 1.
- 8.4 The contract value is calculated by multiplying the (annual price) by the (contract length + possible contract extensions) whether or not the Public Contracts Regulations 2015 are applicable.

- 8.5 Contracts whose value cannot be estimated must be treated as being equal to the relevant public procurement threshold, and thus subject to the full regime (Procurement Policy Note 05/23).
- 8.6 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.
- 8.7 The Service Lead will ensure that values are not split (dis-aggregated) and therefore remain in compliance with these CPRs and the Public Contracts Regulations.2015.

9. Authority to Purchase

- 9.1 The Constitution governs the limits within which the Strategic Directors and their authorised officers may authorise purchases on behalf of the Council and these limits must not be exceeded. The Service Lead - Finance maintains a list of authorisation limits which specifies a maximum financial limit for each transaction for each authorised officer.
- 9.2 Strategic Directors must ensure that procurement activity is undertaken by authorised officers who can demonstrate knowledge and understanding of these Rules and skills appropriate to the task. These officers should already have authority under the above list and if not, must be granted authority by the Section 151 Officer or their deputy.
- 9.3 Officers must ensure that the appropriate budget holder has the funds in place for any proposed contracts and that the necessary budget approval from Finance has been obtained in accordance with Financial Procedure Rules prior to commencement of the procurement process. This must be validated before a decision is made to award a contract.

10 Pre-Contract and Budget Approval

- 9.1 Before commencing a procurement process the Service Lead undertaking a procurement must ensure that:
 - 9.1.1 the procurement is properly authorised either:-
 - a) By Council, Cabinet a Committee or a Cabinet Member,
OR
 - b) In accordance with the Scheme of Delegation to Officers

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

11 Pre-Market Engagement

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

1. establish the supply market and/or market interest;
2. gauge whether the proposed procurement will be affordable;
3. determine the most appropriate procurement process;
4. assist with the development of documentation; and
5. inform potential bidders of the nature of the procurement

Contact the Procurement Team if pre-market engagement is to be undertaken.

11.2 In the event of a procurement process proceeding following Preliminary Market Engagement, the Bidders who participated should be notified of the opportunity.

12 Framework Agreements

12.1 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.

12.2 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.

12.3 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.

12.4 The use of a Framework Agreement should be considered prior to commencing any procurement process.

12.5 Advice should be sought from the Service Lead - Corporate Support on whether it is appropriate to use a Framework Agreement and, if so, how it should be accessed or put in place.

12.6 Where a framework is used, The Service Lead - Legal must be consulted on the proposed contractual terms and conditions before they can be accepted.

13 Dynamic Purchasing System (DPS)

- 13.1 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.
- 13.2 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.
- 13.3 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 FTS
- 13.4 As with Framework Agreements, there are a number of established central purchasing bodies who DPS which the Council can utilise.
- 13.5 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
- 13.6 Advice on setting up or using an established DPS should be sought from the Service Lead - Corporate Support and the Service Lead - Legal.

14 Procurement Thresholds

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

TABLE 1

	Estimated Total Value of Contract	Procedure / Tender Requirement
A1	£10,000 or less	Obtain single verbal or written quotation, or use suitable framework agreement or DPS in accordance with the framework/DPS terms and CPR 11 or 12.
A2	£25,000 or less Works contracts ONLY	The Service Lead concerned may agree contractual terms with any person that they consider competent for the relevant

	Estimated Total Value of Contract	Procedure / Tender Requirement
	<p>Under £25,000 concession and light touch contracts ONLY are exempt</p> <p>Values are ex VAT.</p>	<p>purpose, subject to achieving Best Value and Social Value.</p> <p>For concession and light touch contracts contact the Procurement team</p>
B1	<p>Over £10,000 but not more than £100,000 Supplies and Services contracts ONLY</p>	<p>The Service Lead concerned shall:</p> <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 in accordance with CPR29; 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 agreement or DPS in accordance with the framework/DPS terms and CPR 11 or 12.</p> <p>For Concession and light touch contracts contact the Procurement team</p>
B2	<p>Over £25,000 but not more than £250,000 Works contracts ONLY</p> <p>Under £250,000 concession and light touch contracts ONLY are exempt</p> <p>Values are ex VAT.</p>	
C1	<p>Over £100,000 Supplies and Service contracts (but outside scope of Public Contracts Regulations 2015)</p>	<p>No contract may be entered into unless formal competitive tenders have been invited either:</p> <ul style="list-style-type: none"> • C1 by Public Invitation to Tender (Open Tender) in

	Estimated Total Value of Contract	Procedure / Tender Requirement
C2	Over £250,000 Works contracts ONLY	accordance with CPR 16 and 29 or <ul style="list-style-type: none"> • C2 by Public Invitation to Tender (Open or Restricted) in accordance with CPR 16 and/or 18 and 29 • Use of a suitable framework agreement or DPS in accordance with the framework terms and CPR 11 or 12
C3	Over £250,000 concession and light touch contracts ONLY Values are ex VAT.	<ul style="list-style-type: none"> • C3 by Public Invitation to Tender (Open or Restricted) in accordance with CPR 16 and/or 18 and 29 • For Light Touch Contracts use of a suitable framework agreement or DPS in accordance with the framework terms and CPR 11 or 12 • For competitive restricted tender process, not publicly advertised, Approval to proceed must be obtained from the Service Lead - Corporate Support
D	Over the UK Public Procurement Thresholds UK Public Procurement Thresholds effective from 1 January 2022 are calculated incl VAT: Works Contracts: £5,336,937 (Based on 20% VAT this figure is	Where the value exceeds the UK Public Procurement Thresholds, the procurement must be undertaken in accordance with one of the following procedures as defined by the Public Contract Regulations 2015: <ul style="list-style-type: none"> • Open • Restricted • Competitive with Negotiation • Competitive Dialogue • Innovation Partnership Negotiated procedure without prior publication <p>The Service Lead may select the Open or Restricted Procedure without Member approval, and</p>

	Estimated Total Value of Contract	Procedure / Tender Requirement
	£4,447,448 ex VAT) Supplies Contracts:- £213,477 (Based on 20% VAT this figure is £177,898 ex VAT) Services Contracts: £213,477 (Based on 20% VAT this figure is £177,898 ex VAT) Light Touch Contracts: £663,540 (Based on 20% VAT this figure is £552,950 ex VAT)	shall determine the evaluation criteria and model (based on either price or most economically advantageous tender) and obtain any necessary approval prior to inviting tenders in accordance with CPR29 . In all other cases (except for Light Touch Regime) the choice of Procedure must be approved prior to inviting tenders either by Cabinet or by the relevant Cabinet Member under the scheme of delegation in the Constitution. Use of a suitable framework agreement or DPS is permitted in accordance with the framework or DPS terms and CPR 11 or 12 .

15 **Procurement and Contract Risk Assessment**

15.1 Before the commencement of procurement activity for any category other than A1 and A2, a risk assessment should be completed. The approach to the procurement and subsequent contract management arrangements will be proportionate to the risk of the contract. Further guidance is available from the Service Lead – Corporate Support.

16 **Contracts up to £100,000 / £250,000 - (Band A1 and A2 and Band B1 and B2)**

16.1 For contracts of a value of £10,000 or less (Band A1 - Supplies and Services) and £25,000 or less (Band A2 - Works only) at least one written quotation should be sought.

16.2 For Band B1 Supplies and Services contracts valued above £10,000 – £100,000 and Band B2 Works contracts valued above £25,000 - £250,000 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.

16.3 A Framework Agreement or DPS may also be used as an alternative to inviting quotations. See CPR 11 and 12. Concession and Light Touch contracts valued up to £250,000; contact the Procurement Team.

16.4 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.

16.5 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.) Where e-mail is used to issue and receive quotations, it is recommended that local processes are put in place to ensure the integrity of a fair, open and transparent process.

16.6 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 Service Lead - Corporate Support and Service Lead - Legal to ensure that it is a legally viable option and allows the Council to demonstrate suppliers' suitability.

16.7 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.

16.8 Officers must provide the Procurement Team with any and all requested information relating to the contracts and suppliers to facilitate completion of the Contract Register and to enable the Council to meet its obligations in respect of the Local Government Transparency Code 2015.

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

17.1 The Service Lead - Corporate Support must be notified of the commencement of all new Band C and procurements.

17.2 For Band C1 Supplies and Services contracts valued above £100,000 but below Public Procurement thresholds (see CPR 13), an 'open' tender procedure must be followed or a suitable framework agreement or DPS utilised (See CPR 11 and 12).

17.3 For Band C2 'Works' contracts valued above £250,000 but below Public Procurement thresholds (see CPR 13), an 'open' or 'restricted' tender procedure may be followed or a suitable framework agreement or DPS utilised (See CPR 11 and 12).

17.4 For Band C3 'concession' or Light Touch' contracts valued above £250,000 but below Public Procurement thresholds (CPR 13) an 'open' or restricted tender procedure by public invitation may be followed. A suitable framework agreement or DPS can be utilised for Light Touch contracts, see CPR11 and 12), or a competitive restricted tender process, not publicly advertised, can be followed. Approval shall be obtained from the Service Lead - Corporate Support.

18 Open Tender Procedure

18.1 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. Where relevant, Constructionline can be used as a pre-qualification system to assess and evidence a bidders suitability. However, this cannot be mandated and suitability questions should be completed and submitted by bidders that are not Constructionline members.

18.2 Use of pre-qualification systems should be reviewed periodically by the Service Lead - Corporate Support to ensure that their use continues to be used in a way that promotes the principles of openness, fairness and transparency.

18.3 A Contract Notice (advert) must be placed on Find a Tender Service (FTS), Contracts Finder¹ (and any other electronic advertising portal as determined by the Service Lead - Corporate Support).

18.4 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

18.5 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).

¹ The Governments Contracts Finder website can be found here - <https://www.gov.uk/contracts-finder>

19 Above UK Public Procurement Thresholds – (Band D)

- 19.1 The Service Lead - Corporate Support must be notified of the commencement of all new Band D and procurements
- 19.2 Where a procurement process is being carried out for an UK Public Procurement Procedure contract the procedures set out in the Public Contracts Regulations 2015 (PCR2015) as well as these CPRs must be followed.
- 19.3 For tenders above the UK Public Procurement Threshold, the following procedures are available:
- Open
 - Restricted
 - Competitive Dialogue
 - Competitive with Negotiation
 - Innovation Partnership
 - Negotiated procedure without prior publication
- 19.4 Use of the Competitive Dialogue and Competitive Negotiation procedures should only be used where certain criteria (as prescribed by the PCR2015) are met, including where the contract requirement is complex or cannot be purchased 'off the shelf'.
- 19.5 Before adopting any of the above procedures, guidance must be obtained from the Service Lead - Corporate Support and the Service Lead - Legal.

20 Restricted procedure

- 19.1 Under the 'restricted' procedure a number of bidders are selected from those who express an interest in response to a FTS 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

- 19.2 Guidance should be sought from the Service Lead - Corporate Support on this process.

21 Competitive with Negotiation Procedure

- 21.1 Under this procedure a selection is made from those bidders who respond to a FTS 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.

22 Competitive Dialogue Procedure

- 22.1 Under this procedure a selection is made from those bidders who respond to a FTS 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.

23 Innovation Partnership Procedure

- 23.1 Under this procedure a selection is made from those bidders who respond to a FTS 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'.

Negotiated procedure without prior publication

In the specific cases and circumstances laid down in PCR2015, this procedure may be used to award public contracts by a negotiated procedure without prior publication. Guidance must be sought from the Service Lead - Corporate Support on this process.

24 Reserved Contracts for Mutuals

- 24.1 The UK 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 awarded to an organization who had been awarded a previous contract for the services concerned by the Council within the previous 3 years.

- 24.2 Use of this procedure would require the prior approval of the relevant Cabinet Member and/or Cabinet.

25 Light Touch Contracts

There are specific rules in PCR2015 covering contracts for social and other specific services, that include certain health, social, educational and other services.

- 23.1 Above the threshold set out in **CPR 13 D**, these services must be procured following the placement of a FTS Contract Notice 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
- 25.3 Advice shall be sought from the Service Lead - Corporate Support to ascertain whether the service you are procuring needs to be advertised in accordance with PCR2015 and how the procurement for these services should be run.
- 25.4 Below the threshold set out in **CPR 13 D** these services must be procured following the advice of the Procurement team.
- 25.5 Officers conducting above threshold procurement 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 FTS Contract Notice is published in accordance with PCR2015.

26 Contract Notice

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

Total Contract Value	Contracts Finder	FTS
< £100,000 (B1) / < £250,000 (B2)	Optional	Optional
> £100,000 (C1) / > £250,000 (C2)	Mandatory	Optional

Above UK Public Procurement Threshold	Mandatory	Mandatory
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Where an advert is used it should always be placed on Contracts Finder. Other media may be considered as appropriate.

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

26 Bidder Suitability

- 27 In all UK Public 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 PCR2015.
- 28 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). A Selection Questionnaire can only be used for contracts valued above the UK threshold for goods and services.
- 29 A bidder who is considered for contract award will be required to provide certificates and supporting documents at this stage.
- 30 In all below UK Public Procurement threshold exercises, Officers need to undertake a risk assessment (CPR14) to determine whether it is necessary and proportionate to assess a supplier's eligibility, financial standing and technical capacity. If it is decided that this assessment is appropriate an SQ is not allowed at this level of spend except for Works contracts in excess of the Goods and Services Threshold. Instead, suitability questions must be included as part of the tender assessment. Further guidance should be sought from the Service Lead - Corporate Support.

28 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 UK Public Procurement Threshold procurements are subject to statutory timescales. Further guidance can be sought from the Service Lead - Corporate Support.
- 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 Service Lead - Legal before they can be accepted.

29 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 6 calendar days must 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.

30 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-UK Public Procurement threshold tenders.

28.2 Electronic signatures on e-tenders are acceptable.

28.3 Invitations to tender for procurements that have a value above £100,000 (C1) / £250,000 (C2) or more should be transmitted electronically using an e-procurement system as determined by the Service Lead - Corporate Support. This includes mini competitions under Third Party Framework Agreements.)

28.4 Invitations to tender for procurements that have a value in excess of Public procurement thresholds must be transmitted electronically using an e-procurement system as determined by the Service Lead - Corporate Support. 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 above £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 Service Lead - Corporate Support. 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 above £100,000 (B1) or £250,00 (B2 and C3) must not be involved in the recording or opening of the Tender Documents.
- 28.8 Tender submissions for procurements that have a value above £100,000 (B1) or £250,000 (B2 and C3) shall be opened by two independent officers of the Council as nominated by the Service Lead – 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 of the tender opening shall be signed by all persons present.

Hard Copy Tendering

- 28.9 Where hard copy tenders are being accepted (below UK Public procurement threshold only and in exceptional circumstances) they must be addressed to The Service Lead - Legal 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 Service Lead - Legal, and electronic tenders will not be accessible, until the time appointed for their opening. The Service Lead legal may delegate authority for the opening of the tender submission if they are not able to be present.
- 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 Service Lead - Legal. The tender shall then be retained by the Service Lead - 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.

31 Tender Evaluation (Applies to all Band A, B C and D contracts)

- 29.1 The Service Lead shall 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..

In-line with the council's Procurement and Contract Management Strategy, where the MEAT evaluation model is used, a minimum of 10% must be allocated to environmental and social value, unless an alternative evaluation model is approved by the responsible Cabinet Member or Cabinet.

In all other cases, the evaluation model must be approved prior to inviting quotations or tenders either by the Section 151 Officer for procurements with a total value of up to £100k for goods and services and £250k for works: or if above these values by Cabinet, Committee or the relevant Cabinet Member 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 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 Service Lead. A moderation meeting will 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. For procurements that have a value in excess of UK Public Procurement thresholds, a member of the Procurement Team must lead the moderation.

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 related to those presentations. Any such Elected Member participation shall be on the basis that Elected Members shall treat all information as commercially sensitive and confidential.

- 29.4 All contracts must be awarded on the basis of the offer which represents Best Value to the Council.

32 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.

33 Post Tender Clarification and Negotiation

- 32.1 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 and incorrect 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.
- 32.2 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).
- 32.3 Officers are expected to take advice from the Service Lead - Corporate Support and the Service Lead - 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.

34 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 Service Lead - Legal subject to them having produced and/or approved a suitable set of contract conditions.
- 32.4 Contracts procured under a UK Public Procurement Procedure must be awarded in accordance with the procedure set out in PCR2015. Guidance on this can be obtained from the Service Lead - Corporate Support or the Service Lead - Legal.
- 32.5 Once a contract has been awarded the procuring Officer must update the Corporate Contract Register and Contracts Finder with:
- 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 published information include:
- 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 For all contracts awarded via a UK Public Procurement procedure, a Regulation 84 should be produced and held on file for Audit purposes. Further guidance on Regulation 84 reports can be sought from the Service Lead – Corporate Support.
- 32.9 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.

35 Documentation, Liquidated Damages, Insurance, and Bonds

Documentation

35.1 Every contract under the value of £10,000 made verbally or otherwise will be recorded by the raising of a purchase order that is subject to authorisation by the relevant officer. All expenditure over £500 will be published on the Council's website.

<https://www.winchester.gov.uk/transparency-and-open-data/expenditure-over-163-500>

- 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 Service Lead - Legal shall be informed of every proposed contract which exceeds £10,000 in value or amount and if they so determine a formal contract shall be prepared or approved by them. All contracts shall be executed in accordance with Articles 14.03 and 14.04 of this Constitution.

Liquidated Damages

33.3 Every contract for the execution of works which exceeds £100,000 in value or amount shall, unless otherwise agreed by the S151 Officer, 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 Every contract for the provision of goods and services or execution of works shall require the appointed contractor to provide policies of insurance for the relevant sum specified in the Council's Contract Insurance Guide.
- 33.5 Unless otherwise agreed by the s151 Officer, 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.
- 33.6 Insurance policies shall be maintained by or on behalf of the contractor during the term of the contract. The S151 Officer shall be consulted and a risk assessment carried out before an insurance level is agreed which is outside the Council's Contract Insurance Guide.

Bonds²

- 33.7 For contracts estimated to be greater than £1,000,000 and/or deemed by the s151 Officer 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 Service Lead 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 a written decision is to be made by the Service Lead in consultation with s151 officer or Service Lead – Finance..

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 sS151 Officer.

² 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

Where a bond is required, the contract shall not commence until the Service Lead - Legal or Finance Manager is assured by the relevant officer that the bond is in force.

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 Service Lead.

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.

Where a parental company guarantee is required, the contract shall not commence until the Service Lead - Legal or Finance Manager is assured by the relevant officer that the parental company guarantee is in force.

36 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 them or acting on their 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 them or acting on their 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.

37 Partnering Arrangements

- 35.1 No Partnership or Joint Venture Arrangement shall be entered into by the Council except with the approval of Cabinet or the relevant Cabinet Member except:

35.2

- 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 s151 Officer has been consulted.

38 Contracts Register

36.1 A contracts register shall be maintained by the s151 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 **£5,000**.

36.2 The Service Lead who is responsible for a procurement shall ensure that details of contracts are entered onto the Contracts Registers and Contracts Finder within 30 days 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.

39 Contract Management

37.1 The Service Lead must ensure that all contracts are monitored and managed throughout the contract period, and that the performance of contractors is reviewed regularly against the terms of the contract and any performance monitoring schedules including sustainability.

37.2 For each medium and high risk contract, the Service Lead must designate an appropriate lead officer as primary contact and Contract Manager. Contracts must be managed in accordance with the requirements of the Council's Contract Management Framework and any guidance issued by the Service Lead - Corporate Support.

37.3 In particular, the Service Lead 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 on-going 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 Service Lead shall ensure that release of such monies is managed in accordance with the contract terms.

- 37.6 The Service Lead shall monitor contract expenditure and report on any contractual overspend in accordance with the relevant provisions of the Financial Procedure Rules.
- 37.7 The Service Lead 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.

40 Contract Extensions and Variations

Extensions

- 39.1 Contract extensions are only permitted if they are put in place before the contract expiry date. Prior to seeking approval from the relevant Strategic Director or Statutory Officer to take up a contract extension the Service Lead must comply with the requirements to establish whether the extension will deliver Best Value. This process must be recorded in writing.
- 39.2 Any Contract extension must be approved by and dealt with by the relevant Strategic Director or Statutory Officer. The s151 Officer must be consulted if the extension relates to a high-risk contract. 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 and the decision must be published in accordance with Part 2 Article 13 Decision Making.
- 39.3 All extensions to any Council contracts must be in writing and the Corporate Contracts Register and Contracts Finder updated accordingly. Extensions of a Contract that are categorised as “variations” in the Contract terms and conditions will be governed by rules 38.5 to 38.9 and CPR 31.1 and 31.2 will not apply
- 39.4 Once a Contract has expired it cannot then be extended.

Variations / Modifications

- 39.5 Variations to contracts will be dealt with in accordance with these Contracts Procedure Rules and the Council’s Financial Regulations.
- 39.6 All Contract variations/modifications must be carried out in accordance with PCR2015 (Reg 72) and within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not allowed.
- 39.7 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 Service Lead and a Delegated Decision taken by the relevant Strategic Director or Statutory 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 38.9 might apply.

39.8 Where appropriate, (taking into account any change in contract value, contract term, range of services provided etc.), contract variations must be reported to the Service Lead - Corporate Support in order that Corporate Contracts Register and Contracts Finder can be updated.

39.9 A new procurement is required in case of material change where one or more of the following conditions are met:

39.9.1 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;

39.9.2 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;

39.9.3 The modification extends the scope of the contract or framework agreement considerably.

39.10 You must consult the Service Lead - Legal if you are considering varying a Contract that you have procured under CPR 17.

Transfer of contracts – novation and assignment

39.11 Transfer, assignment and novation of contracts can only be carried out by the Service Lead - Legal.

41 Termination of Contract

39.1 Any Contract will only be terminated early if this action is authorised by the relevant Strategic Director or Statutory Officer through a Delegated Decision. A copy of the report and decision for termination of any contract exceeding £100,000 in value must be sent to the Section 151 Officer for monitoring purposes. All termination letters under this rule will be drafted and issued via The Service Lead - Legal in conjunction with the Service Lead.

39.2 A contract must not be terminated to avoid international obligations.

42 Nominated and Named Sub-Contractors

41.1 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.

41.2 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, they shall comply with the requirements of Contracts Procedure Rules as if they were an officer of the Council.

43 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 one of social, or 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.

42.2 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 € and (f)	Authorised person

< £100,000	Corporate Head of Service within whose area of responsibility the contract falls
< £250,000	Strategic Director and s151 Officer
> £250,000	Cabinet Member / Cabinet

- 41.3 CPRs cannot be waived where the contract value is in excess of the relevant **Public Procurement** 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 Service Lead - Corporate Support in the first instance, who will review the request and endorse if appropriate and then seek approval from the person authorised under CPR 41.2. 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 41.2 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 UK Public Procurement 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 Contract Procedure Rules will be limited.

44 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. The

Service Lead – Legal shall be informed of a contractual dispute and claim.

45 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.

46 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.

47 Concessions

- 45.1 Concession contracts are defined in the Concession Contracts Regulations 2016 and these regulations apply to concessions with a value exceeding approximately five million pounds inc VAT and can be found here:
<http://www.legislation.gov.uk/ukxi/2016/273/introduction/made>
- 46.2 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.
- 45.4 Officers shall consult the Service Lead – Corporate Support or Service Lead – Legal if a contract may fall within the Concession Contracts Regulations 2016. Threshold amounts for establishing the value of concession contracts are also set out in Regulation 9 of the Concession Contracts Regulations 2016.

Contracts outside any of the above provisions in the CPR

- 47.1 Approval for a contract falling outside any of the above provisions, inclusive of property and grant agreements or where there is an element of uncertainty, shall abide by the provisions of this Constitution, in particular Article 15 (Decision Making) and authority is 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
< £250,000	Strategic Director and s151 Officer
> £250,000	Cabinet Member / Cabinet