

Part 4.7 - Contract Procedure Rules

1. Introduction
 - 1.1 The ~~Contracts~~Contract 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). when undertaking procurements from identifying a requirement to contract award and contract management.
 - 1.2 The Monitoring Officer in consultation with the Service Lead – Corporate Support shall have the power to make incidental amendments from time to time to the Rules, for example when updates are required from changes to legislation, job titles and roles.
 - 1.3 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.
 - 1.4 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.
 - 1.5 CPRs are a legal requirement and constitute standing orders for the purpose of ~~s135~~Section 135 of the Local Government Act 1972.
 - 1.6 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.
 - 1.7 ~~Strategic~~ Directors are responsible for ensuring that their officers comply with these ~~Rules~~CPRs.
 - 1.8 ~~The Advice on the application of CPR's can be sought from 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.
 - 1.9 A range of procurement templates are also available. Further support and guidance on these CPRs is available from the Service Lead - Corporate Support.

- 1.10 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~~must comply with:
- 2.2 All applicable ~~EU and~~ UK Legislation ~~This is specifically (but not limited to):~~.
- ~~a. The Local Government Act 1972~~
 - ~~b. Public Contract Regulations 2015 (PCR)~~
 - ~~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)~~
- 2.3 These Contracts Procedure Rules, and the Council's Financial Procedure Rules.
- 2.4 The Council's strategic objectives and policies and the Council's Employee and Members Code of Conduct; and

2.5 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).

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

2.7 Central Government Procurement Policy Notes (PPNs) ~~are to~~must be ~~treated as "best practice"—they do not override~~considered alongside these ~~rules~~CPRs.

2.8 These Contract Procedure Rules apply to all procurements except those set out below in 2CPR2.11 and Exempt Contracts (~~CPR41~~CPR56).

~~2.8~~ Prior to

~~2.9~~

~~a. Bcommencing~~commencing a procurement process, ~~the following need to~~safeguarding obligations must be ~~considered~~G.

~~2.10~~2.9 ~~Is~~considered and appropriate steps taken throughout the procurement lifecycle. For further advice please contact the Council's Safeguarding Policy and process required.Lead.

2.10 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~~means award, entry into and ~~also where goods, works or services are procured through a negotiation with a single provider.~~management of a contract. 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 a procurement. However, officers should consider whether the purpose that the grant is being provided for could be achieved through procurement.

2.11 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~~Procurement Act 2023 (PA23) does not apply), and this is still best value for the Council);

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.~~ Guidance on this matter is available on the national audit office website. [http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/Grants and funding arrangements](http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/Grants-and-funding-arrangements)
- f.
- g. Disposal of land; and
- h. ~~Services~~ Other types of arrangements which are excluded under ~~PCR2015 Reg 10.~~ PA23 Schedule 2.

2.12 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. ~~Where the winning bidder has identified itself as being within the scope of IR35 Legislation via the tender process, the Officer must check the bidder's employment status for tax on the HMRC website to determine whether the bidder should be paid via the Council's payroll system or via the raising of an invoice on the Financial Management System; and relevant legislation.~~

2.12.13 ~~Officers shall also consider whether IR35 may apply and should note that a failure to apply appropriate IR35 employment status checks in line with HM Revenue & Customs requirements may result in the Council additionally becoming responsible for the payment of additional taxes.~~ Advice must be sought from the Finance Manager if there is any doubt about the application of this.

~~3.~~ _____

~~4.~~ _____ ~~Guidance on this matter is available on the national audit office website. <http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/>~~

5.3. Requirements for Procurement and Contracts

~~5.1~~ ~~Neither and 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.~~

~~3.1 The need to maintain fairness, transparency, equality and integrity in the Council's~~In relation to above UK Threshold Value Procurement exercises, where either a new requirement is to be procured or well in advance prior to the natural expiry of an existing Contract, the Officer shall liaise with Procurement in order to agree a procurement strategy for the letting, extension or renewal of a Contract. Guidance on procurement lead times can be found on the Knowledge Hub.

~~3.2 All procurement activity;~~and contract management activity should:

~~a. secure best value.~~

~~b. maximise public benefit whilst delivering sustainability and social value.~~

~~c. act and be seen to act with integrity.~~

~~d. not put a supplier at an unfair advantage or disadvantage.~~

~~e.e.~~ have regard to small and medium enterprises who may face barriers to participation and E~~consider whether such barriers can be removed or reduced (this will include exercising the duty to consider dividing the procurement exercise into lots).~~

~~f. The need to have due regard to the National Procurement Policy Statement (NPPS).~~

~~d.g.~~ comply with applicable legal requirements.

~~All procurement by the Council shall h. 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~~

~~i. consider and implement the overriding public procurement principles of non-discrimination, equal treatment~~acting and be seen to act with integrity and transparency.

~~3.3 Comply with any relevant Council policies and support delivery of the Council Plan.~~

~~5.23.4~~All contracts shall be executed in accordance with Articles 14.3 and 14.4~~Articles 14.4 and 14.5~~ of this Constitution.

~~PLPL~~Regulations 4

~~5.3~~:G

3.5 Where a procurement exercise, regardless of value, commenced prior to 24th February 2025, in accordance with any predecessor legislation, the general principle is that predecessor legislation shall, subject to compliance with the Procurement Act 2023 continue to govern these ongoing procurement exercises, post contract awards, variations and contract management activities.

All Officers must have regard to and seek advice from Procurement and/or Legal Services as required to ensure that the correct law and process is applied.

3.6 The role of responsible Officers / Agents or Consultants procuring on behalf of the Council includes:

- Invite where feasible, local suppliers and or third sector organisations when quotations (CPR 16, B1 and B2) are sought.
- Ensure relevant approvals including adequate budget are in place prior to any procurement commencing.
- Engage with Procurement in good time before approaching the market for any contract in excess of £100,000 for goods and services and £250,000 for works.
- Instruct Legal Services to advise and draft an appropriate form of contract or review existing terms and conditions of a framework.
- Compile and finalise specifications.
- Set evaluation criteria and relative weightings in order of importance.
- Set Key Performance Indicators and Management Information requirements.
- Effectively and robustly manage contracts within Services, either by a dedicated Contract Manager or by a nominated officer in accordance with the Council's Contract Management Framework.
- Publish Procurement and Contract notices in accordance with relevant legislation.
- Update the Contract Register for all contracts valued above £5,000.

3.7 Role of the Procurement Team

- Provide expert procurement advice to ensure compliance and to support delivery of best value.
- Ensure Officers have the correct tools, information and guidance to assist with delivering a compliant, cost effective and good quality contract.

- Offer light touch advice to Officers procuring within Bands C1 C2 and C3 (CPR 16).
- Manage the tender process of any contracts valued above UK Public Procurement threshold, Band D.
- Ensure transparency and compliance by publishing required notices during an above UK Public Procurement Threshold tender process.
- Review and Publish the Contracts Register.
- Review conflict assessments with input from Legal Services when tendering contracts valued above UK Public Procurement Threshold.

6.4. Achieving Best Value

6.14.1 Every procurement process and contract must be designed to achieve best value for the Council, in accordance with the relevant legislation and applicable procurement guidance issued by the Service Lead - Corporate Support.

6.24.2 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 council contract and ensure that the estimated value can be met from the appropriate budget.

6.34.3 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.

7.

5. ~~C~~socialSustainable Procurement

5.1 Sustainable procurement is defined as:

“a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.”

5.2 This definition is based on three pillars of sustainability: environmental, social, and economic.

a. Through sustainable procurement we can improve the impact of the Council's commercial spend to deliver social and environmental benefits both within our local community and nationally.

b. The Council has declared a climate change and nature emergency across the borough and has set a target of being a carbon neutral district by 2030.

c. The environmental and social value impact must be considered within every procurement.

d. At least 10% of the total evaluation criteria allocated, if price is not the only criteria, to environmental and social value. The 'Guide to Sustainable Procurement' located on the intranet and the Council's website provides useful information and practical guidance on this.

8.6. Social Value

8.16.1 The Public Services (Social Value) Act 2012 requires contracting authorities to consider at the pre-procurement stage of any ~~services~~ contract and ~~services~~ Framework Agreement (including ~~good~~ and works contracts procured in combination with services) above UK 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.

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

8.36.3 The Council has been granted The Living Wage Foundation Accreditation, (this differs from the National Living Minimum 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.

8.46.4 Additional guidance is available from the Procurement Team to ensure compliance ~~to~~with the Council's Procurement and Contract Management Strategy in relation to evaluating social value ~~-~~ and environmental matters.

7. Supporting Local Economy

7.1 Where quotations are sought, see Table 1, CPR 16, consideration must be given to whether there is a relevant supplier market for the procurement and at least one of the local suppliers invited to submit a quotation should be a local

supplier and/or a third sector organisation. To note a local supplier is classed as being based in Hampshire.

9.8. Conflicts of Interests of Officers in Contracts and Other Matters

9.18.1 All officers engaged in a procurement process shall Officers and Councillors must comply with The Employee their respective Code of Conduct and must not invite or accept to avoid any gift or reward in respect of the award or performance of a contract. conflict between their own interests and those of the Council. High standards of conduct are obligatory.

10. _____

8.2 For all procurement activity valued above the relevant UK Public Procurement threshold, that is not exempted by Schedule 2 of PA23, a conflict assessment must be undertaken before publishing a transparency notice and or a tender notice.

The assessment should take account of all those involved or influencing the procurement (including developing the specification and tender documentation) and the future management of the contract including Officers, Councillors and Consultants. The conflict assessment must identify any actual, potential or perceived conflicts of interests throughout the life of the contract and be proportionate to the value and risk of the contract.

8.3 For below UK Public Procurement threshold any Officer, Councillor or consultant who has reason to believe that there is a conflict of interests in respect of a supplier should report this to the Monitoring Officer. At any point during the procurement process, if an Officer or Councillor becomes aware that they have a direct or indirect pecuniary interest in a contract which the Council has entered into, or proposes to enter into, their interest must be recorded within the conflict assessment. This includes interests by their close associates or family members. Failure to declare an interest by an Officer, of which the Officer is aware, is a disciplinary offence; failure to declare an interest by a Councillor, of which the Councillor is aware could amount to a breach of the Code of Conduct for Councillors or a criminal offence.

8.4 Where procurements have been jointly procured by another local authority, public sector consortium or collaboration of which the Council is a party but not the lead authority a separate conflict assessment must still be undertaken prior to commencing the joint procurement.

8.5 If a conflict of interest is identified then the assessment will set out what mitigation is being put in place to ensure that suppliers are not put at an unfair advantage or disadvantage. The Monitoring Officer must approve all conflict assessments where mitigation is being put in place.

8.6 For all contracts the conflicts assessment must be:

a. held by the relevant Corporate Head of Service.

8.7 b. regularly reviewed throughout the life of the contract by the relevant Corporate Head of Service.

~~40.18.8~~ 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,

~~40.28.9~~ They shall as soon as practicable give notice in writing to the Monitoring Officer of the fact that they are interested therein.

~~40.38.10~~ 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.in Part 5 of this Constitution prior to providing such advice.

~~40.48.11~~ 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 Paragraph 6.2 of ~~this Rule~~these CPRs. The record shall be open for inspection by members of the Council during the ordinary office hours of the Council.

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.

~~40.58.12~~ 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 paragraph 6.2 of these Contract Procedure Rules, they shall remind the meeting orally of that interest.

41.9. Joint Procurement / Collaboration

41.19.1 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.

41.29.2 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~~required published notices 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.

41.39.3 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~~relevant legislation, 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~~uphold the principle of acting with integrity.

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

42.110.1 With the exception of Low Value Transactions ~~→~~(Bands A1 and A2, B1 and B2 (as detailed in Table 1)), 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.

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

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

~~42.3~~10.3 Where the assessment of the need determines that a procurement is required, the appropriate procedure shall be undertaken in accordance with Table 1.

~~42.4~~10.4 The contract value is calculated by multiplying the (annual price) by the (contract length ~~+plus~~ possible contract extensions) ~~whether or not the Public Contracts Regulations 2015 are applicable.~~

~~12.5 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).~~

~~42.6~~10.5 Where the period of a contract is indefinite or cannot be ascertained, ~~it shall be assumed to be for a period the value of four years for the contract is to be estimated as an amount of more than the purpose of these CPRs threshold amount for the type of contract and subject to the full regime.~~

~~42.7~~10.6 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.~~ relevant legislation.

~~13.11.~~ Authority to Purchase

~~13.11.1~~ 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.

~~13.2~~11.2 ~~Strategic~~ Directors must ensure that procurement activity is undertaken by ~~authorised~~ officers who can demonstrate have relevant 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.~~

~~13.3~~11.3 ~~Officers must ensure that the~~ The appropriate budget holder ~~has~~ must ensure that the funds are 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~~ evidenced before a decision is made to award a contract.

~~14.12.~~ Pre-Contract and Budget Approval

~~14.1~~12.1 Before commencing a procurement process the Service Lead undertaking a procurement must ensure that:

- a. the procurement is properly authorised either: -

- (i) By Council, Cabinet a Committee or a Cabinet Member, OR
- (ii) In accordance with the Scheme of Delegation to Officers

~~14.2~~12.2 The value of the procurement has been calculated in accordance with these CPRs and that appropriate budgetary provision is available.

~~15.13.~~ Pre-Market Engagement

~~15.1~~13.1 Before commencing a procurement process, ~~it may be beneficial to conduct where required, market consultations; should be conducted in order to justify for not doing for Covered procurements must be published in any to: Planned Procurement Notices:~~

~~a. Establish develop the supply market Council's requirements and/or market interest.~~

~~b. a. gauge whether approach to 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.~~

~~b. design a procedure, conditions of participation or award criteria;~~

~~c. prepare the tender notice and associated tender documents;~~

~~d. identify suppliers that may be able to supply the goods, services or works required;~~

~~e. identify likely contractual terms.~~

~~15.2~~13.2 Contact the Procurement Team if pre-market engagement is to be undertaken.

~~13.3~~ For above UK threshold Public Procurements, a Preliminary Market Engagement notice must be published if the Council intends to carry out market engagement before starting a procurement or can be published after the event, stating it has undertaken such engagement. Notices must be published on the government's Central Digital Platform/Find a Tender.

~~15.3~~13.4 In the event of a procurement process proceeding following Preliminary Market Engagement, the Bidders who participated should be notified of the opportunity unless their involvement in market engagement activities means

they are now capable of distorting competition in a procurement process. A potential bidder must however, be given the opportunity to prove that their involvement in market engagement activities is not capable of distorting competition.

13.5 A justification for not undertaking any pre-market engagement for above threshold UK Public Procurements must be included in the published Tender Notice.

46.14. Framework Agreements

~~46.1 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.~~

~~46.2~~14.1 A Framework Agreement is ~~ana pre-tendered~~ ana pre-tendered 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. ~~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.~~

14.2 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.

14.3 When setting up a Framework Agreement, the contract value of the framework must be calculated to include the total estimated value, of all the contracts envisaged to be awarded under it for the total term.

14.4 Frameworks are normally used where it would be useful to have a pool of pre-selected bidders to draw from, as the bidder quality assessment procedure has already taken place, thus saving time and resources for Officers. For these reasons, the use of a Framework Agreement should be considered prior to commencing any procurement process.

14.5 The number of suppliers and operation of, differs from framework to framework, depending on what is being offered.

14.6 Some frameworks include catalogues which can be used for simple, everyday purchases whilst others, enable a direct award or further competition.

~~46.3~~14.7 Where a framework is used, The Service Lead - Legal must be consulted on the proposed contractual terms and conditions before they can be accepted.

47.15. Dynamic Purching ~~System (DPS)~~ and Dynamic Markets

15.1 Contracts based on either a Dynamic Purching PA System (DPS) or Dynamic Market (DM) may be awarded provided they comply with the relevant legislation.

~~47.1~~15.2 A DPS and a DM 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. A DPS is an entirely electronic system. 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.

~~47.2~~

~~47.3 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.~~

~~47.4 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.~~

15.3 No new DPS will commence under the PA 2023, instead there will be Dynamic Markets. Only the competitive flexible procedure can be used for Dynamic Markets. Officers must comply with the processes for Dynamic Markets in the PA 2023 to commence or procure contracts under them. Contracts valued below threshold for Goods and Services cannot be awarded under a Dynamic Market arrangement.

~~47.5~~15.4 As with Framework Agreements, there are a number of established central purchasing bodies who operate a DPS which the Council can utilise and it is likely that similarly DMs of that type will be set up in future under the PA23.

~~47.6~~15.5 The use of a ~~Dynamic Purching System~~ DPS or DM 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.~~a~~
- c. As with Framework Agreements, when a DPS or DM is established, its contract value must be calculated to include the total estimated value of all the contracts envisaged to be awarded over the total term.

	Estimated Total Value of Contract	Procedure / Tender Requirement
	<p>Works contracts ONLY</p> <p>Under</p> <p>Over £25,000 but not more than £250,000-concession</p> <p>Concession and light touch contracts ONLY are exempt</p> <p>Values are ex VAT.</p>	<p>invite<u>Invite</u> a minimum of three written quotations either</p> <p>and accept the quotation which scores highest by applying the evaluation model: used, or</p> <p>Or use<u>Use a</u> suitable framework agreement or DPS in accordance with the framework/DPS<u>its</u> terms and CPR 1114 or 1215.</p> <p>B2 (works) use a suitable DM in accordance with its terms and CPR 15 providing the value of the contract is more than £179,087 ex VAT</p> <p>For Concession and light touch contracts contact the Procurement team</p>
C1	<p>Over £100,000</p> <p>Supplies and Service contracts (or over but outside scope of) <u>not more than the UK Public Contracts Regulations 2015)</u> <u>Procurement Threshold</u></p>	<p>No<u>For C1, C2 and C3 procurements, no</u> contract may be entered into unless formal competitive tenders have been invited either:</p> <p>C1 by Public Invitation to Tender (Open Tender) in accordance with CPR 1621 and 2931 or</p>
C2	<p>Over<u>Goods and Services contracts ONLY</u></p>	<p>C2 by Public Invitation to Tender (Open or Restricted<u>Competitive Flexible</u>) in accordance with CPR 1621 and/or 1823 and 2931</p>

	Estimated Total Value of Contract	Procedure / Tender Requirement
C3	<p>£250,000 <u>or over but not more than the UK Public Procurement Threshold</u> Works contracts ONLY</p> <p>Over</p> <p>£250,000 <u>or over but not more than the UK Public Procurement Threshold</u> concession and light touch contracts ONLY</p> <p>Values are ex VAT.</p>	<p>Use of a suitable framework agreement or DPS in accordance with the framework terms and CPR 11 or 12</p> <p>C3 by Publicpublic Invitation to Tender (Open or Restricted<u>Competitive Flexible</u>) in accordance with CPR 16<u>21</u> and/or 18<u>23</u> and 29<u>31</u></p> <p><u>For Contact the Procurement Team before conducting a Competitive Flexible Procedure.</u></p> <p><u>C1, C2, and C3 (Light Touch Contracts Only) by use of a suitable framework agreement or DPS in accordance with the frameworkits terms and CPR 14 or 15.</u></p> <p><u>C2 and C3 by (Light Touch Only) use of a suitable DM in accordance with its terms and CPR 11 or 1215.</u></p> <p>For competitive restricted tender process, not publicly advertised, Approval to proceed must be obtained from the Service Lead—Corporate Support</p> <p><u>For Concession and light touch contracts contact the Procurement team</u></p>
D	Over the UK Public Procurement Thresholds	<p>Where the value exceeds the UK Public Procurement Thresholds, the procurement must be undertakenin <u>accordanceundertaken</u> with <u>the Procurement Team and in accordance with one of the following procedures as defined by the Public Contract Regulations 2015relevant legislation:</u></p> <p>Open</p>

	Estimated Total Value of Contract	Procedure / Tender Requirement
	<p>UK Public Procurement Thresholds effective from 1 January 20222024 are calculated incl VAT:</p> <p>Works Contracts: £5,336,937372,609</p> <p>(Based on 20% VAT this figure is £4,447,448174 ex VAT)</p> <p><u>SuppliesGoods</u> Contracts:- £213,477:- £214,904</p> <p>(Based on 20% VAT this figure is £177,898179,087 ex VAT)</p> <p>Services Contracts: £213,477214,904</p> <p>(Based on 20% VAT this figure is £177,898179,087 ex VAT)</p> <p>Light Touch Contracts: £663,540</p> <p>(Based on 20% VAT this figure is £ £552,950 ex VAT)</p> <p><u>Concession Contracts:</u> <u>£5,372,609</u></p> <p><u>(Based on 20% VAT this figure is £4,447,174 ex VAT)</u></p>	<p>Restricted</p> <p>Competitive with Negotiation<u>Flexible</u></p> <p>Competitive Dialogue</p> <p>Innovation Partnership</p> <p>Negotiated procedure without prior publication.</p> <p>The Service Lead may select the Open or Restricted<u>Competitive Flexible</u> Procedure without Member approval and shall determine the evaluation criteria and model (based on either price or most economically advantageous tender, <u>CPR35</u>) and obtain any necessary approval prior to inviting tenders in accordance with CPR29<u>CPR31 and CPR 35</u>.</p> <p>In all other cases (except Excerpt 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.</p> <p>Use Concession Contracts, use of a suitable framework agreement or, DPS or DM is permitted in accordance with the framework or DPS<u>its</u> terms and CPR 11<u>14</u> or 12<u>15</u>.</p>

19.17. Procurement and Contract Risk Assessment

~~19.1~~17.1 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.

~~20.18.~~ Contracts valued up to £100,000 / £250,000 - (Band A1 and A2 and Band B1 and B2)

~~20.1~~18.1 For contracts of a value of £10,000 or less (Band A1 - Supplies Goods and Services) and £25,000 or less (Band A2 - Works only) at least one written quotation should be sought.

~~20.2~~18.2 For ~~Band B1 Supplies and Services~~ contracts ~~valued of a value of~~ above £10,000 ~~– £100,000~~ (Band B1 – Goods and Services) and ~~Band B2 Works contracts valued~~ above £25,000 - £250,000 (Band B2 – Works) 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.

~~20.3~~18.3 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~~ 14 and 15.

18.4 For Concession and Light Touch contracts valued up to £250,000 contact the Procurement Team.

~~20.4~~18.5 Where quotations are sought, ~~the Procuring Officer~~ consideration must ~~always consider~~ be given to 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 submit a quotation should be a local ~~supplier~~ supplier and/or a third sector ~~organisations~~ organisation.

~~20.5~~18.6 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 a~~ transparent process.

~~20.6~~18.7 Where relevant, a third-party pre-qualification system ~~such as Construction Line may can~~ be used to ~~invite~~ select a minimum of three suppliers to submit 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.~~

~~20.7~~18.8 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.

~~20.8~~18.9 Officers must ~~Cprovideupdate~~ the ~~Procurement Team Council's Contract Register~~ 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.

~~19.~~ In accordance with the relevant legislation Officers must publish notices in relation to procurement activity. See CPR 28 and CPR29.

~~21.20.~~ Contracts Over £100,000 / £250,000 – (Band ~~C1Supplies and C2~~)C1 (Goods and Services) and C2 and C3 (Works, Light Touch and Concessions))

~~21.120.1~~ The Service Lead - Corporate Support must be notified of the commencement of all new Band C ~~and~~ procurements.

~~21.220.2~~ For ~~Band C1 Supplies and Services~~ contracts ~~valued of a value of~~ above £100,000 but below the UK Public Procurement thresholds ~~Threshold (Band C1 – Goods and Services)~~ (See CPR ~~13~~16 and ~~CPR21~~), an 'open' tender procedure must be followed or a suitable framework agreement, or DPS utilised (See CPR ~~11~~14 and ~~12~~15).

~~21.320.3~~ For ~~Band C2 'Works'~~ contracts ~~valued of a value of~~ above £250,000 but below the UK Public Procurement thresholds ~~(See CPR 13), Threshold (Band C2 - Works)~~ an 'open' ~~or 'restricted'~~ tender procedure or a competitive flexible procedure may be followed or a suitable framework agreement ~~or, DPS or DM~~ utilised (See CPR ~~11~~14 and ~~12~~15).

~~20.4~~ For ~~Band C3~~ 'concession' or Light Touch' contracts ~~valued of a value~~ above £250,000 but below the UK Public Procurement thresholds ~~(CPR 13)Threshold (Band C3)~~ an 'open' ~~or restricted~~ tender procedure by public invitation or a competitive flexible procedure may be followed. ~~A~~

For Light Touch Contracts a suitable framework agreement or, DPS can or DM may be utilised for Light Touch contracts, See CPR11 and 12 (see CPR14 and CPR15), or a competitive restricted tender process procedure, not publicly advertised, can may be followed. Approval shall be obtained from the Service Lead – Corporate Support.

~~22.21.~~ Open Tender Procedure

21.1 Under ~~the an~~ 'open' tender procedure, any bidder can respond to an advert and submit a tender. ~~However, it~~All information needs to be provided at the point of tender and made available to all suppliers.

~~22.1~~21.2 ~~It is permitted to include 'suitability' questions~~Conditions of Participation 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.~~
~~ep. 22.1~~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), for all contracts valued above UK Public Procurement Threshold for goods and services (Band D).

~~22.2~~ The Contract Notice shall:

21.3 ~~Express~~The Conditions of Participation shall be used to assess each bidder's ability to meet the Council's requirements or minimum standards of suitability, legal status, or financial standing.

- ~~a.~~ Conditions of Participation must be a proportionate means of assessing the bidder's capacity and capability, having regard to the nature, complexity and purpose~~cost~~ 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 tendersThis will be received or the Last date when applications for tender documents will be accepted.

21.4 ~~State~~enable the full evaluationwidest range of suppliers to participate in the procurement.

21.5 Conditions of Participation must not include.

- ~~e.a.~~ Award criteria and scoring model.
- b. Non- commercial considerations
- c. Criteria that are not related and not proportionate to the subject matter and value of the contract.

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

~~21.6 It is not permitted to score and shortlist suppliers using Conditions of Participation in an open procedure.~~

~~22.321.7~~ Procedure Notices in relation to the procurement activity must be published in ~~ain to~~ accordance with CPR28 and CPR29.

~~22.421.8~~ All Invitations to Tender must include instructions to ~~tenderers~~ bidders stating that the Council reserve the right to accept a tender other than the lowest, or to accept no tender at all.

~~23.22.~~ Above UK Public Procurement Thresholds – (Band D)

~~23.122.1~~ The Service Lead - Corporate Support must be notified of the commencement ~~of~~ and guidance must be obtained for all new Band D ~~and~~ procurements.

~~23.222.2~~ Where ~~a procurement~~ an above UK Public Procurement Threshold process is being carried out ~~for an UK Public Procurement Procedure contract,~~ the procedures set out in the ~~Public Contracts Regulations 2015~~ (PCR2015) relevant legislation as well as these CPRs must be followed.

~~23.322.3~~ For tenders valued above the UK Public Procurement Threshold, the following procedures are available:

a. Open and

~~b. Restricted~~

~~c.b.~~ Competitive Dialogue Flexible.

~~24.23.~~ Competitive ~~with Negotiation~~ Flexible Procedure

~~a. Innovation Partnership~~

~~b. Negotiated~~ The competitive flexible procedure ~~without prior publication.~~

~~24.2 Use of~~ provides the Competitive Dialogue opportunity 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'.~~

~~24.3 Before adopting any of the above procedures, guidance must be obtained from the Service Lead - Corporate Support~~ flexibility to design ~~and the Service Lead - Legal.~~

~~25.~~ Restricted procedure

~~25.1 Under the 'restricted' procedure~~ undertake ~~a number or 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.~~

~~25.223.1~~ 25.23.1 ~~The notice/contract should specify that information is to be provided by interested parties for the short-listing~~multi-stage procurement ~~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. as appropriate.~~

- a. ~~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.~~

23.2 In designing and conducting this procedure, regard must be given to the procurement objectives (CPR3.2) and to meeting the procedural requirements applicable to the competitive flexible procedure, such as time limits and transparency.

~~25.323.3~~ 25.23.3 ~~Guidance should on this process must be sought from the CService Lead – Corporate Support on this process.~~council's Procurement Team.

~~25.4~~

~~26.~~ Competitive with Negotiation Procedure

~~26.1 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.~~

~~27.~~ Competitive Dialogue Procedure

~~27.1 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.~~

~~28.~~ Innovation Partnership Procedure

~~28.1 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'.~~

~~29.~~ Negotiated procedure without prior publication.

~~29.1 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.~~

~~30.24.~~ Reserved Contracts for Supported Employment Providers and Public Service Mutuals

~~24.1 The UK Procurement Directives permit~~PA23 and supporting secondary regulations permits competition for certain contracts. ~~These are~~ mainly in the social and health sectors, ~~to and can~~ be 'reserved' to such organisations ~~as mutual and social enterprises meeting certain limited criteria. referred to more specifically in the PA23 as public service mutuals or supported employment providers.~~

~~24.2 The 'Light Touch'Competitive Flexible ' procedure would~~must be used, and tenders would only be ~~allowed~~accepted from organisations meeting the public service mutual and social enterpriseor supported employment provider criteria. ~~Any contract~~

~~30.124.3~~ Contracts awarded under this procedure ~~would~~to a Public Service Mutual must be limited to a term of ~~35~~ years and ~~could not be limited to a term of 3 years and could not be~~ cannot be awarded to an ~~organization~~organisation who had been awarded a previous contract for the services concerned by the Council within the previous 3 years.

~~24.4 Use~~Guidance on use of this procedure ~~would require~~should be sought from the Procurement Team.

25. Light Touch Contracts

~~25.1 prior approval of~~ Different procurement rules exist in legislation covering contracts for certain social, health, education and other specific public services.

~~30.225.2~~ Advice should be sought from the relevant Cabinet Member and/or CabinetProcurement Team to ascertain whether the service you are procuring is classed as 'Light Touch' and how the procurement for these services should be run.

~~31. _____~~

~~31.1~~

~~31.2~~

~~31.3 of 5~~

~~31.4~~

32.26. Concessions

~~32.1~~32.26.1 Concession contracts are defined in the Procurement Act 2023 and the requirements of the PA23 apply to concessions with a value exceeding the relevant UK Public Procurement Threshold.

~~32.2~~32.26.2 Officers should note that if the resulting contract would be a mix of services, works and a concession, the relevant legislation shall apply.

~~32.3~~32.26.3 When letting concessions, you must comply with the Procurement Act 2023 where they apply. If there is any inconsistency between the CPRs and the PA23, then PA23 applies.

~~32.4~~32.26.4 Officers shall consult the Service Lead – Corporate Support or Service Lead – Legal if a contract is a concession.

~~33.1. Light Touch Contracts~~

~~33.1 Different procurement rules exist in PCR2015 covering contracts for certain social, health, education and other specific public services.~~

~~34. _____ Concessions~~

~~34.1 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/uksi/2016/273/introduction/made>~~

~~34.2 Officers should note that if the resulting contract would be a mix of services, works and a concession, the PCR2015 shall apply.~~

~~34.3 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, then regulations apply.~~

~~34.4 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.~~

35.27. Lots

35.127.1 Officers conducting above UK Public Procurement threshold for goods, works and services should note that they must consider dividing a contract into smaller contracts (Lots), particularly if it will facilitate opportunities for small and medium enterprises and voluntary organisations.

35.2 A

27.2 A justification where relevant, not to award a contract by Lots, will need to be provided in the applicable published notice.

28. Publication of Notices

28.1 Under the relevant legislation the Council has a statutory obligation to publish notices in relation to procurement activity. Guidance must be obtained from the Procurement Team. There is no requirement to publish a Tender Notice where Officers invite Quotations from a closed group of pre-selected suppliers or from suppliers on a Framework Agreement provided the procurement exercise is not advertised GCDigital P in any other way (for example in a newspaper or the Councils website). Where Officers propose any form of advertising and the contract value is above £30,000 inc VAT, a 'tender notice' must first be published on the governments Central Digital Platform as a minimum.

35.328.2 Where a Contract is to be awarded with a Contract Value above £30,000 including VAT officers must ensure that a ~~Below Threshold~~ Contract ~~Details~~ Notice is issued on the governments Central Digital Platform. For procurement activity to which the Procurement Act 2023 applies, Officers can seek guidance from Procurement as a number of mandatory notices must be published on the governments Central Digital Platform.

<u>Planned Procurement</u> <u>Notices:</u> 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

- ~~Where an advert is used it should always be placed on Contracts Finder. Other media may be considered as appropriate. the governments Central Digital Platform. UK1 Pipeline Notice: To show suppliers what procurements are coming up. Procurement to publish.~~

~~29. UK2 To alert the market to opportunities to engage before the procurement starts.~~

29.1 Under PA23 there are a number of mandatory notices which must be published during the procurement and contract management process and these include:

- ~~UK3 Planned Procurement Notice: An optional notice setting out the intention to undertake a procurement exercise in the future; can be used to reduce tender timescales. Procurement to publish.~~
- ~~UK4 Inviting Tender Notice: Mandatory notice, inviting tenders for both above UK Public Procurement threshold or an open / advertised contract over £30,000 (inc. VAT). Procurement to publish if the contract is valued above UK Public Procurement threshold; all others, otherwise, to be published by the relevant service area.~~

- ~~UK5 UK6 UK7~~

- ~~UK5 Transparency Notice: Mandatory notice setting out the intention to make a direct award for contracts valued above UK Public Procurement threshold. Procurement to publish.~~
- ~~UK6 Contract Award Notice: Mandatory notice published on award of contract which commences the standstill period. To be published by Procurement.~~
- ~~UK7 Contract Details Notice: Mandatory notice setting out the details when the contract is completed for the award of a contract valued over £30,000 (inc VAT). Procurement to publish if the contract is valued above UK Public Procurement threshold; otherwise, to be published by the relevant service area.~~
- ~~UK8 Contract Payment Notice: Mandatory to publish (quarterly) where one or more contract payment of £30,000+ is made under a public contract for contracts valued at £5M+. To be published by the relevant service area.~~
- ~~UK9 Contract Performance Notice: Mandatory notice to publish annually for UK10 for contracts valued at £5m+, and/or as required to report breach of contract / poor performance.~~
- ~~UK10 Contract Change Notice: Mandatory to publish when making a contract modification (unless exemption applies). To be published by the relevant service area.~~

- UK11 Contract Termination Notice: Mandatory notice when a contract valued above UK Public Procurement threshold is terminated or expires. To be published by the relevant service area.
- UK12 Procurement Termination Notice~~otherwise~~: Mandatory to publish if, following a tender or transparency notice, the procurement ends without a contract award. Procurement to publish if the contract is valued above UK Public Procurement threshold; otherwise, to be published by the relevant service area.
- UK13 –UK 16 Dynamic Market Notices: Mandatory notices published to advertise, establish, change or terminate a dynamic market. To be published by Procurement.
- UK17 Payments Compliance Notice: Mandatory Notice published every six months to show the Council have complied with the requirement to pay suppliers within 30 days of receiving an undisputed invoice, on payments valued over £30,000. To be published by the relevant service area.

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

36.30. Bidder Suitability

~~36.130.1~~ 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 for Goods and Services~~ legal and financial capacity and technical ability to perform the contract.

~~30.2 A standard Selection Questionnaire (SQ) is used. The criteria to assess a tenderer's ability to perform must be proportionate having regard to the nature, complexity and cost of the public contract.~~

~~30.3 It is permitted to include 'Conditions of Participation' in question (selection criteria) and must not the tender documents for all contracts valued above UK Public Procurement threshold for Goods and Services.~~

~~30.4 The Conditions of Participation shall be used to assess how a contractor will perform the the bidder's ability to meet the Council's requirements or minimum standards of suitability, legal status, or financial standing. A Procurement Specific Questionnaire (PSQ) is available and should be used for this purpose.~~

~~36.2 The initial suitability of Bidders may be assessed by way of self-declarations of preliminary evidence in accordance with legislation. Prior to contract (award criteria). A Selection Questionnaire can only be used for contracts valued above the UK threshold for goods and services.~~

~~36.330.5~~ Procurement exercises for ~~bA~~ a bidder who is considered for contract ~~award~~ will be required to provide evidence of any self-declarations such as certificates and supporting documents at this stage.

~~30.6 In all~~ It is not permitted to score and shortlist suppliers using conditions of participation or any other method of pre-qualification in an open tender procedure.

~~36.430.7~~ For Procurement exercises below the UK Public Procurement threshold for Goods and Services, Officers are required ~~need~~ to undertake a risk assessment (~~GPR14~~ CPR17) 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 ~~required~~, suitability questions (not a PSQ) should be included as part of the tender assessment. ~~Aan SQ is not allowed at this level~~ A separate suitability stage or conditions of spend participation before the submission of tenders as a way of reducing the number of suppliers who are invited to tender cannot be undertaken. Further guidance should be sought from the Service Lead - Corporate Support.

37.31. Invitation to Tender (ITT)

37.131.1 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.

37.231.2 Where using a Framework Agreement, this may provide for carrying out a ~~mini-tender exercise~~ direct award or a further competition. In such cases, the rules of the Framework Agreement will govern the process where there is any conflict with these CPRs.

37.331.3 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~~ Council's terms and conditions are not suitable or 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.

38.32. Pre-tender submission clarification

38.132.1 Prior to the tender submission deadline either the Council or a ~~tenderer~~ bidder may seek to clarify any aspects of the issued tender documentation. Adequate time must be allowed for both the clarification question and the response.

38.232.2 Both the clarification question and response must be in writing. A reasonable and recorded in a log. A minimum proportionate amount of 6 calendar days must ~~time should~~ be allowed between the last ~~clarifications~~ clarification 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.

39.33. Submission, Receipt, Opening and ~~Receding~~ Recording of Tenders

39.133.1 The use of e-procurement is ~~encouraged for all procurements for an efficient and transparent process but is not~~ mandatory for ~~non-above~~ UK Public Procurement threshold tenders. The e-procurement system used will be determined by the Service Lead - Corporate Support. This includes further competitions under Third Party Framework Agreements.

39.233.2 Electronic signatures on e-tenders are acceptable.

~~39.3~~ 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~~further competitions under Third Party Framework Agreements.)~~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.)~~

~~39.4~~33.3 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~~.

~~39.5~~33.4 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.

~~39.6~~33.5 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~~record or open the Tender Documents.

~~39.7~~33.6 Electronic 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 or a trusted third party 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.

40.34. Hard Copy Tendering

~~40.1~~34.1 Where hard copy tenders are being accepted (below UK Public ~~procurement~~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.

~~40.2~~34.2 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- Legal may delegate authority for the opening of the tender submission if they are not able to be present.

~~40.3~~34.3 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.

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

41.135.1 The Service Lead shall select an evaluation model based on: -

- a. Lowest price (or highest bid in contracts where payment is to be made to the Council) alone; or
- b. Most ~~Economically~~ Advantageous Tender (~~MEAT~~~~MAT~~) - a combination of price and up to and including 40% for quality, technical capability, environmental and social value and other similar criteria.

41.235.2 In-line with the Council's Procurement and Contract Management Strategy, where ~~the MEAT~~~~a MAT~~ 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.

41.335.3 In all other cases, (any deviation from CPR 35.1), 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 ~~£400k~~£100,000 for goods and services and ~~£250k~~£250,000 for works: or if above these values by Cabinet, Committee or the relevant Cabinet Member ~~under the scheme of delegation in the Constitution;~~

41.435.4 Selection and award criteria must be ~~distinguish~~~~and defined~~ 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~~The selection and ~~will apply throughout all stages of procurement. The evaluation~~award criteria and scoring methodology must be set in accordance with ~~the PCR 2015 (including an assessment of cost effectiveness such as lifecycle costing)~~relevant legislation.

41.535.5 For contracts which are to be evaluated, ~~"MEAT criteria,~~ the evaluation in accordance with the published award criteria, 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~~after 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.

41.635.6 Elected Members shall not participate in the tender evaluation procedure but may in appropriate cases be invited to attend any presentations given by ~~tenderers~~bidders 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.

~~41.7~~35.7 All contracts must be awarded on the basis of the offer which represents Best Value to the Council and in accordance with the published award criteria.

~~42.36.~~ Errors in Tender Submissions~~Errors or Omissions~~

~~36.1~~ Where a ~~tenderer~~bidder has made a genuine error or omission, they may be given an opportunity to correct that ~~error~~ prior to tender conclusion of the evaluation. Provided that late acceptance of documents or corrections to the Tender complies with the principles of integrity and transparency.

~~42.1~~ If a correction to an error or omission 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.

~~42.2~~36.2 ~~If a tender submission is incomplete or has specific documents missing and correction is permitted the tenderer~~bidder 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 and proportionate time limit.~~

~~42.3~~36.3 ~~Other errors in~~In all other cases, tender submissions must be dealt with either by asking the ~~tenderer~~bidder to confirm that they will honour their tender submission despite the error or if not withdraw the tender from the procurement process.

~~42.4~~36.4 If a ~~tenderer~~bidder uploads documents onto an e-procurement system which cannot subsequently be opened by the Council ~~at the tender opening ceremony, the Authorised Officer~~bidder should ~~ask the tenderer to be asked~~ to re-submit its documents ~~to them~~ in an accessible format that can be accessed by the Council.

~~42.5~~36.5 Tender Documents must state how errors or omissions in tenders will be dealt with. Whichever process is followed it must be transparent and fair to all ~~tenderers~~bidders.

~~42.6~~36.6 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~~whether this should be treated as an abnormally low tender.

~~43.37.~~ Post Tender Clarification and Negotiation (where permitted).

~~43.1~~37.1 Post tender submission, the Council may ask ~~tenderers~~bidders 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~~.

~~43.2 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).~~

~~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.~~

37.2 Post tender negotiation is permissible in certain circumstances if permitted by the selected procurement procedure. Guidance must be obtained from the Procurement Team prior to proceeding.

44.38. Awarding Contracts

44.138.1 A contract will only be awarded subject to the tender evaluation criteria.

44.238.2 The results of the tender evaluation process must be recorded.

44.338.3 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.

44.438.4 Contracts procured under a UK Public Procurement Procedure must be awarded in accordance with the procedure set out in ~~PCR2015~~ the relevant legislation. Guidance on this can be obtained from the Service Lead - Corporate Support or the Service Lead - Legal.

44.538.5 Once a contract has been awarded the procuring Officer must update the Corporate Contract Register and ~~Contracts Finder with:~~ publish required notice(s), see CPR 28, CPR29 and CPR 46 for details.

~~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.~~

~~44.6 If an existing Framework Agreement is utilised the published information include:~~

~~a. Framework title and Reference Number (if applicable).~~

~~b. Lead buying organisations name.~~

~~44.7~~ 38.6 Following completion of the tender evaluation process, all ~~tenderers~~bidders must be notified in writing of the results in accordance with ~~PCR 2015~~the relevant legislation and the principles of ~~openness,~~fairnessintegrity and transparency.

~~44.8~~ 38.7 For all contracts awarded via a UK Public Procurement procedure, a ~~Regulation 84~~report 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.

~~45. Documentation, Liquidated Damages, Insurance, Financial Security and Bonds~~

~~46.39.~~ Documentation

~~46.139.1~~ 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>

~~46.239.2~~ 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.

~~46.339.3~~ 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 14.34 and 14.45 of this Constitution.

47.40. Liquidated Damages

~~47.140.1~~ Every contract for the execution of works which exceeds £100,000 in value or amount shall, unless otherwise agreed by the Section 151 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.

48.41. Insurance

~~48.141.1~~ Every contract for the provision of goods and services or execution of works shall require the appointed contractor upon contract award to provide policies of insurance for the relevant sum specified in the procurement documents and be reflective of the Council's Contract Insurance Guide.

~~48.241.2~~ Unless otherwise agreed by the Section 151 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 adoptedContract Insurance Guide) in respect of any one accident.

~~48.341.3~~ Insurance policies shall be maintained by or on behalf of the contractor during the term of the contract. The Section 151 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.

49.42. Financial Security

~~49.142.1~~ A contractfinancial risk assessment (CPR 7-17) identifies whether a financial stability assessment is required as part of a procurement process.

~~49.242.2~~ If an assessment is undertaken at the start of the evaluation process, considerconsideration should be given to whether an additional assessment would also be appropriate prior to awarding. Details of any proposed financial checks must be set out for transparency purposes in the procurement documents and if ongoing, contract documents.

~~49.3-~~

~~49.442.3~~ In accordance with the Contract Management Framework, suppliers operating- contracts assessed as high risk must be subject to an annual finance check by the Finance Team.

~~49.542.4~~ If an Officer has any concerns about a supplier's financial stability, contact your Finance Partner.

~~49.6 Details of any proposed financial checks must be set out for transparency purposes in the procurement documents and if ongoing, contract documents.~~

~~50.43.~~ Bonds²

~~50.143.1~~ For contracts estimated to be greater than £1,000,000 and/or deemed by the Section 151 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 may be 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 Section 151 Officer.

~~50.243.2~~ 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.~~ A written decision is to be made by the Service Lead in consultation with Section 151 officer or Service Lead – Finance.

~~50.343.3~~ 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.

~~50.443.4~~ 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 Section 151 Officer.

~~50.543.5~~ 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.

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~~

~~50.6~~43.6 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.

~~50.7~~43.7 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.

~~50.8~~43.8 Where a ~~parental~~parent 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~~parent company guarantee is in force.

~~51.4~~44. Prevention of Corruption

~~51.144.1~~ 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.

~~52.4~~45. Partnering Arrangements

~~52.145.1~~ 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:

- 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~~In either case the Section 151 Officer has been consulted.

~~53.4~~46. Contracts Register

53.146.1 ~~A contracts register~~ In accordance with the Transparency Code 2015 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.a. ~~Any other~~ contract that is above the value of £5,000.

53.246.2 The Service Lead who is responsible for a procurement shall ensure that details of contracts are entered onto the Contracts ~~Registers and Contracts Finder~~ Register within 30 days of the contract being entered into.

53.346.3 The ~~contracts register~~ Contracts Register will also be published quarterly on the Council's website as part of the Government's transparency agenda.

54.47. Contract Management

54.147.1 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.

54.247.2 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.

54.347.3 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~~ Contract Procedure Rules, the contract monitoring process includes on-going monitoring of the implementation and effectiveness of such Health and Safety Policies.

54.447.4 Records of review meetings or site meetings (as applicable) shall be kept on the contract file.

54.547.5 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.

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

54.747.7 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.

47.8 Contract notices including key performance indicators must be published in accordance with the relevant legislation; see CPR 28 and CPR29 and seek guidance from the Procurement Team.

55.48. Contract Extensions and Variations

55.148.1 Extensions

- a. Contract extensions are only permitted if they are put in place before the contract expiry date; and are in accordance with the relevant procurement legislation. 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.
- b. Any Contract extension must be approved by and dealt with by the relevant Strategic Director or Statutory Officer. The Section 151 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.
- c. 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 36.5 to 36.9 and CPR 35.1 and 35.2 will not apply.~~
- d. The Corporate Contracts Register must be updated and notices published in accordance with the relevant legislation, see CPR 28 and CPR 29 and seek guidance from the Procurement Team.

d.e. Once a Contract has expired it cannot then be extended.

55.248.2 Variations / Modifications

- a. Variations to contracts will be dealt with in accordance with these ~~Contracts~~Contract Procedure Rules and the Council's Financial Regulations.
- b. 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.the relevant legislation

~~b.c.~~ If the relevant legislation does not permit the modification, a new contract will need to be procured.

~~e.d.~~ 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 Section 151 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
or

(ii) ~~If~~ there is any possibility that CPR ~~36.92.13~~ might apply.

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.~~

~~55.3 A new procurement is required in case of material change where one or more of the following conditions are met:~~

~~55.4 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.~~

~~55.5 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.~~

~~55.6 The modification extends the scope of the contract or framework agreement considerably.~~

e. The Contracts Register must be updated and notices published in accordance with the relevant legislation, see CPR 28 and CPR29 and guidance from the Procurement Team.

~~55.7~~48.3 You must consult the Service Lead - Legal if you are considering varying a Contract that you have procured under CPR ~~17~~22.

~~56.49.~~ Transfer of contracts – novation and assignment

~~56.1~~49.1 Transfer, assignment and novation of contracts can only be carried out by the Service Lead - Legal.

49.2 A novation or assignment of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

~~57-50.~~ Early Termination of Contract

~~57-150.1~~ 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.

~~57.2 A contract must not be terminated to avoid international obligations.~~

50.2 Early termination of a contract requires a notice to be published in accordance with the relevant legislation - see CPR 28 and CPR29 and seek guidance from the Procurement Team.

~~58-51.~~ Nominated and Named Sub-Contractors

~~58-151.1~~ If a sub-contractor or sub-consultant is to be nominated or named to a main ~~Contractor~~contract, they must have been procured in accordance with relevant legislation, these Contracts Procedure Rules and the terms of the tender and appointment must be compatible with the main contract.

~~58-251.2~~ 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~~these Contract Procedure Rules as if they were an officer of the Council.

~~59-52.~~ Exceptions to Contracts Procedure Rules

~~59-152.1~~ 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 suppliesgoods and it is not practical to seek competitive quotations or tenders.
- b. By applying the Procedure Rules,these CPRs it would not be possible to obtain genuine competition.
- c. The works, services or suppliesgoods 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 of 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, these CPRs~~ 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~~goods 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.

59.252.2 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 50.1 (e) and (f))	Authorised person
< £100,000	Corporate Head of Service within whose area of responsibility the contract falls
<= £100,000 up to £250,000	Strategic Director and <u>or</u> Section 151 Officer
> £250,000	Cabinet Member / Cabinet

~~59.3~~ In very limited circumstances and in accordance with the relevant legislation, CPRs ~~cannot~~can be waived ~~where~~when the contract value is in excess of the relevant UK Public Procurement threshold.

59.452.3 A waiver of CPRs may not be sought retrospectively, unless it can be demonstrated to be essential for reasons of business continuity or recovery.

59.552.4 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~~52.2. 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.

~~59.652.5~~ Any decision to waive CPRs must be made in writing by the person authorised under ~~Procedure Rules 41~~CPR 52.2 and no action shall be taken to enter into the contract until such time as a request has been submitted and properly approved.

~~59.752.6~~ If any approval to waive these CPRs falls within the key decision criteria, then that procedure must also be followed.

~~59.852.7~~ 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.

~~60.53.~~ Contract Disputes and Claims

~~60.153.1~~ 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.

~~61.54.~~ Contract Exit by Natural Expiry

~~61.154.1~~ 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.

~~54.2~~ On contract expiry a notice must be published in accordance with the relevant legislation see CPR 28 and CPR 29 and guidance from the Procurement Team.

~~62.55.~~ Retention of Contractual Documents

~~62.155.1~~ All procurement documentation (successful or unsuccessful) and contracts must be kept in accordance with the Council's adopted Records Retention Policy.

~~63.~~ Concessions

~~63.1~~ 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/uksi/2016/273/introduction/made>~~

~~63.2 Officers should note that if the resulting contract would be a mix of services, works and a concession, the PCR2015 shall apply.~~

~~63.3 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, then regulations apply.~~

~~63.4 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.~~

~~64.56.~~ Contracts outside any of the above provisions in the ~~CPR~~CPRs

~~64.156.1~~ 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 14 (Decision Making) and authority is by the following persons:

Contract value (or additional contract value where approval is being sought pursuant to paragraphs 50.1 (e) and (f))	Authorised person
<= £100,000	Corporate Head of Service within whose area of responsibility the contract falls
<> <u><</u> £100,000 up to £250,000	Strategic Director and, Director or Section 151 Officer
_ > £250,000	Cabinet Member / Cabinet

