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## GENERAL

### 1. Interpretation

1.1 In these Contract Procedure Rules, the following terms have the following meanings:

Approved List	a List drawn up for corporate use under CPR 11. <b>Note this facility will no longer be available after 1 April 2016</b>
Authorised Signatory	as per the Officers Scheme of Delegation
Chief Finance Officer	Head of Finance
Code of Conduct	the Code regulating the conduct of officers and members as set out in the Constitution
Contract	an agreement for the supply of goods, or services, or concessions or the execution of works
Contract File	a record of all matters relating to the contract
Contractor	a supplier of goods or services or concessions or Works to the Council
Corporate Purchasing Agreement	a contract or framework agreement which has been endorsed and approved for corporate use by the Strategic Procurement Manager and its use shall be mandatory
CPR's	these Contract Procedure Rules
Day	a calendar day unless otherwise specified
Director	Chief Executive or any other Director of the Council
EU	European Union
EU contract	a contract covered by the Public Contracts Regulations 2006
Framework Agreement	an agreement which allows a Responsible Officer to call off or undertake a mini competition to provide goods, services or works in accordance with the terms of the agreement. The Framework Agreement usually constitutes a non-binding offer with

no obligations to call off from the contractor. If the Council calls off from the contractor a binding contract comes into being.

Strategic Procurement Manager	the officer who is designated to have responsibility for the Collaborative Procurement Service
Head of Service	Head of Service of the relevant Council Service Area
Invitation to Tender	invitation to tender documents in the form required by these Rules
Monitoring Officer	the officer designated by the Council as its Statutory Monitoring Officer from time to time
Month	means a calendar month
OJEU	Official Journal of the European Union incorporating the Public Contracts Regulations 2006
OJEU threshold	the values that are determined by the European Union every two years, which are shown in schedule 1 of these Rules
Quotation	a quotation of price and any other relevant matter made without the formal issue of an invitation to tender;
Relevant Head of Service	the Head of Service whose Directorate or Department is responsible for the procurement exercise in question
Responsible Officer	any permanent or temporary staff member or any other person properly authorised by the Council to carry out any of the Council's contracts functions
Sub-OJEU	the values below the threshold that are determined by the European Union every two years, which are shown in schedule 1 of these Rules
Table of Values	the table maintained and updated by the Monitoring Officer as identified in Schedule 1
Tender	a Contractor's formal proposal submitted in response to an invitation to tender

Value for Money	means the optimum combination of whole life costs, quality and benefits to meet the Council's requirement. Such term equates to the EU procurement requirement of "most economically advantageous offer"
Working day	means any day other than a Saturday or a Sunday or a day which is a bank or a public holiday throughout Wales

1.2 Any reference to actions within these CPR's can also be undertaken by officers with the appropriate delegated authority to carry out such tasks, provided such delegated authority has been granted by the named individual.

1.3 Unless the context otherwise requires, reference to any clause, sub-clause or schedule is to a clause, sub-clause or schedule of or to these Rules.

1.4 Under these Rules, periods expressed as a certain number of days from a particular event run from the day following the day on which the event takes place. If the last day of the period falls on a Saturday, Sunday or a public holiday it will end on the next working day.

1.5 Periods will include public holidays and weekends unless these are expressly excluded or the periods are expressed as a certain number of working days.

## **2. Compliance with Contract Procedure Rules and Legislation**

2.1 These Contract Procedure Rules apply to all contracts entered into by or on behalf of the Council with the intention of procuring goods, services, concessions or works.

2.2 The Strategic Procurement Manager in consultation with the Monitoring Officer shall advise on the implementation and interpretation of the Council's Contract Procedure Rules.

2.3 Every contract entered into by the Council or on its behalf shall be entered into pursuant to, or in connection with, the Council's functions and shall comply with:

- (a) all relevant statutory provisions
- (b) the relevant EU law and the EU public procurement rules (including the EC treaty, the general principles of EU law and the EU public procurement directives implemented by the UK regulations)
- (c) the Council's constitution including these CPR's and the Council's Financial Procedure Rules
- (d) schemes of delegation

- (e) the Council's strategic objectives and policies,
  - (f) the Council's Corporate Procurement Strategy and any other relevant Council policies
- 2.4 Should there be a conflict between the provisions of the Council's Contract Procedure Rules and any provision of an EU directive or any domestic legislation, the latter shall prevail.
- 2.5 It shall be a condition of any agreement between the Council and anyone who is not an officer of the Council including Temporary Agency staff and Consultants, but who is authorised to carry out any of the Council's contracts functions, that they comply with the Council's Contract Procedure Rules and Financial Regulations as if they were an officer of the Council.
- 2.6 Any failure by officers / members to comply with any of the provisions of these Contract Procedure Rules or Financial Regulations or associated guidance adopted by the Council or UK and European legal requirements may result in disciplinary action.
- 2.7 Failure to comply with these CPR's by officers or consultants shall be reported immediately to the relevant Head of Service / Director or Chief Finance Officer or Strategic Procurement Manager or Internal Audit Manager. All failures to comply by Members shall be reported immediately to the Monitoring Officer.
- 2.8 Arrangements for Contracts made by schools operating under local management arrangements shall not be subject to these CPR's but shall be subject to their own Contract Procedure Rules.

### **3. Officers' and Members Duties**

- 3.1 The highest standards of probity are required of all officers and Members involved in the procurement, award and management of Council Contracts.
- 3.2 Officers shall always:
- (a) seek value for money
  - (b) show no undue favour to any contractor, nor discriminate against any contractor
  - (c) ensure that all procurement is in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information)
  - (d) do nothing that contravenes EU or domestic law
  - (e) ensure that adequate Contract Files are kept for Contracts upon which they are engaged
  - (f) ensure that Contracts are packaged to ensure Best Value for Money

3.3 As a general rule, Members and officers must not accept from Contractors or potential Contractors, or from any firm or organisation with whom the Council has had, is having or may have any dealings of any kind,

- (a) any gift; or
- (b) any hospitality

Without the written authorisation of the Head of Service / Director who is responsible for that officer, or in the case of Members, unless the matter has been reported to the Monitoring Officer.

3.4 Members shall comply with the Member's Code of Conduct and Officers shall comply with the Officers Code of Conduct

3.5 Members and officers may seek advice from the Monitoring Officer in respect of any matter arising out of CPR 3.3

#### **4. Declaration of Interests**

4.1 No member, employee or agent of the council shall improperly use their position to obtain any personal or private benefit from any contract entered into by the council

4.2 The following shall declare any interests which may affect the contract process;

- (a) all officers who play an influential role in any aspect of the contracts process, including those designated under a scheme of delegation in CPR 5.3;
- (b) Cabinet Members involved in the contract process;
- (c) external consultants.
- (d) anyone else who is not an officer of the Council but who is authorised to carry out any of the Council's Contract Functions

4.3 The Monitoring Officer shall ensure that Heads of Service, Directors, Cabinet Members, Officers, Consultants and anyone else who is not an officer of the Council appointed or agreed by them make declarations on their appointment and on any change in circumstances (and annually in the case of officers), and shall either certify them as acceptable or take any necessary action in respect of potential conflicts of interest.

4.4 Head of Service shall keep a register of declarations indicating the names and grades of those declaring and the nature of their declaration. Responsible Officers shall keep completed consultants' declarations on the Contract File.

## **5. Scheme of Delegation**

- 5.1 Any procurement carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority to carry out such tasks.
- 5.2 Each Head of Service / Director shall receive from Cabinet delegated powers to enter into contracts (CPR 29), to grant waivers and exemptions (CPR 8, CPR 9 and CPR 10) and to approve contract variations (CPR 39) on behalf of the Council to specified financial limits.
- 5.3 Each Head of Service shall compile and maintain a scheme of delegation specific to their Department, detailing the names and grades of officers approved for the purposes of obtaining quotations, tendering, entering into contracts and placing orders on behalf of the Council and the maximum contract/ order value allocated to each officer for these purposes.
- 5.4 Each Head of Service shall supply to and agree with the Strategic Procurement Manager their scheme of delegation before the start of each financial year, and on making any amendment.
- 5.5 The Chief Finance Officer shall keep a register of all schemes of delegation and shall ensure the appropriate scheme of delegation is replicated within the purchase to pay solution (for ordering, receipting and payments) and the e-sourcing solution (for sourcing and contracting).

## **6. Electronic Procurement Solutions**

- 6.1 All purchase-to-pay processes including requisitioning, ordering, receipting and invoice payments shall be conducted via the corporate purchase-to-pay solution (where available), which has been approved by the Strategic Procurement Manager.
- 6.2 All e-sourcing processes including request for quotations, tendering, e-auctions, contract management, supplier performance management and approved list management shall be conducted via the corporate e-sourcing solution (where available), which has been approved by the Strategic Procurement Manager.
- 6.3 The use of any alternative e-procurement solutions cannot be carried out without the prior approval of the Strategic Procurement Manager.

## **7. Corporate Purchasing Agreements (including use of Framework Agreements) and Joint Procurement arrangements (including membership of official purchasing consortiums)**

- 7.1 Any membership of an official purchasing consortium which requires upfront Council commitment shall be approved by Cabinet prior to the

involvement by or on behalf of the Council.

7.2 Any joint procurement arrangement, with any other public sector organization that results in the Council being committed to contractual obligations (not including Framework Agreements) shall be approved in the following manner prior to the commitment stage:

7.2.1 by the Head of Service / Director based on a report from the Responsible Officer having consulted with the Chief Finance Officer and Strategic Procurement Manager if the Council's estimated overall contribution over the contract duration is less than £250,000

7.2.2 by the Head of Service / Director based on a report from the Responsible Officer having consulted with the Chief Finance Officer and Strategic Procurement Manager and relevant Cabinet Member, if the Council's estimated contribution over the contract duration is over £250,000 and less than £1,000,000

7.2.3 by Cabinet based on a report from the Head of Service having consulted with the Chief Finance Officer and Strategic Procurement Manager, if the Council's estimated contribution over the contract duration is over £1,000,000

7.3 The use of the following Corporate Purchasing Agreements as endorsed by the Strategic Procurement Manager shall be mandatory, unless a justification not to use them has been made in writing and has been approved by the Strategic Procurement Manager:

- Corporate Purchasing Agreements resulting from the National Procurement Service or any other approved Official purchasing consortiums
- Any other Framework Agreements and any subsequent call-off arrangements,
- Joint Procurement Arrangements,
- Electronic catalogues within the purchase-to-pay solution and
- Contracts listed within the corporate contract register

7.3.1 The Strategic Procurement Manager will undertake a consultation or benchmarking exercise before endorsing any Corporate Purchasing Agreements

7.4 The use of any Framework Agreements and /or Joint Contracts resulting from a procurement exercise involving other public bodies as the lead authority shall be approved by the Strategic Procurement Manager prior to using such arrangements. All such requests shall be made in writing to the Strategic Procurement Manager, and once approved the responsible officer shall ensure that the Framework Agreements and/or Joint Contracts shall be inputted onto the Corporate Contract Register within the e-sourcing solution (where available).

- 7.5 The Head of Service will ensure that the CPR's or equivalent of the lead authority / body will be acceptable to the Council and are to be followed throughout the procurement exercise.

## **EXEMPTIONS**

### **8. Exempt Contracts**

- 8.1 Exemptions are where contract procedure rules do not apply to certain contracts
- 8.2 The following contracts are exempt from the requirements of these CPR's:
- (a) individual agency contracts for the provision of temporary staff;
  - (b) employment contracts;
  - (c) contracts relating solely to disposal or acquisition of an interest in land with exception to Development Agreements (see CPR 43),
  - (d) internal purchases or service provision
  - (e) contracts formalising the funding of particular voluntary sector bodies, where the purpose of the contract is to provide Grant in Aid funding by the Council;
  - (f) contracts for the engagement of Counsel;
  - (g) contracts for the engagement of Expert Witness;

### **9. Exemptions from Contract Procedure Rules**

- 9.1 Waiver is where the Contract Procedure Rules are partly suspended to enable a particular course of action. This does not obviate the need to ensure that adequate and robust process is undertaken in accordance with the principles of these Contract Procedure Rules. The Council's rules and guidance will still apply.
- 9.2 Waiver from any Contract Procedure Rules requirements including obtaining quotations or tendering based on any reason that is not listed in CPR 10.2 can only be obtained from Chief Finance Officer or Monitoring Officer in accordance with CPR 10.3.

### **10 Exemption from Tendering Requirement**

- 10.1 Exemption from Tendering is where the requirement to seek market competition as per CPR 17, 18, 19 & 21 is suspended provided a justification can be demonstrated as per CPR 10.2
- 10.2 Where an exemption is sought by an Responsible Officer in respect of obtaining tenders (CPR 10.2), a report must be provided setting out the reason for requiring the exemption and to notify which exception under CPR 10.2 is applicable. The responsible officer shall consult with the Strategic Procurement Manager in preparing the report and the report shall also include a statement from Chief Finance Officer.

In order to justify an exemption it will need to demonstrate that one or more of the following reasons is applicable:

- (a) In the absence of tenders, suitable tenders (irregular or unacceptable) or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered.
- (b) The contract involved is purely for the purpose of research, experiment, study or development under the conditions stated in Public Contracts Regulations 2006
- (c) The works/goods/services can be provided only by a particular contractor for reasons that are technical, artistic, or connected with the protection of exclusive rights.
- (d) Extreme urgency brought about by events unforeseeable by the contracting authority and in accordance with the strict conditions stated in the Public Contracts Regulations 2006.
- (e) Additional works/deliveries/services are ordered under the strict conditions stated in Public Contracts Regulations 2006, which do not exceed 50% of the value of the original contract and are required which, through unforeseen circumstances, were not included in the original contract and which either are strictly necessary for the completion of the contract or, for technical or economic reasons, cannot be carried out separately;
- (f) New works/services, constituting a repetition of existing works/services and ordered in accordance with the strict conditions stated in the Public Contracts Regulations 2006. Such that new works or services are required which are a repetition of works or services carried out under the original contract (provided in the case of EU contracts they are required within three years of the original contract and the contract notice stated that a new contract might be awarded by negotiation);
- (g) That goods are required as a partial replacement or addition to existing goods or installations and obtaining them from another contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance;
- (h) That the rules of a design contest require the contract to be awarded to one of the successful candidates, provided all successful candidates are invited to negotiate;
- (i) For supplies quoted and purchased on a commodity market or for the supply of goods or materials the goods or materials are proprietary articles or are sold at a fixed price and no reasonable satisfactory alternative is available;
- (j) For the purchase of supplies on particularly advantageous terms from a supplier which is definitely winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure.

- (k) Where delay attributable to the tendering process would, in the estimation of the Head of Service concerned, result in the Council incurring net expenditure or forfeiting net income in excess of the savings on the contract sum that might reasonably be expected to accrue from competitive tendering;
- (l) The engagement of actors and performers
- (m) Where the delay attributable to the Tendering process would create or increase danger to life or limb or would, in the opinion of the Head of Service / Director concerned, result in or continue an unacceptable level or standard of service.
- (n) that services are required which are categorised as Part B Health and Social Services in accordance with EU and UK legislation, and which represent a clear continuation of specific services required under an existing contract, and that a decision to both exempt the required services from obtaining quotations or tendering and award a new contract to the existing contractor **can** be justified as reasonable following **a balanced consideration in conjunction with guidance from the Monitoring Officer on the relevant public law principles, of the extent to which the new requirement meets the following criteria:**
  - i. evidence demonstrates that obtaining quotations or tendering for the required services is unlikely to secure significant improvements in value for money, or else is unlikely to secure sufficient improvement in value for money to justify the cost of obtaining quotations or tendering, or else any likely improvement in value for money will be outweighed by the potential cost of changing contractor;  
*and/or*
  - ii. the specification for the new requirement does not differ substantially from that of the existing contract;  
*and/or*
  - iii. the contract terms and conditions of the new requirement do not differ from those of the existing contract except where required by changes to the Authority's Financial Regulations (including these Contract Procedure Rules) or relevant standard contracting practices;  
*and/or*
  - iv. the equivalent annual value of the contract for the new requirement does not differ from that of the existing contract by more than +10% unless required by law;  
*and/or*
  - v. the services required have previously been tendered or been subject to competitive quotations no more than five years prior to the end of the original contract having regard to the term of the

contract to be offered and the volatility of prices and quality in the relevant sector;

*and/or*

vi. no more than two previous contracts for the required services have been exempted from obtaining quotations or tendering;

*and/or*

vii. the performance of the existing contractor in delivering the required services under the existing contract has been monitored and assessed as satisfactory or better;

*and/or*

viii. the quality of the required services as provided by the existing contractor under the existing contract has been assessed as satisfactory or better;

*and/or*

ix. improvements in value for money in respect of contract specification or contract price or service quality have already been secured or else will be secured under the terms of the new contract for the required services.

*and/or*

x. the required services, where applicable, are necessarily delivered in specific accommodation and there is a significant risk that a change in contractor would result in the loss of that accommodation to the required services or service user(s) and also a significant risk that alternative accommodation will not be secured within a reasonable and practical timescale.

*and/or*

xi. there is a reasonable probability that obtaining quotations or tendering the required services would result in significant distress or other detriment to the welfare of the service user(s) or would reverse or undermine the attainment of successful outcomes for the service user(s).

*and/or*

xii. any other valid and relevant considerations which may be identified by the Responsible Officer in consultation with the Monitoring Officer as pertinent to the relevant contractor.

10.3 Exemptions from tendering on the basis of one or more of the reasons listed in CPR 10.2 may be granted in the following manner:

(a) by the Monitoring Officer, based on a written report from the Head of Service, having consulted with the Strategic Procurement Manager and the Chief Finance Officer, if the contract value is under £1,000,000;

- (b) by a Cabinet Member in whose portfolio the service falls based on a report from the Head of Service, having consulted with the Monitoring Officer, Strategic Procurement Manager and the Chief Finance Officer, if the contract value is between £1,000,001 and £2,000,000. In the event that any Exemption under consideration is deemed sensitive or high risk then the Lead Member can request on a case by case basis that the matter is escalated to Cabinet for a decision
- (c) by Cabinet if the contract value is over £2,000,001.

10.4 No exemptions may be granted:

- (a) which would result in a breach of European or domestic law;
- (b) from CPR 3 (Officers' duties), CPR 4 (Declaration of Interests); CPR 5 (Scheme of Delegation), CPR 7 (Corporate Purchasing Agreements and Joint Procurement Arrangements);
- (c) from CPR 39 requiring approval of certain contract variations.

10.5 Exemptions from the CPR's can only be granted in the following circumstances:

- (a) at the direction of the Chief Finance Officer and Monitoring Officer subject to CPR 10.2 and CPR 10.3; or
- (b) in order to meet the requirements of European Union legislation or any domestic legislation including any regulations or directives from the National Assembly for Wales.

10.6 All single Tenders resulting from Exemption from the CPR's, Exemption from tendering or CPR waivers, shall be procured and evaluated via the e-sourcing solution (where available).

10.7 Each Head of Service shall keep a copy of the approved exemptions and waivers granted in respect of their Department, detailing the nature and value of the contract, the circumstances justifying the approval and the name of the contractor awarded. A central register of the same information will also be held on the Corporate Contract Register via the e-sourcing solution (where available).

## **APPROVED LISTS**

### **11. Council Approved Lists and Vetting of Contractors**

11.1 Quotations and Tenders for contracts which are not subject to EU Thresholds may be invited from Contractors included on the Council's Approved Lists. **The use of Approved Lists shall be discontinued from 1 April 2016**

11.2 The use of Approved Lists will need the prior approval from the

Strategic Procurement Manager and must be sought prior to set up or adoption of an Approved List.

11.3 All Approved Lists shall be compiled and maintained by named officers via the Approved List Management module within the e-sourcing solution (where available).

11.4 The Council's Approved Lists shall include all contractors that meet the Council's pre-qualification questionnaire requirements only and must not include any commercial / pricing elements.

11.5 Council Approved Lists shall:

- (a) be compiled for any goods, services or works categories as the relevant Head of Service may require up to the contract value of the OJEU threshold as identified in Schedule 1 (Goods and Services) and £250,000 (Works). Higher contract values can only be undertaken with prior approval of the Strategic Procurement Manager
- (b) include contractor who must have expressed and submitted a written request for the inclusion on the Council Approved List and has been approved.
- (c) indicate whether the contractors listed are approved for all contracts or for only some of the specified categories, values or amounts
- (d) be publicly advertised and reviewed in full at least every three years. A public advertisement must be advertised as a minimum either on the Council's own website/National Procurement Website, or at least one local newspaper circulating in the locality or in at least one appropriate trade journal
- (e) be open to receive new expressions of interest from any contractor at any time,
- (f) be an approved list prepared by another public body providing that it has been composed in a proper manner by that body and that the Responsible Officer is satisfied that the procedure used does not conflict with the Council's procedures.

11.6 The financial standing of Contractors shall be subject to continuous financial monitoring through a third party financial vetting service (where available); alternatively a manual financial checking process will need to be put in place and undertaken by the relevant corporate Finance Manager. Whenever reasonable doubts which are based on objective grounds arise as to the financial standing or technical capabilities of a contractor on a Council Approved List, Framework Agreement or Contract, the appropriate Head of Service may, in consultation with the Strategic Procurement Manager, immediately suspend that contractor from the Approved List / Framework Agreement or Contract.

- 11.6.1 Investigations of the contractor shall commence immediately by the service and be completed as soon as possible but must be completed within 28 days. Where the investigation establishes sufficient evidence justifying removal from the Approved List / Framework Agreement the relevant Head of Service may remove the contractor following consultation with the Monitoring Officer. Where the investigation has not established grounds for removal the contractor shall be reinstated to the Approved List / Framework Agreement immediately. The Strategic Procurement Manager shall be kept informed of any decision made in respect of the contractor and shall update the e-sourcing solution immediately.
- 11.7 If a contractor consistently declines to tender when invited or consistently submits tenders which are so high as to suggest that the contractor is not genuinely competing for the contracts, the Head of Service shall seek an explanation from the contractor. Subject to the explanation given by the contractor, the Head of Service may consider whether removal from the List / Framework Agreement must be recommended. Such recommendation must be made to the Strategic Procurement Manager who will decide whether to remove the contractor from the Approved List / Framework Agreement.
- 11.8 A contractor may be removed from the List / Framework Agreement if the appropriate Head of Service considers that the contractor or its staff have breached standards of conduct that are relevant to the nature of the work performed by the contractor. Action may be taken under this paragraph even if there are no doubts about the financial standing or technical capability of the contractor. Any decision to remove a contractor from a List / Framework Agreement under this paragraph shall, following an investigation be reported to the Strategic Procurement Manager. In the event that a Contractor is removed from the List / Framework Agreement, then the Senior Leadership Team shall also be notified of the decision.
- 11.8.1 The removal of any contractors from the Proactis Approved List (where available) shall be carried out by the Strategic Procurement Manager. The removal of contractors from a manual Approved List shall be carried out by the relevant Approved List administrator.
- 11.9 In the event that is deemed that the use of a specific Framework Agreement is more beneficial than the use of an Approved List for the same category of work as per CPR 7.3, the corresponding category of work on the Approved List including the Contractors shall be removed from use. This shall be done with agreement from the Approved List Manager and the Strategic Procurement Manager.
- 11.10 Where an Approved List is deemed to be in place then the creation of a tender shortlist using a combination of Approved List contractors as well as the inclusion of non Approved List contractors shall not be allowed. In the event that the tender shortlist may include non approved

contractors then this shall be subject to a separate Pre-Qualification Questionnaire vetting exercise as part of a specific Tender.

11.11 Contractors shall be invited to tender by random selection by using the e-sourcing solution (where available), save that up to 50% of tender shortlist may also include contractors:

(a) who have carried out similar work or has worked on an earlier stage of the project for the Council in the last two years and there is evidence that they have demonstrated the required performance standards. Once there is sufficient feedback available on the Contractor performance standards via the e-sourcing solution (when available), the best performing contractors shall be identified for the relevant category of work, and shall be considered for the tender short-list; or

(b) by 100% random selection from the contractors on the relevant Approved List.

11.12 Contractors shall be selected from within the appropriate work category or, where the contract involves several categories, from the most relevant category.

11.13 In all cases, the Responsible Officer shall demonstrate on the Contract File how they compiled the tender invitation.

11.14 With respect to Contractors that are on Approved Lists, Framework Agreements or that have a Contracts in place, the financial standing (see CPR 11.6), level of Insurance cover including any policy exclusions, Accreditations, level of Prosecutions any other relevant information that may be subject to change / renewal, must be checked and verified by Approved List Owner, Contract Manager or responsible officer that uses the relevant Framework Agreement.

## **PROCUREMENT PLANNING**

### **12. Contract Value and Aggregation**

12.1 Before conducting any procurement exercise the Responsible Officer will estimate and record the total monetary value and expected cost of a proposed contract, including any contract extensions, incidental or ancillary costs, net of VAT, over the full duration of the contract (not the annual value). For construction contracts, the estimate must be produced by a suitably qualified officer.

12.2 Where a service or supply contract does not stipulate a total price, the contract value shall be estimated as follows:

(a) fixed term service contracts of up to 48 months: total consideration payable over the term;

- (b) service contracts, or contracts for the hire of goods, for an indefinite (or uncertain) period or for a fixed term of more than 48 months: consideration payable in respect of each month multiplied by 48.

12.3 The contract value of regular or renewable service or supply contracts shall be estimated either:

- (a) by aggregating the value of similar contracts for the same categories of services or supplies awarded by the Council over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the next 12 months; or
- (b) by taking the estimated aggregate value during the twelve months following the first supply or service performed, or during the term of the contract where this is greater than 12 months

12.4 A contract cannot be artificially divided into two or more separate contracts, nor a valuation method selected, with the intention of avoiding these CPR's. Contracts shall be packaged to ensure best service delivery, competition and value for money.

12.5 Where a purchasing requirement is subdivided into several contracts, the estimated value of each shall be aggregated to estimate the total contract value; however:

- (a) any works contract that has an estimated value of less than the small lots provision in the Table of Values; or
- (b) any service contract that has an estimated value of less than the small lots provision in the Table of Values need not be aggregated, provided that the aggregate value of all those contracts is less than 20% of the total contract value.

12.6 The Responsible Officer must be satisfied that authority exists within the Council's approved budget for such expenditure, or will exist before expenditure is committed and that he has the delegated authority to spend from such budget.

### **13. Pre-Tender Enquiries**

13.1 Enquiries of contractors may be made before tenders are invited in order to:

- (a) establish whether goods, works or services that the Council wishes to purchase are available, and within what price range;
- (b) prepare tender documents, price estimates and contracts;
- (c) establish whether particular contractors wish to be invited to tender or quote.

13.2 In making enquiries:

- (a) no information shall be disclosed to one contractor which is not then disclosed to all those of which enquiries are made, or who are suitably invited to tender or quote;
- (b) no contractor shall be led to believe that the information they offer will necessarily lead to them being invited to tender or quote, or awarded the contract;
- (c) a written record, including notes of any meetings held, the responses and the names of all individuals present shall be kept by the Responsible Officer on the Contract File.

#### **14. Purchasing Need and Procurement Planning Approval**

14.1 The Head of Service shall, having established and identified a purchasing need, nominate a Responsible Officer to fully assess the purchasing need.

14.2 Before undertaking a procurement exercise, the Responsible Officer, shall ensure that:

- (a) All individual procurements projects over the value of £100,000 will require that a Procurement Plan checklist is completed by the Responsible Officer and sent to for approval to the Strategic Procurement Manager prior to undertaking any competitive market testing or negotiation.
- (b) With respect to procurement projects between the values of £25,000 and £100,000 a Procurement Plan checklist must still be completed and retained on contract file for inspection. Other than for Projects outlined in CPR 14.2 (c), where approval is required by the relevant Head of Service listed below, no further approval will be required.
- (c) With respect to the following specific procurement projects, additional approval to the above will be required as follows:
  - ICT procurement projects - additional approval to the above will be required from the Manager of Business Transformation & ICT or their designated Responsible Officer
  - Property and Works related procurement projects – additional approval will be required from the Property Manager – Strategic Assets or their designated Responsible Officer
  - Temporary staff Agencies (excluding Matrix) and Interim staff Agencies – additional approval will be required from Head of Human Resources & Occupational Development or their designated Responsible Officer

#### **15. Sustainable Procurement**

15.1 For all contracts exceeding £2,000,000 in value it will be mandatory to deliver a social, economic and environmental return on investment through the adoption of a community benefits approach where such benefits can be realised.

- 15.2 For all contracts below £2,000,000 in value it will be optional to deliver a social, economic and environmental return on investment through the adoption of a community benefits approach. However, even for these contracts it will be desirable to deliver relevant community benefits.
- 15.3 All contractors that will be required to deliver Community Benefits shall be required to complete the Community Benefits Toolkit as part of their contractual requirements.
- 15.4 For all contracts over £100,000 for Goods and Services the Council shall take account of social, economic and environmental issues when making procurement decisions using the sustainable risk assessment template (SRA) as part of Procurement Plan Checklist approval (CPR 14).
- 15.5 The inclusion of Sustainable Procurement requirements arising from the Sustainable Risk Assessment (SRA) under CPR 15.4 shall be at the discretion of the relevant Head of Service, having taken into considerations any financial impact of including such requirements.

## **QUOTATIONS AND TENDERING**

### **16. Contracts Valued at less than £10,000 (Goods, Services & Works)**

- 16.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.
- 16.2 Where practical, competition is required for contracts with an estimated value of less than £10,000. The need to obtain written request for quotation shall be at the Head of Service's discretion although this does not alleviate the Head of Service of his responsibility in being able to demonstrate that value for money has been obtained. The Responsible Officer shall obtain, where practical, a minimum of one request for quotation, which must be sourced from an Approved List of Contractors where such a list exists or alternatively if no Approved List is in place from the general list of registered suppliers on the e-sourcing solution (where available) or by public advertisement on the National Procurement Website.
- 16.3 The Request for Quotation shall be received through the e-sourcing solution (where available) or alternatively by written submissions. In the event that only ONE Request for Quotation is sought, then it can be in received in writing on paper or through e-mail which is not locked.
- 16.4 The Request for Quotation shall include as a minimum a technical specification, pricing schedule and Terms and Conditions.
- 16.5 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following acceptance of the Request for Quotation /

signing of the contract.

**17. Contracts Valued between £10,001 and £25,000 (Goods, Services & Works)**

- 17.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.
- 17.2 The Responsible Officer shall invite as a minimum three Quotations, which must be sourced from an Approved List of Contractors where such a list exists or alternatively if no Approved List is in place from the general list of registered suppliers on the e-sourcing solution (where available) or by public advertisement on the National Procurement Website.
- 17.3 The Quotations shall be received electronically through the e-sourcing solution (where available) or alternatively through written submissions. All Quotations received shall NOT be opened until the specified closing time and date has elapsed.
- 17.4 The Request for Quotation shall include as a minimum a technical specification, pricing schedule and Terms and Conditions.
- 17.5 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following signing of the contract.

**18. Contracts Valued between £25,001 and OJEU threshold (Goods & Services)**

- 18.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.
- 18.2 The Responsible Officer shall invite as a minimum four Tenders which must be sourced as a minimum through a public advertisement via the National Procurement Website. If a Restricted Procedure is undertaken then a minimum of four contractors shall be invited to Tender (subject to suitability). Exceptions to this, shall be the use Approved Lists or the supplier directory on the e-sourcing solution (where available) by prior agreement with the Strategic Procurement Manager.
- 18.3 The Tenders shall be received through the e-sourcing solution (where available) or alternatively through written submissions. All Tenders received shall NOT be opened until the specified closing time and date has elapsed.
- 18.4 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following signing of the contract.

## **19. Contracts Valued over OJEU threshold (Goods & Services)**

- 19.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.
- 19.2 The Responsible Officer shall invite as a minimum five Tenders which must be sourced as a minimum through a public advertisement via the National Procurement Website, which will also publish the same advertisement in the Office Journal of European Union (OJEU).
- 19.3 The Tenders shall be received through the e-sourcing solution (where available) or alternatively through written submissions. All Tenders received shall NOT be opened until the specified closing time and date has elapsed.
- 19.4 All Tender notices for projects above the OJEU threshold (Goods and Services) shall be administered by the Strategic Procurement Manager.
- 19.5 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following signing of the contract.

## **20. Contracts Valued between £25,001 and £250,000 (Works)**

- 20.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.
- 20.2 The Responsible Officer shall invite as a minimum four Tenders, which must be sourced from an Approved List of Contractors where such a list exists or alternatively if no Approved List is in place then from the general list of registered suppliers on the e-sourcing solution (where available) or by public advertisement on the National Procurement Website. If a Restricted Procedure is undertaken then a minimum of four contractors shall be invited to Tender (subject to suitability).
- 20.3 The Tenders shall be received through the e-sourcing solution (where available) or alternatively through written submissions. All Tenders received shall NOT be opened until the specified closing time and date has elapsed.
- 20.4 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following signing of the contract.

## **21. Contracts Valued over £250,001 (Works)**

- 21.1 The Responsible Officer shall check whether a Corporate Purchasing Arrangement is in use for the particular purchasing requirement. If so, an order shall be placed under the Arrangement accordingly.

- 21.2 The Responsible Officer shall invite as a minimum five Tenders which must be sourced as a minimum through a public advertisement via the National Procurement Website. With respect to contracts above the OJEU threshold the same advertisement shall be published in the Office Journal of European Union (OJEU). Exceptions to public advertisement shall be the use of Approved Lists or the supplier directory on the e-sourcing solution (where available) only following approval from the Strategic Procurement Manager for contracts below the OJEU threshold (Works) only.
- 21.3 The Tenders shall be received through the e-sourcing solution (where available) or alternatively through written submissions. All Tenders received shall NOT be opened until the specified closing time and date has elapsed.
- 21.4 All Tender notices for projects above the OJEU threshold (Works) shall be administered by the Strategic Procurement Manager.
- 21.5 A Purchase Order Must be sent via the Purchase-to-Pay solution (where available) following signing of the contract.

## **22. Timescales for receiving requests for Requests for Quotes and Tenders**

- 22.1 For all Tenders below the OJEU threshold for Goods, Services and Works there is NO prescribed timescale duration for receipt of documentation e.g. Pre Qualification Questionnaire and / or Tender documentation, since all projects need to be assessed based on its own complexity and to allow sufficient timescales for contractors to provide suitable bids.
- 22.2 For all Tenders (Goods, Services and Works) above the OJEU threshold the timescales for various procedures **MUST** follow the process chart located in the Procurement Pages of the Intranet.

## **23. Request for Quotes and/or Invitation to Tender Documentation**

- 23.1 The Invitation to Tender documentation (including Pre Qualification Questionnaire, Invitation to Tender and Award Letters) and all other procurement documentation used shall be in compliance with the corporate standard documentation as approved or amended from time to time by the Strategic Procurement Manager.

## **24. Tender Specifications**

- 24.1 The Responsible Officer shall ensure the tender specifies the quality, performance, safety and other characteristics required of the works, services, or supplies. Specifications may include requirements relating to methods of construction, design and costing, tests, testing methods, inspection and acceptance, quality assurance, packaging, marking and

labelling.

- 24.2 Technical specifications shall be defined by reference to relevant European specifications or, where they do not exist, in the following order: to British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards. Where an appropriate standard is current at the date of tender, all works services and supplies shall be at least of equal quality.
- 24.3 Specifications shall not refer to supplies of a particular make or source unless:
- (a) it is justified by the tender requirement; or
  - (b) the tender requirement cannot otherwise be described precisely and intelligibly, provided references are accompanied by the words 'or equivalent'

## **25. Tender Opening**

- 25.1 All Quotations under £10,000 where there is only ONE quote invited can be opened upon receipt of the single quotation. The bid shall be accessed via the e-sourcing solution (where available) or alternatively by paper bid.
- 25.2 All Quotations under £25,000 (with exception to single quotes <£10,000 see CPR 25.1) shall be opened at the same time and place after the closing time for receipt as stated in the documents or as early as reasonably practical thereafter. The tender opening shall take place as a minimum 24 hours after the closing time if using the e-sourcing solution (where available). This shall be done in the presence of at least two officers of the Council designated for the purpose by the Head of Service concerned. At least one of the Officers present must be independent of the project and not had involvement in document preparation or be involved in the evaluation of Tenders received. The bids shall be accessed via the e-sourcing solution (where available) or alternatively by paper bids.
- 25.3.1 All Tenders undertaken on the e-sourcing solution that are above £25,000 shall be opened at the same time and place after the closing time for receipt as stated in the documents or as early as reasonably practical thereafter. The tender opening shall take place as a minimum 24 hours after the closing time. This shall be done in the presence of at least two officers of the Council designated for the purpose by the Head of Service concerned. At least one of the Officers present must be independent of the project and not had involvement in document preparation or be involved in the evaluation of Tenders received. The bids shall be accessed via the e-sourcing solution (where available) or alternatively by paper bids. A Cabinet member shall always be invited to attend the tender opening and be given reasonable notice of the

arrangement. It is that Cabinet Members discretion as to whether they attend. The Tender opening will be arranged by the Head of Service.

- 25.3.2 Where Tenders are undertaken using paper documents and the value is above £100,000 then the opening shall be undertaken in the presence of two or more officers of the Council designated for the purpose by the Monitoring Officer and the Head of Service concerned. A Cabinet member shall always be invited to attend the tender opening and be given reasonable notice of the arrangement. It is that Cabinet Members discretion as to whether they attend. The Tender opening will be arranged by the Head of Service. This facility will only remain in place until the e-sourcing solution is made available to all Services.
- 25.4 Every Invitation to Tender shall state that a Bid will only be considered if it is received by a specified time and date via the E-sourcing solution (where available) or with respect to paper tenders in a sealed plain envelope with the word "Tender" and the name of the contract written on it. If the envelope bears any distinguishing matter or mark intended to indicate the identity of the sender, the Bid may be deemed invalid.
- 25.5 All Tenders shall be submitted via the e-sourcing solution (where available) or by paper. All paper Tenders shall be delivered to the named Responsible Officer who shall be responsible for the safe custody of Tenders until such time as they are officially opened.
- 25.6 On receipt, all bids received (electronically or paper based) shall be endorsed with the time and date of receipt and kept secure by the Responsible Officer until the time specified for Tender opening.
- 25.7 If a paper based Tender is opened in error, no attempt shall be made to ascertain any contents of the bid or its origin and the matter shall be reported to the appropriate Head of Service. The envelope shall be resealed immediately and signed by the designated Responsible Officer who opened the envelope and the Head of Service. If the Head of Service has reason to suspect a breach of confidentiality or irregularity has occurred, the Head of Service shall consider arranging for re-Invitation to Tender and report without delay to Internal Audit.
- 25.8 The designated persons present at the Tender opening shall record the following details of each tender:
- (a) the last date and time for the receipt of bids;
  - (b) the name of each Bidder and the amount of each bid;
  - (c) the date the Tenders were opened;
  - (d) if using the e-sourcing solution a print out of the tender opening form shall be obtained

And the record shall be signed by all designated persons present at the Tender opening.

## **26. Late Tenders received**

- 26.1 Any bid received after the specified time shall be endorsed with the time and date of receipt.
- 26.2 If all other bids have been opened, the late bid shall not be considered for evaluation and shall be opened only to ascertain the name of the contractor. No other details of the Bid shall be disclosed. The Responsible Officer shall arrange for the bid to be returned (if paper based) to the Contractor immediately. A notification letter explaining why the bid has not been considered shall be sent to the Contractor.
- 26.3 The late bid shall be considered, providing that the other bids have not been opened and that the Monitoring Officer is satisfied:
- (a) that there is evidence that the late bid was posted / submitted in time for delivery by the due date in the normal course of postal service/ internet service or
  - (b) that exceptional circumstances surround the submission of the late bid, including but not limited to technical difficulties accessing the e-sourcing solution.
- 26.4 Any decision made under CPR 26.3 is to be recorded on the Contract File signed by the Monitoring Officer and a copy of the decision is to be forwarded to the Strategic Procurement Manager.

## **27. Tender Evaluation and Alterations**

- 27.1 All Tenders above £100,000 (Goods, Services and Works) shall be evaluated and awarded on the basis of MEAT (Most Economically Advantageous Tender) only, which shall include a combination of Price and Quality criteria, unless a deviation to this requirement has been approved by the Strategic Procurement Manager through the Procurement Checklist process. (See CPR 27.3)
- 27.2 Lowest price evaluation may only be used as an option for contracts below £100,000, however it is recommended that for contracts below £100,000 that they are evaluated and awarded on a price/quality basis.
- 27.3 Where a contract is to be awarded on the basis of Most Economically Advantageous Tender (MEAT), the Bids shall be evaluated by an Evaluation Team consisting of a minimum of TWO Responsible Officers, in accordance with the criteria stated in the Tender Evaluation documents. With respect to OJEU Tenders, the Collaborative Procurement Service (CPS) staff shall be notified of the evaluation process by the Evaluation Team and the CPS staff shall be consulted following the tender evaluation process, and prior to any tender award approval of any contract in order to ensure robustness of process.

- 27.4 Any particular scoring or weighting attributable to any criteria or sub criteria must be clearly stated in the Invitation to Tender documentation. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the evaluation stage. It must be noted that prior disclosure of and adherence to award criteria and weightings is a fundamental requirement of the core principle of transparency. The core procurement principles (transparency, equal treatment, non-discrimination) apply even to sub-OJEU threshold procurements.
- 27.5 As a general rule no adjustment or qualification to any bid is permitted. Errors found during the examination of bids shall be dealt with in one of the following ways:-
- 27.6 Where there is an error of clerical or arithmetical transcription or computation manifest upon the face of the document which would affect the tender figure in an otherwise successful tender, the tenderer shall be given details of such errors in writing and shall be allowed the opportunity of correcting those errors and confirming the correct details.
- 27.7 Where examination of Tenders reveals other errors or omissions not stated in CPR 27.6 which would affect the Tender figure or submission, the Tenderer shall be given details of such errors and an opportunity of confirming or withdrawing its Tender.
- 27.8 In relation to Contracts, The Relevant Responsible Officer shall be responsible for scrutinising the forms of Tender in order to identify any errors or other discrepancy affecting the validity of the Tender. Where Tender amounts are compiled from a detailed Bill of Quantities, Schedule of Rates or Pricing Schedule the Responsible Officer shall also scrutinise the priced documents supporting the lowest Tender received and any others he considers appropriate. Where scrutiny reveals a discrepancy between a Tender amount and a priced Bill of Quantities, Schedule of rates or Pricing Schedule the Responsible Officer shall notify the Tenderer who shall be offered the option of either correcting the Tender amount, the rates entered in the documents remaining unaltered or withdrawing the Tender. If it is in the best interests of the Authority, the Tenderer may be given the opportunity to correct the Tender. Where a standard form of contract is being used, errors in the contract will be dealt with in accordance with the rule applicable to that form of contract.
- 27.9 With relation to Works Contracts, if the contractor withdraws, or the corrected bid is no longer the highest ranking bid, the bid from the next highest ranking contractor in competitive order will be called in to be examined in more detail.

## **28. Post Tender Negotiations and Tender Bid Clarifications**

- 28.1 Where the procurement is conducted pursuant to the Public Contracts

Regulations 2006 through either the open, restricted or competitive dialogue procedures, no post-tender negotiations are permitted. The responsible officer may seek clarification from tenderers where appropriate in consultation with the Strategic Procurement Manager. Negotiations on price are never permissible except where the negotiated procedure or electronic auctions are used. The negotiated procedure must only be used in those exceptional cases where it is lawful to do so under the Public Contracts Regulations 2006 (Regulation 14).

- 28.2 Where Sub OJEU contracts are conducted within these CPRs (i.e. they are below the relevant OJEU thresholds) the Strategic Procurement Manager may authorise negotiations if he/she considers that it is in the Council's interest to do so. Such negotiations must be undertaken by TWO responsible officers and must not distort competition, and it must be remembered that the core principles of transparency, non-discrimination and equal treatment apply to below-threshold contracts, therefore negotiations must be kept to a minimum. Negotiations must stay strictly within the boundaries authorised by the Strategic Procurement Manager and a written record must be kept of all negotiations and the final outcome.
- 28.3 At all times during the procurement process the Council shall ensure that all contractors are treated equally and in a non-discriminatory and transparent manner.
- 28.4 The Responsible Officer may negotiate a revised bid in the manner set out in CPR 28.2, provided the specification and terms of the contract remain substantially unaltered:
- (a) where tendering produced no tenders or inappropriate tenders, for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited; or
  - (b) where tendering was discontinued because of irregular bids, for example because contractors failed to meet the requirements specified in the bidding documents or offer variations on them, or the works, supplies or goods fail to meet the technical specification.
- 28.5 The Responsible Officer shall invite all contractors to amend their bids, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the old bill of quantities) as the Responsible Officer specifies. All negotiations shall be conducted by at least two officers of different disciplines, one of whom is not involved in the contract award. The Responsible Officer shall keep a written record of all negotiations, including notes of all meetings and the names of all individuals present.

28.6 Where post-tender negotiation results in a fundamental change to the specification or contract terms, then advice must be sought from the Strategic Procurement Manager or Monitoring Officer, since the contract must not be awarded but re-tendered.

## **29. Request for Quotations / Tender Award Approvals**

29.1 No contract may be awarded unless the expenditure involved has been included in approved estimates or on capital or revenue accounts, or has been otherwise approved by, or on behalf, of the Council. The Responsible Officer shall ensure that evidence of authority to spend and the budget code to be used is recorded on the Contract File.

29.2 When awarding contracts, framework agreements or mini competitions based on MEAT (Most Economically Advantageous Tender) (based on price and quality criteria); Award approvals must be undertaken in the following manner:

(a) by the Head of Service having consulted with Chief Finance Officer, Monitoring Officer and Strategic Procurement Manager if the contract value is up to £1,000,000

(b) by the Cabinet Member in whose portfolio the services falls based on a report from the Head of Service, if the contract value is between £1,000,001 and £2,000,000. (2 million)

(c) following a report made to Cabinet if the contract value is over £2,000,001. (2 million)

29.3 When awarding contracts, framework agreements or mini competitions based on lowest price only; Award approvals must be made to the Contractor submitting the lowest price, unless the quote or tender is deemed to be an abnormally low bid which cannot be justified by the bidder to be sustainable in order to deliver the contract. Contracts will be awarded to the tender which offers the lowest price in the following manner:

(a) by the Head of Service providing it does not exceed £1,000,000;

(b) by the Cabinet Member in whose portfolio the services falls based on a report from the Head of Service, if the contract value is between £1,000,001 and £2,000,000. (2 million)

(c) following a report made to Cabinet if the contract value is over £2,000,001. (2 million)

29.4 The Responsible Officer shall following obtaining approval for Tender Award and having received no legal challenges during the “Standstill” period, ensure all Contracts are in writing as per CPR 33 and that a

Purchase Order is entered on to the Purchase-to-Pay solution (where available), once the contract has been signed.

- 29.5 The Responsible Officer shall record all contracts awarded by their Department, on a Corporate Contract Register via the E-sourcing solution (where available).
- 29.6 The Responsible Officer shall send a Contract Award Notice to the OJEU within 48 days of the award with respect to an above OJEU contract and shall publish a Contract Award Note to be published on the National Procurement Website for any other contracts below the OJEU threshold. The requirement to publish a contract award notice also applies to “Part B” services contracts (such as health and social care, and legal services) where the value exceeds the relevant OJEU threshold.
- 29.7 If a contract is to be awarded to a department of the Council, a record of the contract must be published in the Corporate Contract Register on the e-sourcing solution (where available) and a Service Level Agreement must be signed between the relevant Head of Services.

### **30. Notification of Tender Award and De-briefing requests**

- 30.1 Prior to awarding any contract following a report to Lead Member or Cabinet, the Responsible Officer should note the Council’s 5 day Call-In procedure to be implemented before Contract Award notifications are made to contractors. Guidance is available on the Council’s Intranet site.
- 30.2 ‘Standstill’ letters to be issued as part of the OJEU tender process under the Public Contracts Regulations 2006 or optionally as part of any Sub-OJEU tender process must not be issued prior to confirmation of tender award (CPR 29).
- 30.3 There must be a mandatory standstill period between communicating the award decision to all tenders and conclusion of the contract with respect to OJEU tenders. This standstill period shall be 10 calendar days if sent electronically or 15 days for notices sent by other methods. Where the last day of the standstill period is not a working day, the standstill period is extended to midnight at the end of the next working day.
- 30.4 With respect to tender awards involving mini competition’s undertaken within a Framework Agreement or tender awards with respect to Sub-OJEU tenders, it is still advisable to include a Standstill period as per CPR 30.1, CPR 30.2 and CPR 30.3, in particular where there is a risk of challenge such voluntary standstill should be considered by the Responsible Officer.
- 30.5 The Notification letters which are sent to any Contractor who was successful and unsuccessful at either Pre Qualification or Tender Award stage shall be sent promptly once the decision has been made at either selection or award stage. The Contractor shall be informed of the

reasons for being unsuccessful and shall also be informed of the characteristics and relative advantages of the successful contractor as well as the name of contractor awarded the contract. For tender procedures that are below the OJEU thresholds the Responsible Officer shall, within 15 days of receipt of a request in writing from any contractor who was unsuccessful, inform them of the reasons why they were unsuccessful and, if an admissible tender was submitted, the characteristics and relative advantages of the successful tender as well as the name of the contractor awarded the contract (subject to certain exceptions e.g. commercial confidentiality)

### **31. Letters of Intent**

31.1 Letters of Intent must only be used in exceptional circumstances after prior approval in writing has been obtained from the Monitoring Officer and shall only be used in exceptional circumstances as follows:

- (a) where the contractor is required to provide services goods or works prior to formal written acceptance by the Council; or
- (b) where all the contractual terms and conditions have been agreed and there would be an unacceptable delay in waiting for the contractual documentation to be completed.

### **32. Non-concluded Terms and Conditions of Contract**

32.1 The council must always ensure that terms and conditions are fully agreed, by including them in the bidding documents and requiring contractors to accept them as part of the bidding process.

32.2 Where the Terms and Conditions of contract are not fully agreed, no contractor shall be allowed to commence delivery of goods, works or services until all Terms and Conditions have been agreed and signature or written agreement of both parties obtained.

32.3 The Council must in no circumstances contemplate entering into a contract on the contractor's own standard terms and conditions, or negotiate terms which are significantly different to those included or referred to at tender stage, without the prior approval of the Monitoring Officer and subject to CPR 28.

## **FORM OF CONTRACT**

### **33. Contracts in Writing**

33.1 The following contracts shall be in writing and executed under seal:

- (a) if the Council wishes to enforce the contract for more than six years after its end;

- (b) where the price paid or received under contract is a nominal price or there is no consideration and does not reflect the value of the works goods or services;
- (c) where there is any doubt about the authority of the person signing for the other contracting party;
- (d) where it is required by law; or
- (e) where the total value of the Contract exceeds £250,000.
- (f) where the appropriate national form of contract used is drafted as a 'deed'.

The seal must not be affixed without the authority of Cabinet, Cabinet Member or Head of Service acting under delegated powers. The sealing of documents is facilitated through Legal Services who shall arrange the signing and sealing with the Council Chairman and a second authorised signatory.

- 33.2 All contracts, whether made via a Purchase Order number, 'under seal' or 'under hand' (ie not sealed but still signed ), will require an official Purchase Order to be created on the Purchase-to-Pay solution (where available).
- 33.3 All contracts up to £250,000 and made 'under hand', shall be in writing on the Council's general standard terms and conditions of business as available on the Council website and procurement pages of the intranet, subject to CPR 33.4 & 33.5, and signed by one authorised signatory. Approval in respect of the use of alternative terms and conditions shall be approved by the Monitoring Officer during the procurement planning stage.
- 33.4 Where there is an appropriate national standard form of contract, that standard form shall be used, subject to any amendments as may be agreed with the Monitoring Officer in consultation with relevant Head of Service.
- 33.5 Where bespoke terms and conditions are likely to be required for a particular project or scheme, based on its complexity, value, importance or risk level; then the Responsible Officer shall contact Legal Services at the procurement planning stages (CPR 12 to 15), to seek advice; give consideration to Legal Services sitting on the any project team or board at this early stage; and take into consideration the professional judgement of procurement and legal officers on the appropriateness of any bespoke terms that should be incorporated.
- 33.6 Emergency contracts awarded under CPR 10.2(d) need not be in writing before commencement but must be confirmed in writing as soon as possible.
- 33.7 All contracts, whether electronic copies or manual, (save for those which are sealed), shall be retained by the relevant Service for a minimum of 6 years from the expiry date of the contract. Sealed

contracts shall be retained in the Council's Deed Store by Legal Services, usually for a period of 12 years from the date of expiry of the contract.

- 33.8 The Responsible Officer shall ensure that all contracts signed 'under hand' are scanned and saved in the e-sourcing solution (where available).
- 33.9 Commencement of any contract shall not take place until the written contract is finalised except in cases of emergency or in accordance with rule 31, following which the written contract shall be finalised as soon as practicable.

#### **34. Surety/Securities**

- 34.1 The Responsible Officer shall undertake a risk assessment for all contracts (whether works or goods or services), over £100,000, to determine whether a form of surety is to be required as part of the contract terms and conditions. The nature of the surety, whether in the form of a bond, parent company guarantee or vesting certificate or otherwise, will be dictated by the outcome of the risk assessment and the form shall be approved by the Monitoring Officer.

#### **35. Remedies for breach of contract and Service Level Agreements**

- 35.1 The Responsible Officer shall ensure that the agreed remedies for breaches of the contract are incorporated into the terms and conditions as advertised. The type specified will depend on the nature of the contract and may be in the form of liquidated damages or service credits (payment or repayment of price) if the supplier does not meet service levels.
- 35.2 The level of remedy shall be a genuine and reasonable pre-estimate of anticipated loss based on the facts at the time the contract is made.
- 35.3 Advice shall be sought from the Monitoring Officer, on the main elements of any Service Level Agreement that forms part of the main contract. This should reflect the Service's explicit business objectives, describes service deliverables, sets performance standards, sets reporting and remedial mechanisms, compensation events and any other agreed remedies.
- 35.4 Advice shall be obtained from the Monitoring Officer before agreeing any exclusive remedies under the main contract or any Service Level Agreement.

## **OPERATION OF CONTRACT**

### **36. Contract Management**

- 36.1 All contracts must have a named contract manager for the entirety of the contract.
- 36.2 All contracts which are strategically critical and / or high risk and / or high value and / or high profile as determined by the relevant Head of Service within their own service area, are to be subject to a minimum monthly formal contract review with the contractor. Monthly reviews (or as determined by the provision in the contract whichever is the shorter) shall be undertaken by the named contract manager and any contractual issues reported to the relevant Head of Service / Project Sponsor.
- 36.3 All contract management activities shall be undertaken via the e-sourcing solution (where available).

### **37. Contract Performance**

- 37.1 All Contractors shall be subjected to contract performance reviews, which shall be undertaken via the e-sourcing solution (where available) through feedback received from external and internal stakeholders. If practical, a performance review shall be undertaken at the end of each completed contract / job. This shall include a requirement to record good and bad performance including complaints, issues and defects arising under a contract and to monitor the aggregation of contractor defaults including performance issues.
- 37.2 Incidents of poor performance shall first be raised with the contractor in writing, or at a meeting where notes are made and sent to the contractor. In cases of particularly poor performance, or persistent poor performance, the Responsible Officer shall consider whether to recommend suspension or exclusion from the Council's Approved List or Framework Agreement (CPR 11) or to terminate early the contract as per CPR 38.
- 37.3 A customer satisfaction form will be devised and issued on a random and periodic basis to contractors in order for them to express their views and opinions on the operation of the approved list, framework agreement or contract.

### **38. Termination of Contract**

- 38.1 Contracts of less than £250,000 may be terminated early by the relevant Head of Service / Director in consultation with the Monitoring Officer based on a written report by the Head of Service / Director.
- 38.2 Contracts with a value above £250,001 may be terminated early only by the Monitoring Officer in consultation with the Chief Finance Officer,

Strategic Procurement Manager and Portfolio Lead Member based on a written report by the Head of Service / Director.

38.3 Any contracts that are terminated early must be recorded against the contract entry on the Corporate Contract Register.

### **39. Contract Variations and Contract Extensions**

- 39.1 No variation or extension may be made to the Contract if the proposed variation would:
- (a) extend the Contract period by more than 50% or more than three calendar months, whichever is the greater; or
  - (b) add more than 20% to the agreed Contract sum; or
  - (c) mean the works, services or goods to be added to or deleted from the original Contract are substantially different in scope: or
  - (d) be in breach of EU Regulations.

UNLESS IT HAS BEEN APPROVED BY:

- 1) By the relevant Head of Service / Director if the Contract value is under £250,000 (including the aggregated value of variations) based on a written report by the Responsible Officer providing that the variation costs can be met within the budget;
  - 2) By the Monitoring Officer, in consultation with the Chief Finance Officer based on a written report from the Head of Service / Director, if the Contract value is between £250,001 and £1,000,000 (including the aggregated value of variations), providing that the variation costs can be met within budget;
  - 3) by the Monitoring Officer and Chief Finance Officer, based on a written report from the Head of Service having consulted with the Strategic Procurement Manager, Other Statutory Officer(s) and Cabinet Member if the contract value is over £1,000,001 (including aggregated value of variations), providing the variation costs can be met within budget.
- 39.2 The value of a variation or extension shall be calculated by taking the aggregate value of all variations or extensions made to the Contract. No variation, which adds to the cost of the Contract, shall be made until funding has been identified by the relevant Head of Service / Director.
- 39.3 Subject to CPR 39.1 and the provisions of the Contract, every other variation or extension shall, unless otherwise deemed appropriate, be authorised in writing by the relevant Head of Service / Director or the Responsible Officer as delegated by the Head of Service / Director, providing that the variation costs can be met within budget.
- 39.4 CPR 39.1 shall not apply in cases of emergency or where the cost of

Contract delay would exceed the variation/extension costs. In such cases, the variation or extension may be approved by the appropriate Head of Service / Director providing that the same is reported as soon as practicable under the applicable thresholds as in CPR 39.1 to report on the impact of a variation order on a Contract, including budget implications.

- 39.5 For the avoidance of doubt, no variation may be made to a contract if the proposed variation would mean the works, services or goods to be added to the original contract are substantially different in scope or type to those contemplated by the original procurement exercise.
- 39.6 As soon as it becomes known or apparent that the total cost of a scheme including variations will or is likely to exceed the contract sum by more than 5%, the contract manager must inform the Chief Finance Officer or delegated Corporate Finance Manager immediately for financial monitoring purposes who may then inform the responsible officer of any further financial requirements to be complied with.
- 39.7 Contract variations which change any significant term of the contract (particularly as to price, quality or balance of risk) have the potential to amount to a new contract variations must therefore only be considered where:
- (a) The proposed variation is within the scope of the original tender (including any possible extensions or options which were included in the contract notice/advertisement or tender documents);
  - (b) The proposed variation does not significantly exceed the value of the original tender (including any possible extensions or options which were included in the contract notice/advertisement or tender documents);
  - (c) Variations of the type proposed were contemplated at the time the original procurement exercise was carried out; or
  - (d) The variation is permitted under the terms and conditions of the contract (provided that those terms and conditions were known to tenderers at the time of the original tender).
- 39.8 However, variations which alter the balance of risk in favour of the Council may in certain circumstances be judged not to be anti-competitive and thus may be permissible. Permission of the Monitoring Officer must always be sought to determine if the variation is deemed significant.
- 39.9 The decision to extend the contract period (term) may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original contract.
- 39.10 Where the terms of the contract and or original procurement exercise do not expressly provide for extension then such contract may only be extended in exceptional circumstances, where legislation permits and value for money issues have been addressed. Such decision shall be

made by the relevant Responsible Officer in consultation with the Strategic Procurement Manager and Monitoring Officer.

39.11 Contract variations shall be entered on the e-sourcing solution (where available) and an amendment shall be made to the original Purchase Order via the Purchase-to-Pay solution (where available).

#### **40. Contract Payments**

40.1 The relevant Head of Service shall notify the Chief Finance Officer the contract value as soon as possible after any formal contract has been entered into by either ensuring a Purchase Order is submitted on the purchase-to-pay solution (where available) or by written notification, and shall make available the contract documents and accepted tenders to the Internal Audit Manager for inspection as and when required.

40.2 Where contracts provide for payment to be made by instalments, the relevant Head of Service shall arrange for the keeping of a Contract Register to show the state of account on each Contract between the Council and the Contractor in respect of all Contracts.

40.3 Payments to contractors on account of contracts shall be made only on a certificate issued by the relevant Head of Service / Director (or private consultant whenever engaged by the Council) as appropriate, or by an officer nominated by him. The names of officers authorised to approve such records shall be sent to the Chief Finance Officer by each Head of Service, together with specimen signatures (if applicable), and shall be amended on the occasion of any change.

40.4 The Internal Audit Manager shall, to the extent he considers necessary, examine final accounts for contracts and he shall be entitled to make all such enquiries and receive such information and explanations as he may require, in order to satisfy himself as to the accuracy of the accounts.

40.5 The Chief Finance Officer may at his discretion set off any sums due from a contractor to the Council against any sums due from the Council to the contractor.

40.6 Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Monitoring Officer and Chief Finance Officer before a settlement is reached.

40.7 Where completion of a contract is delayed beyond the original contract period or extended contract period within the terms of the contract, it shall be the duty of the relevant Head of Service / Director, in consultation with the Chief Finance Officer and Monitoring Officer, to consider what appropriate action, if any, must be taken in respect of a claim for liquidated damages by the Council under the contract.

40.8 The Responsible Officer approving invoices should be different to the Responsible Officer engaging the contractor to ensure proper segregation of duties

#### **41. Assignments and Novation**

41.1 When any request for Assignment or Novation of any contract is made it must be referred to the Monitoring Officer at the earliest possible instance.

#### **42. Nominating Products/Contractors/Suppliers**

42.1 The core procurement principles of transparency, non-discrimination and equal treatment are undermined by the nomination of products and suppliers.

42.2 Councils must first of all seek to specify goods and services by reference to objective, non-product specific descriptions. Equivalent goods or services are nearly always capable of being specified. If this is not possible for genuine technical reasons, and a particular type of product or service or method of production or delivery has to be stated, then the words “or equivalent” must always be added.

42.3 It is permissible to provide potential main or principal contractors with lists of council-approved suppliers or sub-contractors provided that it is made clear to the main/principal contractors that they are completely free to sub-contract to whoever they wish subject to the Council’s right to consent which shall not be withheld unreasonably subject to meeting the council’s reasonable requirements, such as technical standards, financial standing or insurance levels.

#### **43. Land Contracts**

43.1 All land transactions must comply with Section 120 -123 of the Local Government Act 1972.

43.2 Any Land Contracts which are deemed to be Development Agreements, where:

- the Council requires or specifies works to be undertaken by the Developer
- the Developer enters into an enforceable written obligation (under a development agreement to carry out the work and
- there is some pecuniary interest –which need not necessarily be a cash payment- in carry out the work

The appointment of a Developer may be subject to the Public Contracts Regulations 2006 and CPR 19 & 21 of these Rules. Any Land Contracts which involve Development Agreements shall be notified to the Monitoring Officer and advice sought.

#### **44. Use of Consultants**

- 44.1 The engagement of consultants must be approved, in the first instance, by the Relevant Head of Service / Director and such approval shall be recorded on a Corporate Register of Consultants that may be in place centrally.
- 44.2 When calculating the estimated value of the contract due consideration must be given to any follow on work that may result from the original contract. Where it is proposed that consultants are engaged by the Council, the Relevant Head of Service shall ensure that:-
- (a) there is a clear identification of need. In particular, the availability of in-house resources must be considered before seeking to engage external consultants;
  - (b) a budget has been agreed;
  - (c) a project brief has been prepared;
  - (d) Tenders have been invited in accordance with these CPRs, including any in-house bids unless CPR 10 applies;
  - (e) comprehensive criteria, against which proposals will be evaluated, are set
  - (f) the selection decision is clearly documented;
  - (g) a formal agreement or detailed letter of engagement is prepared and signed;
  - (h) fee payments and progress are monitored;
  - (i) a detailed Contract File is maintained;
  - (j) performance is reviewed and adequate management monitoring and reporting is in place, including implementation of any recommendations made by consultants.
  - (k) there is a clear requirement for knowledge and skills transfer from the consultant to in-house staff
- 44.3 Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the Relevant Head of Service for the periods specified in the respective agreement. The sum insured shall be not less than £1 million but Head of Service may require a greater or lesser sum in appropriate cases further to consultation with the Monitoring Officer. The excess for any one claim shall be no less than £50,000 except with the approval of the Chief Finance Officer
- 44.4 For the engagement of technical external staff as architects, surveyors, engineers and lawyers, the Relevant Head of Service shall annually review the level of use of such external staff
- 44.5 Where consultants or technical external staff as architects, surveyors, engineers or lawyers are appointed to be responsible for supervision of a contract on behalf of the Council, it shall be a condition of appointment that they shall comply with these Rules and Financial Procedure Rules, in relation to that contract, as if they were an Officer of the Council and that, on completion of the contract, they shall submit

all relevant records to the Relevant Head of Service.

#### **45. Retention of Contract Files**

45.1 The Contract File prepared for all contracts over £10,000 must be kept for six years from the end of the contract term unless the contract was executed under seal, in which case the contract must be kept for twelve years from the end of the contract term. With respect contracts funded by Wales European Funding Office grants, the Contract Files shall be kept for twenty years from the end of the contract term.

45.2 Documents relating to unsuccessful tenderers may be micro filed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.

#### **46. Review and Amendment of the CPR's**

46.1 The Strategic Procurement Manager in conjunction with the Monitoring Officer shall continually review Contract Procedure Rules and shall undertake a formal review every three years.

## **Schedule 1**

### **Table of Values**

The relevant EU Thresholds for the period between 1<sup>st</sup> January 2014 and 31<sup>st</sup> December 2015 are as follows:

#### **Contract provisions**

Works	SDR € 5,186,000	<b>£4,322,012</b>
Supplies and Services	SDR € 207,000	<b>£ 172,514</b>

#### **Small lots provisions**

Works	€1,000,000	<b>£833,400</b>
Services	€ 80,000	<b>£ 66,672</b>

#### **Prior Information Notices**

##### **Thresholds**

Works	€ 5,186,000	<b>£4,322,012</b>
Supplies and Services	€ 750,000	<b>£ 625,050</b>

The EU Thresholds are published in the “C” series of the Official Journal of the European Union in the November preceding the 1st January revision.

Any queries regarding the thresholds must be referred to the Council’s Collaborative Procurement Service.