



CONTRACTS' PROCEDURE RULES

Procurement Unit

7th February 2012

Part 4(i)
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Definitions

“Administrative Decision” is as defined in Part 3 Section 5 of the Council’s Constitution

“Approved List” means a supplier of works or services that has been vetted by the Council’s Procurement Unit or relevant department and placed upon the Council’s approved list(s).

“Authorised Officer” means a person with delegated authority to act on the Council’s behalf and is used throughout these Contracts Procedure Rules and the Procurement Code of Practice in the generic sense and includes Architect, Engineer and Supervising Officer as appropriate;

“Best Value for Money” means the optimum combination of whole life costs, quality and benefits to meet the customer’s requirement.

“Call In” means the process by which Members can scrutinise a Key or Major Decision taken by the Relevant Chief Officer

“FMS” means the Financial Management System which ensures Council Officers place orders against Council contracts currently in place.

“Committee” means the relevant Committee of the Council duly authorised (and includes Boards and Plans Panels);

“Contract” means an agreement between the Council and any Contractor made by formal agreement or by issue of a letter of acceptance or official order for goods, works or services;

“Contractor” means the other part to a contract with the Council for the provision of goods works and or services under a contract;

“Corporate Contract” means an agreement between the Council and Contractor made by formal agreement which has been procured in consultation with and for the benefit of more than one Council department. Examples include the stationery contract and temporary staff contract.

“Chief Officer Public Private Partnership Unit and Procurement” means the manager of the Procurement Unit who is responsible for the procurement function on behalf of the Council.

“(The) Council” means Leeds City Council;

“Council’s Constitution” means the set of policies and procedures as amended from time to time which sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose;

“CPR” means the Contract’s Procedure Rules

“Delegated Decision” means a formal decision taken in accordance with Part 3 Section 5 of the Council’s Constitution and includes a Key, Major, Significant Operational and Administrative decision. It is for the Officer seeking the Delegated Decision to decide which type of decision is required.

“Electronic Tender Time-Box” means a web based facility available to tenderers for the submission of expressions of interest and tenders for specific projects;

“Emergency” means an urgent situation or crisis created as a result of a natural disaster (such as flooding or an earthquake) or tragedy (such as an explosion or plane crash)

“Forward Plan” means the plan which sets out key matters to be considered by the Council over the following four months and is updated on a monthly basis

“Framework Agreement” means an agreement which allows the Council to call off from a Contractor to provide services, goods or works in accordance with the terms of the agreement. This includes Corporate Contracts and any strategic partnering contract. If the Council calls off goods works and or services from the Contractor then a binding contract comes into place.

“Highways and Transportation Partnership” means the partnership/framework contract set up by the Council to combine their internal provider (Highways Agency) and a private sector partner to provide all the Council’s consultancy work in transport & engineering (excluding architecture & building services).

“ISP” means Internal Service Provider

“Invocation/Waiver Report” means a report to the Director of Resources in the form of the Invocation/Waiver Report contained in Appendix 1 of the Contracts’ Procedure Rules.

“Key Decision” is as defined in Part 3 Section 5 of the Council’s Constitution

“Letter of Intent” means a letter setting out the parties intentions to enter into a contract at a later date. However, the fact that the parties envisage that the letter is to be superseded by a more formal contract does not, of itself, prevent it from taking effect as a contract.

“Major Decision” is as defined in Part 3 Section 5 of the Council’s Constitution

“Member(s)” means elected member(s) of the Council;

“Non Approved Framework Agreement” means a Framework Agreement set up by a public body other than the Council.

“NPS” means the company set up between the Council and Norfolk Property Services to provide the Council’s design and technical consultancy work associated with buildings and architecture.

“Officer(s)” means employee(s) of the Council;

“OJEU” means the Official Journal of the European Union;

“One Council Approach To Commissioning Framework” means the commissioning framework detailing how procurements will be undertaken by the Council.

“Pre-set Budget” means the pre-determined fixed budget which is to be used to procure the works, goods services in question.

“PIN” means Prior Information Notice for publication in the OJEU;

“Procurement Plan” means a plan identifying major projects maintained by the Relevant Chief Officer. It also provides a basis for information for the Procurement Unit to meet the Council’s reporting obligations;

“**PU**” means the Council's Procurement Unit:

“**Quotation**” means a formal offer to supply or purchase goods, execute works or provide services at a stated price estimated by the Relevant Chief Officer to be of a value of £100k or less;

“**Regulations**” means the Public Contracts Regulations 2006

“**Relevant Chief Officer**” means the head of the procuring department and includes the Chief Executive, Deputy Chief Executive, Assistant Chief Executive, City Solicitor, Directors¹, Chief Officers with appropriate delegations or authorised representative(s) of any of those officers;

“**SCMS**” means the Council's supplier and contract management system maintained by the Procurement Unit;

“**SRP Toolkit**” means the Socially Responsible Procurement Toolkit;

“**Tender**” means a formal offer to supply or purchase goods, execute works or provide services at a stated price estimated by the Relevant Chief Officer to be of a value of over £100K.

“**The Compact For Leeds**” means the agreement between the Council and voluntary, community and faith sector partners. Its purpose is to strengthen working relationships between the partners in order to deliver the best possible outcomes for the people of Leeds.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

¹ Any reference to a Director within these CPRs shall be deemed to include reference to all officers listed in these CPRs, except where the context requires otherwise
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CONTRACTS' PROCEDURE RULES

1 Compliance

- 1.1 Every contract entered into by the Council 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 European procurement rules (the EC Treaty, the general principles of community law and the European Union's Public Contracts Directive implemented by the Regulations);
 - (c) the Council's Constitution including these Contracts' Procedure Rules, the Council's Financial Procedure Rules and schemes of delegation; and
 - (d) the Council's strategic objectives and policies including the One Council Approach To Commissioning Framework.
- 1.2 The highest standards of probity are required of all Officers and Members involved in the procurement, award and management of Council contracts².
- 1.3 Members and Officers are reminded of their responsibilities in relation to gifts and hospitality and should ensure that they comply with the obligations set out in the Members' Code of Conduct and Employee Code of Conduct respectively and any guidance issued in that regard.
- 1.4 These Contracts' Procedure Rules should be read in conjunction with the Council's Procurement Code of Practice.
- 1.5 Any **failure to comply** with any of the provisions of these Contracts' Procedure Rules, the Code of Practice, the Financial Procedure Rules or UK and European Union legal requirements by Officers **may result in disciplinary action** by the Relevant Chief Officer and shall in any event be reported by the Relevant Chief Officer immediately to the relevant Scrutiny Board.

2 Procurement Plan and Statistical Returns

- 2.1 At the beginning of each financial year, the PU shall publish a Prior Information Notice in the Official Journal of the European Union listing the contracts for services and supplies which it expects to procure for the coming financial year. The Relevant Chief Officer shall ensure that all contracts to be procured over £250K per annum have been registered for the pre-requisite time on the forward plan at the point that the contract is due to be awarded in accordance with CPR 21.

² See guide for elected Members' involved in commercial transactions

- 2.2 Each year the PU shall make a statistical return to Central Government for onward transmission to the European Commission concerning the contracts awarded during the year under the EU Rules.
- 2.3 In order for the PU to effectively carry out the above activities, each Relevant Chief Officer shall keep a contracts register setting down details of contracts awarded in the preceding twelve months and ensure that those contracts are registered on SCMS. In the March of the financial year the Relevant Chief Officer shall provide in writing the information contained in the contracts register to the Chief Officer Public Private Partnership Unit and Procurement along with the anticipated tender activity and spend outlined in the relevant service plan for the coming financial year.

3 Delegated Authority

- 3.1 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 as set out in the Council's scheme of delegation contained within the Council's Constitution. However, Officers themselves cannot delegate accountability for the procurement carried out.
- 3.2 Officers with delegated authority to carry out a procurement task may only delegate to other Officers who have suitable experience and seniority. Officers shall be informed by their Relevant Chief Officer as to the extent of any delegated authority and any applicable financial thresholds set by the Relevant Chief Officer for each procurement.
- 3.3 Within approved budgets and schemes of delegation, Authorised Officers **must** place orders against an appropriate contract which has been entered into by the Council or to which the Council legally has access through approved consortia arrangements, joint contracts with other Local Authorities or Central Government contracts in accordance with CPR 8. Any contract awards which constitute Key or Major Decisions under the Council's Constitution or which involve any potential transfer of the Council's employees to a Contractor shall be referred for a Delegated Decision to the Relevant Chief Officer
- 3.4 In order to facilitate the Contract Procedure Rule's training programme, each Chief Officer must inform the Procurement Unit via the Chief Officer Public Private Partnership Unit and Procurement, as soon as identified, of known Officers in their department who authorise orders that have been raised (i.e. they have the authority to spend the money) and/or officers involved in tender exercises and the production of reports to award contracts or seek a waiver/invocation of these Contract Procedure Rules. This list will then be used by the Procurement Unit to target those Officers to ensure they receive the appropriate Contract Procedure Rule training.

4 Exempt Contracts

4.1 The following contracts are exempt from the requirements of these Contracts' Procedure Rules:

- (a) employment contracts.
- (b) contracts relating solely to disposal or acquisition of an interest in land.
- (c) urgent special educational needs or urgent social care contracts, if in the opinion of the Relevant Chief Officer it is considered to be in the Council's interests or necessary to meet its obligations under relevant legislation and demonstrates Value for Money for the Council. Use of this exemption by the Relevant Chief Officer must be followed up with a written report under CPR 31.4 on the approved Invocation/Waiver Report form set out at Appendix 1, setting out the reason for such urgency, how it complies with relevant legislation and represents Value for Money. The report will be forwarded to the relevant Director to note and a copy sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes.
- (d) residential and nursing care contracts which the Council has a duty to provide under S21 and S29(4) National Assistance Act 1948, S117 Mental Health Act 1983, S17 Children Act 1989 and S2 Local Government Act 2000, if in the opinion of the appropriate Chief Officer, following consultation (by whatever means) with the Director of Resources, it is considered to be in the Council's interests and demonstrates Value for Money for the Council.
- (e) where contracts are subject to the Regulations the following Contracts Procedure Rules shall not apply to procurements that are being conducted pursuant to the UK government Private Finance Initiative scheme, the Building Schools for the Future programme or the Local Improvement Finance Trust and such other similar UK government sponsored procurement schemes as the Director of Resources may, at their discretion, approve:
 - (i) 7.3, 9, 11, 12, 16.1 (d), 19.2 and 19.5 (save at Final Tender stage only)

5 Estimating the Contract Value

5.1 Contract values should be calculated in accordance with the Regulations (even when the Regulations are not applicable) for consistency. The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. In particular contracts for supplies,

services or works shall not be split in an attempt to avoid the applicability of these Contracts' Procedure Rules or the Regulations.

- 5.2 When calculating the price of any software the Authorised Officer shall ensure that a genuine estimate of the maintenance costs are included within the price of that software. For the avoidance of doubt it is acknowledged that when software, of any value, is procured the cost of maintenance shall continue until such time as the Council decide no longer to use the software

6 Pre-Procurement Procedure and Member Involvement

6.1 Before undertaking procurement activity the Authorised Officer shall:

- (a) consult with all stakeholders, including Members and interested third sector organisations, to fully identify the need and outcomes to be achieved and fully assess all options for meeting those needs and achieving the outcomes, where appropriate taking account of The Compact For Leeds. Should the Authorised Officer decide not to consult with a particular stakeholder they shall keep a record of their reasons for not doing so
- (b) using Delivering Successful Change methodology, establish a business case for the procurement, and for contracts over £100K, identify provision for resources for the management of the contract, for its entirety. Further details of what should form part of the business case can be found in the Contract Procedure Rules Code of Practice.
- (c) using the One Council Approach to Commissioning, choose a course of action which will represent Best Value for Money to the Council giving consideration to the use of internal providers, the Highways & Transportation Partnership, the Strategic Design Alliance and other strategic partners, existing Framework Agreements, provision of grants, undertaking shared services and utilising the powers to trade, collaborative working and use of the voluntary community and faith sector.
- (d) establish a written specification for the procurement requirement and associated evaluation criteria and strategy which must be formally approved by the Relevant Chief Officer
- (e) ensure that the tender documents are available in a suitable electronic format (usually Portable Document Format (PDF)), unless there are exceptional circumstances where the use of electronic documents are not appropriate. PDF format may not be suitable for documents requiring completion or signature.

- (f) inform the Chief Officer Public Private Partnership Unit and Procurement prior to inviting tenders or quotations whether they consider the Transfer of Undertaking (Protection of Employment) (TUPE) apply in order that these issues are managed correctly in accordance with the Council's TUPE protocol where any employee either of the authority or of a Contractor may be affected by any transfer arrangement³.
 - (g) form an evaluation team with responsibility for evaluating tenders where quality evaluation criteria has been set. The Authorised Officer shall invite the Chief Officer Public Private Partnership Unit and Procurement and finance Officer to form part of the evaluation team. Where appropriate the evaluation team shall include representatives from the other professional services within the Council such as engineers/architects to ensure adequate consideration of the Best Value option. Consideration should also be given to including service users on the evaluation team where appropriate. For procurements over £100K, the evaluation team shall also carry out a risk assessment as part of its pre-qualification assessment and the evaluation process. Guidance can be sought from the Council's Risk Unit
 - (h) consider all aspects of the tender and contract lifecycle with reference to the checklist guidance in appendix 3 of the Contracts' Procedure Rules Code of Practice.
 - (i) apply a gateway review process to contracts above £100K or deemed to be high risk. This process must be applied at key stages of the procurement process in conjunction with the Chief Officer Public Private Partnership Unit and Procurement, and in line with the Council's Delivering Successful Change Methodology.
 - (j) complete the SRP Toolkit, ensuring that both equalities and sustainability impacts are identified and mitigated at the tender scoping stage.
- 6.2 Where the risk in a specific procurement is perceived to be high then that procurement shall be treated as a High Value Procurement regardless of the value of the contract.
- 6.3 Certain types of procurement will be of particular interest to Members. As such the Authorised Officer must consult with Members where the procurement:-
- (i) is of significant strategic importance in meeting the Council's objectives;

and/or

³ Procurements involving TUPE shall always be procured in accordance with CPR 13

- (ii) will, or is likely to, have a significant impact upon the communities living or working in the City of Leeds;
- 6.4 The Authorised Officer should use their professional judgment to determine when and how it would be appropriate to consult with Members taking into account the guidance set out in the Contract Procedure Rules Code of Practice at 2.3.

7 Internal Providers

- 7.1 Subject to CPR 7.2 before commencing procurement activity and in consultation with the Chief Officer Public Private Partnership Unit and Procurement the Relevant Chief Officer shall ask the head of the ISP to carry out either part of or the whole of the works or services competition free. If the head of the ISP does not want to carry out the works or services, they must obtain specific dispensation from the Council's Corporate Leadership Team by submitting a formal report to the Team giving clear and transparent justification (e.g. unavailability of skills or insufficient capacity) for not undertaking those works or services.
- 7.2 For all aspects of transport and engineering consultancy work (excluding architectural and building services), the Authorised Officer should undertake initial discussions with the Highways and Transportation Partnership, to establish the extent to which the Highways and Transportation Partnership can meet their needs. It is expected that the Highways and Transportation Partnership will be able to meet the clients needs on most occasions, given the range of skills available and the ability of the Highways and Transportation Partnership to bring in specialist consultants to support it. If, however, following discussions with the Partnership an Authorised Officer feels that the Highways and Transportation Partnership cannot meet, or procure resources to deliver their requirements, then the Authorised Officer must, subject to a sound rationale/business case, submit a report to Council's Corporate Leadership Team and seek a waiver of this Contract Procedure Rule and procure consultancy services in accordance with CPR 6.2 and 28.
- 7.3 For all design and technical consultancy work associated with buildings and architecture, the Authorised Officer should undertake initial discussions with the Asset Management section in City Development, to establish the extent to which the NPS arrangements require use of the NPS, or the extent to which the arrangements can meet their needs. It is expected that NPS will be able to meet the clients needs on most occasions, given the range of skills available. If, however, following discussions with the NPS an Authorised Officer feels that NPS cannot meet their requirements, then the Authorised Officer must, subject to a sound rationale/business case, submit a report to Council's Corporate Leadership Team and seek a waiver of this Contract Procedure Rule and procure consultancy services in accordance with CPR 6.2 and 28.

- 7.4 In respect of legal work, arrangements are in place (WYLAW) for the sharing of resources between the authorities who are a party to the WYLAW agreement. Before any legal work is procured externally, enquiries should be made with the other authorities as appropriate via legal services.

8 Framework Agreements

- 8.1 In consultation with the Chief Officer Public Private Partnership Unit and Procurement the Authorised Officer shall ascertain whether there is an approved Framework Agreement in place that should be used. If there is it must be used.
- 8.2 The Framework Agreement may include within its terms a requirement for a mini competition exercise between those Contractors who are parties to the Framework Agreement. These shall be tendered in accordance with these Contracts' Procedure Rules and/or the Framework Agreement itself.
- 8.3 Where the Council is able to call off from existing Framework Agreements procured by central Government agencies, purchasing consortia or other local authorities or public bodies, then the Council may benefit from using those contracts without entering into a separate procurement exercise. Where such Framework Agreements contain a number of different Contractors able to provide a particular category of goods or services a mini competition exercise between those Contractors who are parties to the Framework Agreement may have to be carried out.
- 8.4 However, if such Framework Agreements are used it will be in accordance with the terms of those agreements which may not be appropriate to the particular procurement in question. Advice should be sought from the Chief Officer Public Private Partnership Unit and Procurement prior to commencing the procurement.
- 8.5 Where the use of a Non Approved Framework Agreement is to be considered the Authorised Officer must comply with the relevant provisions of CPR 6 and seek written approval to use the Non Approved Framework Agreement. Such approval shall be sought in a timely manner and supported by an appropriate Delegated Decision signed by the Relevant Chief Officer. A record of the approval process followed shall be kept on the Authorised Officers file for audit purposes. Where the Non Approved Framework contains a mechanism for mini-competitions to be undertaken at regular intervals so that the cheapest provider may change throughout the period of the Non Approved Framework, this must be detailed in the body of the report to the Relevant Chief Officer.
- 8.6 Any Framework Agreement set up by a client department shall be notified to the Chief Officer Public Private Partnership Unit and Procurement by the Authorised Officer in order that the Procurement Unit can incorporate

the Framework Agreement onto the SCMS and FMS systems to make it available to other departments where applicable.

9 Approved Lists

- 9.1 Where any procurement exercise is to be undertaken in accordance with CPR 11, 12 or 13, the Authorised Officer, in consultation with the Chief Officer Public Private Partnership Unit and Procurement, shall ascertain whether there is an appropriate Approved List of suppliers that should be used. Guidance on how to use the Approved Lists is set out at paragraph 2.3.7 of the Contract Procedure Rules Code of Practice. These must be used except where the requirement is subject to the Regulations.
- 9.2 The PU sets up and maintains approved lists of Contractors that meet the Council's pre-qualification requirements. These Approved Lists shall be advertised by the PU who shall maintain and review all such lists.
- 9.3 Where an approved list has been set up by a client department the Relevant Chief Officer of that department shall inform the PU that such a list exists and provide details of the Contractors upon that list. The client department shall maintain these lists.
- 9.4 All approved lists set up by the Council shall remain open at all times so that interested Contractors can apply to join the approved lists at any time.

10 Joint Procurement

- 10.1 Any joint procurement arrangement to be established by the Council whereby other local authorities or public bodies are to be allowed to use the contract shall be formally approved by the Relevant Chief Officer before the procurement commences.
- 10.2 Once such approval has been obtained the procurement shall be carried out in accordance with these Contracts' Procedure Rules and the Public Contracts Regulations 2006.
- 10.3 When undertaking a joint procurement arrangement on behalf of the Council the Authorised Officer must ensure the other public bodies that are to be included in that arrangement are listed in the advertisement and contract documents. They can either be individually listed or referred to as a class of organisation within a particular region e.g "all Local Authorities in the Yorkshire and Humber Region" or "all Health Authorities in the Yorkshire and Humber Region" etc. Further, the estimate given must include the potential usage of that joint arrangement by those public bodies listed.

11 Below £10K - Low Value Procurement (Quotations)

- 11.1 Where no appropriate internal supplier, Council contract or Framework Agreement exists, competition (three written quotations) is required for procurements with an estimated value of below £10k unless it represents Best Value for the Council not to do so. Where an Approved List is in place it **must** be used.
- 11.2 On a case by case basis where the Relevant Chief Officer deems it appropriate for the efficiency of service provision and it represents Best Value for Money for the Council they shall be able to use their discretion to raise the amount referred to in CPR 11.1 and CPR 12.1 to £25k and award a contract to a specific Contractor without the need for competition. The Relevant Chief Officer must ensure that, if using this rule, details of the procurement are entered onto SCMS and a unique reference number obtained which will be applied to all stages and documentation of the procurement. If previously agreed with the PU, the Authorised Officer may use an alternative referencing scheme.
- 11.3 The decision to invoke the provisions of paragraph 11.2 above cannot be delegated to any other Officer. The Relevant Chief Officer shall keep a formal record of their reasons for all such decisions.
- 11.4 Once a Contractor is selected an order shall be issued specifying the services, supplies or works to be provided and the price and terms of payments.
- 11.5 Subject to CPR 24.1 and 24.2 Quotations should be invited using the Council's standard terms and conditions⁴

12 Between £10K and £100K - Intermediate Value Procurement (Quotations)

- 12.1 Subject to CPR 11.2 where no appropriate internal supplier, Council contract or Framework Agreement exists, competition is required for procurements valued over £10k but at or below £100k. Where an Approved List is in place it **must** be used.
- 12.2 Subject to paragraph 12.3, the procurement must, as a minimum, be procured using SCMS by the Relevant Chief Officer. This will include advertising the Quotation on the system and ensuring that the Quotation documents are electronically available in accordance with CPR 17 and 6.1(e). At least **three** written Quotations shall be invited. The Authorised Officer shall obtain a unique reference number from SCMS which will be applied to all stages and documentation of the procurement. If previously

⁴ The Council's standard terms and conditions can be found on the intranet under Procurement/Tender and Quotation Documents

Contracts Procedure Rules

agreed with the PU, the Authorised Officer may use an alternative referencing scheme.

- 12.3 Procurements need not be advertised on SCMS where other arrangements are already in place which enable works, goods and services to be procured via a website set up for those purposes (for example conducting a procurement via the Buying Solutions website). However, once complete, details of those procurements must be registered on SCMS by the Authorised Officer.
- 12.4 Faxed or emailed quotations are not acceptable for these purposes.
- 12.5 The Relevant Chief Officer shall ensure that, where proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU, a sufficiently accessible advertisement is published on SCMS in accordance with CPR 12.2 above. Generally, the greater the interest of the procurement to potential bidders from other member states, the wider the coverage of the advertisement should be. Advice must be sought from the Chief Officer Public Private Partnership Unit and Procurement.
- 12.6 Where clients undertake their own procurements they shall do so in accordance with these Contracts Procedure Rules and Code of Practice and procedures as agreed by the PU.
- 12.7 Details of all procurements undertaken by client departments of a value greater than £10k must be recorded on SCMS by the Authorised Officer or shall be forwarded to the Chief Officer Public Private Partnership Unit and Procurement in order that SCMS can be updated on their behalf.
- 12.8 Where the procurement of any value is fully funded by a third party, and if that third party so requests, then the name(s) of one or more Contractor(s) may be added to the quotation list or be the only Contractor(s) invited provided the Approved List criteria are satisfied (and the Regulations not contravened). The Chief Officer Public Private Partnership Unit and Procurement will confirm this.
- 12.9 Subject to CPR 24.1 and 24.2 Quotations should be invited using the Council's standard terms and conditions

13 Over 100K - High Value Procurements (Tenders)

- 13.1 Where no appropriate internal supplier, Council contract or Framework Agreement exists, competition is required for procurements valued over £100k. Where an Approved List is in place it must be used (for values up to the EU Thresholds).
- 13.2 For all procurements valued at above £100k and prior to the commencement of the procurement process:

- 13.2.1 the Authorised Officer shall obtain a unique reference number from SCMS which will be applied to all stages and documentation of the procurement. If previously agreed with the PU, the Authorised Officer may use an alternative referencing scheme.
- 13.2.2 approval of the proposed procurement and contract award procedure including the evaluation criteria to be applied shall be formally sought by the Authorised Officer from the Relevant Chief Officer in accordance with CPR 18 below.
- 13.2.3 the Authorised Officer shall develop and document the procurement approach which shall set out which of the considerations detailed in Appendix 3 of the Contracts' Procedure Rules Code of Practice were taken into account.
- 13.3 Where the estimated contract value reaches the relevant EU threshold CPR 14 shall also apply.
- 13.4 The procurement must, as a minimum, be procured using SCMS by the Relevant Chief Officer. This will include advertising the Tender on the system and ensuring that the Tender documents are electronically available in accordance with CPR 6.1 (e) and 17. Where there are sufficient numbers of Contractors at least **four** written Tenders shall be invited.
- 13.5 Faxed or emailed Tenders are not acceptable for these purposes.
- 13.6 The Relevant Chief Officer shall ensure that, where proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU, a sufficiently accessible advertisement is published on SCMS. Generally, the greater the interest of the procurement to potential bidders from other member states, the wider the coverage of the advertisement should be. Advice must be sought from the Chief Officer Public Private Partnership Unit and Procurement.
- 13.7 Where clients undertake their own procurements they shall do so in accordance with these Contracts Procedure Rules the Code of Practice and procedures as agreed by PU.
- 13.8 Details of all procurements undertaken by client departments must be recorded on SCMS by the Authorised Officer or shall be forwarded to the Chief Officer Public Private Partnership Unit and Procurement in order that SCMS can be updated on their behalf.
- 13.9 Where the procurement of any value is fully funded by a third party, and if that third party so requests, then the name(s) of one or more Contractor(s) may be added to the tender list or be the only Contractor(s) invited provided the Approved List criteria are satisfied (and the Regulations not

contravened). The Chief Officer Public Private Partnership Unit and Procurement will confirm this.

13.10 Subject to CPR 24.1 and 24.2 Tenders should be invited using the Council's standard terms and conditions

14 Contracts subject to the EU Public Contracts Regulations (Tenders)

14.1 Where the estimated value of a contract exceeds the current EU threshold, then the contract shall be tendered in accordance with the Regulations and these CPRs. In all such circumstances appropriate advice must be sought from the Chief Officer Public Private Partnership Unit and Procurement.

14.2 The current thresholds are: -

Services	£173,934.00
Supplies	£173,934.00
Works	£4,348,350.00

The thresholds change every two years and are due to change again on the 1st January 2014.

14.3 It should be noted that there is a distinction in the Regulations between part A and part B services. Part A services, such as consultancy, attract the full force of the Regulations whereas part B services, such as social care, attract only limited application of the Regulations as such services are, by their very nature, more appropriately provided by domestic contractors rather than contractors in other member states. The parts of the Regulations that apply to part B services include providing a specification, publishing contract award details and providing statistical returns to the European Commission. In certain circumstances there may be no requirement to advertise part B services and advice should always be sought from the PU to ascertain whether the service you are procuring needs to be advertised in accordance with the Regulations.

15 Pre-qualification

15.1 In order to be consistent with the Council's requirements in relation to entry onto its approved lists, in all procurements with a value of over £100K, the Council shall only enter into a contract with a Contractor if it is satisfied as to the Contractor's -

- (a) eligibility
- (b) financial standing
- (c) technical capacity

- 15.2 Pre-Qualification Questionnaires are used to assess a bidder's ability to perform the contract in question (selection criteria) and must not be used to assess how a contractor will perform the contract (award criteria).
- 15.3 A Pre-Qualification Questionnaire is available on the PU Intranet for use to determine the criteria under CPR 15.1.

16 The Invitation to Tender/Quote

- 16.1 The Invitation to Tender or Quotation shall include details of the Council's requirements for the particular contract including:
- (a) a description of the services, supplies or works being procured;
 - (b) the procurement timetable including the Tender/Quotation return date and timescales. The Authorised Officer shall allow a reasonable period for the applicants to prepare their Tender/Quotation and where applicable meet the minimum Regulation timescales;
 - (c) a specification and instructions on whether any variant bids are permissible;
 - (d) Subject to clause 24.2, the Council's terms and conditions of contract or a request for the bidder to submit their terms and conditions in accordance with CPR 24.1;
 - (e) the evaluation criteria including any weightings and or sub-criteria as considered appropriate;
 - (f) pricing mechanism and instructions for completion;
 - (g) whether the Council is of the view that TUPE may apply;
 - (h) if appropriate the form and content of method statements to be provided by the bidder;
 - (i) rules for submitting of Tenders/Quotations (all Tenders/Quotations should state that the Council's preferred option is to have Tenders/Quotations submitted electronically);
 - (j) any further information, such as a project brief, which will inform or assist Contractors in preparing Tenders/Quotations.

17 Submission, Receipt, Opening and Registration of Tenders/Quotes

Tenders

17.1 Electronic Tendering

17.1.1 Requests for Quotations and Invitations to Tender should be transmitted by electronic means using the Council's SCMS. This will ensure that:

- (a) the Electronic Tender Time-Box will only be available for the submission of tenders up to the stated deadline time and date. The date and time of each Tender or Quotation received within the Electronic Tender Time-Box will be automatically recorded electronically.
- (b) Electronic Tenders or Quotations submitted are kept in a separate secure Electronic Tender Time-Box under the control of the Director of Resources which is not opened until the deadline has passed for receipt of Tenders or Quotations.

17.1.2 The Council's preferred method of tendering is by electronic means. However, in very exceptional circumstances (e.g. PFI schemes, large construction contracts where there are a large amount of drawings required or where a contractor doesn't have the capacity to tender electronically), the Authorised Officer may allow the Contractor to submit a Tender or Quotation in paper format.

17.2 Hard Copy Tendering

17.2.1 Tenders received shall be addressed to the Director of Resources in a sealed envelope endorsed with the word "Tender" followed by the subject matter to which it relates. No marks shall be included upon the envelope that identifies the bidder prior to the opening of the envelope. Tenders shall be kept in a safe place and remain unopened until the time and date specified for their opening.

17.2.2 Tenders shall be opened by the Chief Officer Public Private Partnership Unit and Procurement and if required at least one other Officer nominated by the Director of Resources. An immediate record shall be made of the Tenders received including names, addresses, value and the date and time of opening.

17.3 Officers who have been involved in preparing a tender bid, must not be involved in the recording or opening of tenders. Only persons authorised by the Relevant Chief Officer (as client), and by invitation of the Director of Resources shall attend tender opening. Due notice must be given to

the Chief Officer Public Private Partnership Unit and Procurement of the details of the scheme, the closing date and time, and the number of Tenders invited. Submission to the Chief Officer Public Private Partnership Unit and Procurement of a blank set of Tender documents when giving this due notice will enable preparatory work to commence and assist the acceptance and award procedure.

Quotations

- 17.4 With regard to the submission, receipt, opening and registration of Quotations, in order to reduce the potential number of legal challenges the, Relevant Chief Officers must ensure that there is a system in place which has been approved by the Chief Officer Public Private Partnership Unit and Procurement, whereby the probity and transparency of the process cannot be called into question. It is recommended that a system is set up which replicates that used for Tenders as above as all mandatory requirements apply.
- 17.5 All Quotation envelopes must be retained on file.

General

- 17.6 The design of the Tender/Quotation documents must be such that price documentation cannot be changed or substituted following submission of the Tender or Quotation.
- 17.7 No Tenders, Quotations or Pre Qualification Questionnaires received after the specified date and time for their receipt can be considered by the Council.
- 17.8 All Tender/Quotation documents must be retained in line with the provisions set out at in Financial Procedure Rule 2.10 relating to "Contracts".

18 Tender Evaluation

- 18.1 The evaluation criteria shall be predetermined and approved by the Relevant Chief Officer and listed in the Invitation to Tender documentation in order of importance. Selection and award criteria must be distinguished and highlighted as part of the tender documentation. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure.
- 18.2 Except where there is a Pre-set Budget and the Quotation/Tender is to be evaluated significantly on quality, where the quality evaluation criteria is to be greater than 60% the Authorised Officer must seek an invocation of this rule by submission of a report in the form set out at Appendix 1 and

subsequent Delegated Decision to the Relevant Chief Officer. The invocation report must set out in detail and demonstrate why a quality weighting of over 60% is justified. A copy of the report when authorised, must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes.

- 18.3 Tenders subject to the Regulations shall be evaluated in accordance with the relevant Regulations and the evaluation criteria set out in the Invitation to Tender. All other Quotations/Tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.
- 18.4 All contracts, except contracts where lowest price was predetermined to be the only criteria, must be awarded on the basis of the offer which represents Best Value for Money to the Council.
- 18.5 Procurements can only be abandoned and re-tendered for proper justifiable reasons e.g. receipt of non compliant bids so genuine competition cannot be obtained or funding is no longer available etc. It would be a breach of the EU procurement rules if a tender was abandoned on the ground that a particular contractor was not the successful bidder and such action would leave the Council open to legal challenge.

19 Errors in Tenders/Quotations

- 19.1 Errors in Tenders/Quotations must be dealt with either by asking the Contractor to confirm that they will accept the contract documentation as issued or if not withdraw the Tender/Quotation from the procurement process. Where a Contractor has made a genuine arithmetical error they may be given an opportunity to correct that error. Other than where a procurement is being carried out under the competitive dialogue or negotiated procedure, where fine tuning and clarification are permitted, no other adjustment, revision or qualification is permitted.
- 19.2 If a Contractor uploads documents onto SCMS which cannot subsequently be opened by the Council at the tender opening ceremony, the Authorised Officer should ask the Contractor to re-submit it's documents to them direct in a format that can be accessed by the Authorised Officer.
- 19.3 Tender/Quotation documents must state how errors in Tenders/Quotations will be dealt with.
- 19.4 Careful consideration must be given to the effect of any procedure adopted when dealing with errors in Tenders and the reflection which any such procedure may have on the integrity of the Officers and Members of the Council. It is essential that whatever procedure is adopted is transparent and seen to be fair and equitable to all Contractors. Certainly asking the Contractor to accept contract documentation as issued is less likely to lead to the probity of the process being questioned. In cases of

any doubt about the procedure to be adopted in any particular circumstances, the Relevant Chief Officer must consult with the Chief Officer Public Private Partnership Unit and Procurement.

- 19.5 Clearly, the effect of any errors identified in a tender/quotation will depend on how material to the tender / quotation the error is. 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 by invocation of this rule with submission of a relevant Invocation/Waiver Report in the form set out at Appendix 1 and associated Delegated Decision to the Relevant Chief Officer as to whether to proceed with acceptance. A copy of the report when authorised, must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes.
- 19.6 Contractors regularly making errors should be warned appropriately.

20 Post Tender Negotiation

- 20.1 Where a procurement is conducted pursuant to the Regulations through either the open, restricted or competitive dialogue procedures, no post tender negotiations are permitted. Under the open and restricted procedures negotiations on price are never permitted. Where the competitive dialogue procedure is used all aspects of the procurement can be discussed pre-tender. However, post tender the Authorised Officer may only seek to clarify, specify or fine tune tenders in accordance with (i) the Regulations and (ii) the tender instructions.
- 20.2 Where procurements are conducted outside the Regulations, such as below threshold contracts, or where the Regulations application is limited such as Part B services, the Authorised Officer may authorise negotiations if he/she considers that it is in the Council's interest to do so. Approval to enter into negotiations shall be sought in writing from the Relevant Chief Officer in a timely manner and supported by an appropriate Delegated Decision signed by the Relevant Chief Officer.
- 20.3 Negotiations shall be conducted on behalf of the Council by at least two appropriately trained Officers from the client department concerned. The Chief Officer Public Private Partnership Unit and Procurement shall be invited to send a representative to the negotiation meetings. A full written record shall be kept of the results of the negotiations, signed by the Relevant Chief Officer or his or her nominee personally and the Contractor, and retained on a central file by the Relevant Chief Officer concerned and a copy sent to the Chief Officer Public Private Partnership Unit and Procurement. Where the Chief Officer Public Private Partnership Unit and Procurement sends a representative to the negotiation only one trained officer from the client department will be required
- 20.4 An amended Tender following negotiations under this rule 20 may not be accepted unless it provides Best Value for Money to the Council.

20.5 At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory and transparent manner.

21 Awarding Contracts

21.1 A contract shall only be awarded subject to the tender evaluation criteria.

21.2 Where a Tender is to be evaluated on price only the Contract must be awarded to the Contractor submitting the lowest price.

21.3 Where a Contract is to be awarded on the basis of a price/quality evaluation and the difference between the value of the lowest priced tender and the highest scoring submission is more than 5%, the Authorised Officer must invoke this rule by submitting the completed Invocation/Waiver Report in the form set out at Appendix 1 and associated Delegated Decision to the Relevant Chief Officer . A copy of the report when authorised, must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes. The purpose of the invocation report is to ensure that the extra cost is justified and demonstrate the method of evaluation. It is not to enable the Authorised Officer to award the contract to any bidder other than the one which submitted the highest scoring submission based on price and quality.

21.4 All Contract awards above £10k will be recorded on the SCMS. The PU will arrange this for Contracts valued over £100k. The Authorised Officer must record, or request the PU to record, all Contracts valued up to £100k.

21.5 Contracts with a value above £100k shall be executed as a deed by an Officer with the requisite delegated authority to do so within the Procurement Unit.

21.6 Contracts with a value up to £100k, based on the Council's standard terms and conditions, or formally approved submitted terms and conditions, may be awarded by an Officer with the requisite delegated authority to do so within the relevant client department.

21.7 For all procurements valued at above £100k, as part of the pre-procurement process, the Authorised Officer should ensure that the budget holder responsible for the contract has sufficient funds in place to sustain the contract.

21.8 The decision to award a contract shall be made by the Relevant Chief Officer on receipt of a delegated decision form from the relevant Authorised Officer. This report should give details of the reasons why tenders, if any, were disqualified and the reasons for the selection of Contractor(s).

- 21.9 Rule 21.7 will not apply for capital schemes where authorisation has already been sought prior to invitation to tender in accordance with the Council's Financial Procedure Rules. However, CPR 21.3 will still apply.
- 21.10 The Council shall only award a contract where it represents Best Value for Money. Where the Regulations do not apply and a 2 stage process is adopted whereby the mechanism for the costs of completing stage 2 of the Contract aren't included in the costs of completing phase 1 of the Contract the Authorised Officer shall submit a report to the Relevant Chief Officer confirming that Value for Money will be achieved by allowing the same Contractor that completed stage 1 to continue with stage 2 without submitting stage 2 to another formal tendering exercise.
- 21.11 Contracts valued over the EU threshold must be awarded in accordance with the Regulations. This will be carried out by the PU at the time of award.
- 21.12 Letters of Intent shall only be used in very exceptional circumstances and authorisation must be sought by invocation of this rule submitting the completed Invocation/Waiver Report and associated Delegated Decision to the relevant Chief Officer. A copy of the report when authorised, must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes. 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 a full risk assessment has been carried out by the Authorised Officer as to the possible implications to the Council by the Contractor being allowed to commence work before the Contract terms and conditions have been finalised.

22 Debriefing

- 22.1 Once a decision to award any Contract subject to the Regulations has been taken the Authorised Officer shall inform the Chief Officer Public Private Partnership Unit and Procurement immediately and where applicable by completing the Preferred Tender Proforma attached at Appendix 2 in order that a 10 day review period can be implemented. During this 10 day period unsuccessful tenderers may challenge the Council's decision to award the contract to the successful tenderer.
- 22.2 The Authorised Officer responsible for each procurement shall provide a full and timely debriefing in writing to unsuccessful tenderers upon written request.
- 22.3 Failure to comply with the 10 day review period may provoke a legal challenge resulting in contracts being set aside for up to 6 months after it has been entered into depending on the circumstances. The PU will manage all aspects of this process in conjunction with the Authorised Officer.

23 Contract Award Notice

23.1 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in the Official Journal of the European Union and on the SCMS as soon as possible after the decision to award the contract has been taken, and in any event no later than 48 days after the date of award of the contract. This will be done by the PU.

24 Contract Terms and Conditions

24.1 The Authorised Officer shall use their best endeavours to ensure that Contracts are entered into on the Council's terms and conditions, which shall be included with each purchase order or invitation to Tender. Where this is not possible, because the Council's terms and conditions are not suitable, and a Contractor has been asked to submit their terms and conditions, those terms and conditions must be formally approved in writing by the PU Procurement Compliance and Regulation team before they can be accepted

24.2 The above rule shall not apply to –

- (i) contracts that are being conducted pursuant to the UK government Private Finance Initiative scheme, the Building Schools for the Future programme or the Local Improvement Finance Trust and such other similar UK government sponsored procurement schemes as approved by the Director of Resources, which shall use UK government standard documentation. Such documentation may be amended by the Relevant Chief Officer for value for money or project specific reasons.
- (ii) construction and/or engineering contracts where bespoke conditions based on accepted standard form contracts are used such as JCT, NEC or ICE for example.

25 Contract Extension and Variations

Extensions

25.1 Any Contract may be extended before the expiry date where it is in accordance with its terms and proves to deliver Best Value for Money. Approval for such an extension shall be sought in a timely manner and supported by an appropriate Delegated Decision signed by the Relevant

Chief Officer. A record of the approval process followed shall be kept on the Authorised Officers file for audit purposes.

- 25.2 All extensions to any Council contracts must be in writing and reported to the Chief Officer Public Private Partnership Unit and Procurement in order that SCMS can be updated accordingly. Variations for extensions of contract shall be governed by this rule and CPR 25.6 and 25.7 shall not apply in these circumstances .
- 25.3 Once a Contract has expired it cannot then be extended. A new contract must be procured by either undertaking a formal procurement exercise or, if that is not appropriate, a waiver needs to be sought in accordance with CPR 11, 12 or 13

Variations

- 25.4 Variations to the Capital Programme provision shall be dealt with in accordance with these Contracts Procedure Rules and Appendix F of the Council's Financial Procedure Rules. Variations in relation to revenue Contracts shall be dealt with in accordance with these Contract Procedure Rules and Rule 10 of the Financial Procedure Rules.
- 25.5 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially effect or change the scope of the original Contract are not allowed.
- 25.6 All Contract variations must be in writing and signed by both the Council and the Contractor except where different provisions are made within the Contract documentation. The value of each variation must be assessed by the Authorised Officer and all necessary approvals sought prior to the variation taking place including registrations on the Council's forward plan if applicable. Approval for any variation shall be sought in writing from the Relevant Chief Officer in a timely manner and supported by an appropriate Delegated Decision signed by the Relevant Chief Officer.
- 25.7 Where appropriate contract variations must be reported to the Chief Officer Public Private Partnership Unit and Procurement in order that SCMS can be updated accordingly.

26 Termination of Contract

- 26.1 For any Contract exceeding £100k in value, early termination shall be approved by the Relevant Chief Officer by invocation of this rule by submitting the completed Invocation/Waiver Report and associated Delegated Decision to the Relevant Chief Officer. A copy of the report when authorised, must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes. Contracts of a lesser value may be terminated early by agreement of the parties prior

to the expiry date or in accordance with the termination provisions set out in the contract. All termination letters under this rule shall be drafted and issued via the PU's Procurement Compliance and Regulation team in conjunction with the Authorised Officer.

27 Nominated and Named Sub-Contractors

- 27.1 If a sub-contractor or sub-consultant is to be nominated or named to a main Contractor, Quotations or Tenders must be invited in accordance with these Contracts' Procedure Rules and the terms of the invitation shall be compatible with the main contract.

28 Procurement by Consultants

- 28.1 Any consultants used by the Council shall be appointed in accordance with these Contracts' Procedure Rules and the Authorised Officer must take into account the guidance set out at paragraphs 2.2.8 to 2.2.17 in the Contract Procedure Rules Code of Practice. Further, the Procurement Unit has been asked to keep a database of all consultants procured by the Council regardless of value. As such all consultant appointments must be recorded on SCMS.
- 28.2 Where the Council uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultants carry out any procurement in accordance with these Contracts' Procedure Rules. No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The Authorised Officer shall ensure that the consultant's performance in relation to procurement is in accordance with these Contracts' Procedure Rules.
- 28.3 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any conflict of interest that may arise to the Authorised Officer prior to completing any Tender evaluations on behalf of the Council.
- 28.4 Where the Authorised Officer considers that such a conflict of interest is significant the consultant shall **not** be allowed to evaluate Tenders on behalf of the Council.

29 Emergencies

- 29.1 In the case of emergencies, the Authorised Officer should first and foremost consider the health and safety of individuals and take action accordingly. This may involve for example, taking the necessary steps to secure a building or prevent the ingress of water. The Council has in place a series of emergency procedures set out in the Emergencies Handbook which should be followed. At the first available opportunity the

situation should be discussed with the Chief Officer Public Private Partnership Unit and Procurement and future actions agreed.

30 Record and Document Retention and Control

- 30.1 Officers attention is drawn to the Financial Procedure Rules section 2
- 30.2 For each procurement activity up to £100k, the Authorised Officer shall maintain a list of all Tenders and Quotations received. Over £100k this will be carried out by the PU.
- 30.3 A Contracts Register of all term Contracts awarded above £100k per annum shall be maintained by the PU.
- 30.4 Each Relevant Chief Officer shall maintain his/her own register of all other Contracts, over £10k as a minimum, entered into by his/her department.
- 30.5 For every individual Contract above £100k a contracts file shall be maintained with appropriate documentation which must include, as a minimum, the following: -
- (a) the method for obtaining bids (see Rules 11, 12 and 13);
 - (b) any exemption under Rule 4 together with reasons for it;
 - (c) the evaluation criteria in descending order of importance and associated evaluation method;
 - (d) Tender documents sent and received from Contractors;
 - (e) any pre-tender market research;
 - (f) all notes made by the evaluation panel during the evaluation of tenders;
 - (g) clarification and post-tender negotiation (to include minutes of meetings);
 - (h) the Contract documents;
 - (i) post-contract evaluation and monitoring;
 - (j) communications with all Contractors during the Tender process and with the successful Contractor throughout the period of the Contract;
 - (k) award of Contract documentation;
 - (l) any decision to abandon a procurement exercise or terminate a Contract.

- (m) all delegated decisions, authorisations, waivers and reports relating to the Tender process and subsequent Contract.

31 Waiver of Contracts' Procedure Rules

- 31.1 Waivers of any of these Contracts' Procedure Rules shall only be given in exceptional circumstances. The relevant Chief Officer will complete the Invocation/Waiver Report in the form set out in Appendix 1 and subsequent Delegated Decision. The report, when authorised, will be forwarded to the Chief Procurement for monitoring purposes.
- 31.2 The relevant Chief Officer may seek advice from Procurement or Internal Audit to assist in the decision-making process.
- 31.3 The relevant Chief Officer must be able to justify a procurement as a genuine exception to the requirements for competition. The reasons for use of this Contracts' Procedure Rule must be documented, and in a format approved by the Director of Resources.
- 31.4 When deciding whether to make the delegated decision to approve a waiver of Contract Procedure Rules the relevant Chief Officer shall take into account the legal obligations for appropriate advertising.
- 31.5 In exceptional circumstances where a waiver could not or was not obtained the relevant Chief Officer shall prepare a written report by submitting the Invocation/Waiver Report in the form set out in Appendix 1 for consideration by his/her Director setting out the reasons why a waiver could not be obtained. A copy of the report must be sent to the Chief Officer Public Private Partnership Unit and Procurement for monitoring purposes.
- 31.6 In all the above circumstances the originator of the report is responsible and accountable for making sure that the contents of the report are factually correct, including details of any previous agreements made with Contractors. The originator of the report should ensure that all supporting documentation is retained on an easily accessible file for auditing purposes. Should it be found that incorrect intentionally misleading information has been knowingly submitted in order to obtain approval for a waiver of these contract procedure rules the originator of the report will be reported to both the relevant Chief Officer and Scrutiny Board.

32 Contract Management

- 32.1 Authorised Officers must follow the procedures set out in these CPRs, and the Contract Procedure Rules Code of Practice.

- 32.2 For all procurements over £100K, Authorised Officers must have a contract management plan. Details of what should be contained in such a plan are set out in paragraph 2.6.1 of the Contract Procedure Rules Code of Practice and the PU's published Contract Management Guidance.

33 Specific Requirements for Construction Contracts

Site Records

- 33.1 The Authorised Officer shall as a minimum ensure the maintenance of accurate records of activities on site as follows:
- (a) labour and plant working on site;
 - (b) labour working on site by trade, including any operatives under 18 years of age; lost time due to inclement weather;
 - (c) plant on site, when idle and when in use; date of arrival and departure of plant; whether plant owned by the Contractor or hired;
 - (d) date, type and volume of materials delivered to site, including the name of the Contractor; ensure that there are adequate facilities for storage;
 - (e) if appropriate, photographs to show the various stages of construction.

Cost Control

- 33.2 The Relevant Chief Officer shall ensure that suitable procedures are laid down and followed for the effective cost control of all Contracts. Such procedures shall involve a continuous monitoring of the cost being incurred on each Contract with the objective of ensuring that the project is completed within the authorised cost and that any unavoidable extra costs are identified quickly so that appropriate action can be taken.
- 33.3 The procedures shall provide:
- (a) a cost statement to be prepared every time a Contract payment is made assessing the probable final cost. This should take into account all known factors including variations, adjustments of prime cost and provisional sums and other items such as re-measured work;
 - (b) a cash flow forecast based on a cost statement prepared by the Relevant Chief Officer, showing the expected pattern of payments to the end of the Contract, updated each month until the final payment is made.

Contracts Procedure Rules

- 33.4 As soon as it becomes apparent to the Relevant Chief Officer that costs will exceed the amount authorised, the Relevant Chief Officer must immediately report the situation to the Director of Resources. A final cost report shall be submitted to the Director of Resources as prescribed by Financial Procedure Rules.

34 Contract Claims

- 34.1 To safeguard the Council's right to deduct liquidated damages, if the Contract is over-running the Authorised Officer must certify in writing that the Contractor ought reasonably to have completed the works within the Contract period. Such a certification must be in accordance with the Contract conditions and be issued prior to the issue of the final certificate for payment.
- 34.2 Any events that may lead to claims for extension of time must immediately be brought to the attention of the Authorised Officer.
- 34.3 Claims for extension of time must be assessed promptly and any extension award made in accordance with the conditions of Contract.
- 34.4 If the works are not complete the Authorised Officer must issue a certificate of non-completion in accordance with any relevant Contract conditions immediately after the expiry of the (extended) date for completion. It is the ultimate responsibility of the Authorised Officer to arrange for the deduction of liquidated damages.
- 34.5 If the Contractor subsequently brings forward fresh evidence of delay, the Authorised Officer may award a further extension but must then also issue a revised certificate stating the revised date in accordance with any relevant Contract conditions.
- 34.6 Before the final certificate is issued the Authorised Officer shall check that any necessary certificate has been issued in accordance with the relevant Contract conditions.
- 34.7 The above procedures must be strictly followed for each section of a Contract in the case of sectional completions.
- 34.8 The City Solicitor shall be kept informed at all times of all contractual claims whether by or against the Council.
- 34.9 It is critical that documentary evidence is kept relating to all aspects and stages of a claim and these should be kept by the Authorised Officer at one central point.

35 Review and Amendment of Contracts' Procedure Rules

- 35.1 These Contracts' Procedure Rules shall be reviewed and updated on an annual basis by the PU in consultation with Relevant Chief Officers.

Appendix 1: Invocation/Waiver Report

Guidance Notes

Introduction

The waiving of CPR's shall only be permitted in exceptional circumstances and only with the prior written approval of the Relevant Chief Officer following consultation with the Director of Resources. Waivers can only be made retrospectively in exceptional circumstances.

An invocation report is required to meet the Council's obligations of transparency and openness and to show that the matter referred for consideration properly falls within Contracts Procedure Rules.

The Processing of the Report

Advice should be sought from the Chief Officer Public Private Partnership Unit and Procurement regarding completion of the Invocation/Waiver Report.

The report must be forwarded to the Chief Officer Public Private Partnership Unit and Procurement and the content of the report is reviewed. The Chief Officer Public Private Partnership Unit and Procurement will raise a proforma with his/her comments and return the report and comments to the author of the report.

Once these comments are received the Invocation/Waiver Report is then passed to the client and, once acted upon the proforma shall be referred for a Delegated Decision to the Relevant Chief Officer.



Originator:

Report of

Report to

Date:

Subject:

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. (This is a summary of the entire Invocation/Waiver Report)
- 2.
- 3.
- 4.

Recommendations

- 5.

1 Purpose of this report

1.1 *(Give a brief explanation as to what the report is for.)*

2 Background information

2.1 *(Sufficient emphasis in the report should be placed on giving the Relevant Chief Officer the necessary background information on the scheme.)*

3 Main issues

Reason for Contracts Procedure Rules Waiver / Invocation

3.1 *(The report must give the reasons why a request to waive/invoke Contracts Procedure Rules is being made. Sufficient information must be included to enable the Relevant Chief Officer to make a decision. If required, the Council's Contracts Procedure Rules and associated Codes of Practice can be accessed from the Council's Intranet site.*

Details of the tenders received, the Contractor(s) to be used together with the proposed contract value should be included under this heading. Where you wish to invite a single tender you must give reasons for this. You must also state where you have sourced the tenderer from and detail any alternatives looked at, giving reasons why they are not to be invited to tender. If there is an Approved List for the type of work to be undertaken and you are not wishing to use this list, you must provide full reasons for this decision. The aim of this information is to provide justification to mitigate the risk of third party challenge from contractors who have been unable to bid for the contract.

Information demonstrating that value for money is being achieved must also be included. This differs from outlining whether a course of action is cost effective. Under Best Value legislation, Value for Money can only be demonstrated where competition has been sought. Where tenders have been evaluated on price and quality, details of who carried out the evaluation, the evaluation criteria and a summary of the results of the evaluation need to be included in the report or attached as an Appendix.

The report needs to include information detailing whether an "in-house" provider is capable of undertaking the required works or services and whether they have been contacted to ascertain their willingness to provide the service.)

Consequences if the proposed action is not approved

3.2 *(A statement must be included which informs the Relevant Chief Officer of the consequences of the proposed action not being approved and/or the costed alternatives should any exist. Details should include, but not be limited to, possible delays to the programme due to the need to advertise the requirement, vet responses prior to undertaking a tendering exercise*

etc. An indication of the possible increased costs involved in undertaking this process should be given if available.)

Advertising

- 3.3 *(A statement must be included which informs the Director as to what degree of advertising was undertaken when the work was tendered. If no advertising was undertaken details must be included as to the reasons why taking into account all the circumstances of the particular case such as the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc) and the geographical location of the place of performance.)*

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 *(A statement must be included which informs the Director as to what degree of consultation with key stakeholders has been undertaken when the work was tendered. If no consultation was undertaken details must be included as to the reasons why taking into account all the circumstances of what is being procured.)*

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 *(A statement must be included which informs the Director as to what has been considered in relation to equality and diversity etc when the work was tendered. If these matters were not considered details must be included as to the reasons why.)*

4.3 Council Policies and City Priorities

- 4.3.1 *(A statement must be included which informs the Director as to what Council Policies and City Priorities are relevant and give details of how the procurement meets those policies and priorities .)*

4.4 Resources and Value for Money

- 4.4.1 *(A statement must be included which informs the Director as to how the procurement represents value for money.)*

4.5 Legal Implications, Access to Information and Call In

(The Procurement Unit will advise as to whether the proposed action would, or might, be held to contravene any enactment, rule of law or Directive of the EU. A statement made by the Chief Officer Public Private Partnership Unit and Procurement must be included in the report and the options available are detailed below. The first option will apply in the majority of cases where a waiver is requested and the second option will usually apply where Contracts Procedure Rules are being invoked to accept a tender which is not the lowest price, where a price/quality evaluation has been

undertaken. Should neither of these options apply, the Procurement Unit will notify you of the alternative wording to be used.)

- 4.5.1** The Chief Officer Public Private Partnership Unit and Procurement has advised that it would be lawful for the Council to waive Contracts Procedure Rule 10 / 11 / 12 / 28 / * in these circumstances, provided that the Relevant Chief Officer of xxxxxxx * is satisfied that there are compelling reasons to do so.

Or

- 4.5.2** The Chief Officer Public Private Partnership Unit and Procurement has advised that this invocation report is required to meet the Council's obligations of transparency and openness and therefore this is a matter properly falling within Contracts Procedure Rule 21.7 / 31.2. There are no other legal provisions requiring a further competition exercise to be undertaken.

Or

- 4.5.3** *(Other text to be advised.)*

4.6 Risk Management

4.6.1

5 Conclusions

5.1

6. Recommendations

(The recommendation must state the specific Contracts Procedure Rule(s) to be waived/invoked, together with an explanation of the meaning of the Contract Procedure Rules.)

- 6.1 The Chief Officer of * xxxxxxxx is recommended to approve the waiver of the following Contracts Procedure Rule(s):

Contracts Procedure Rule No 11- Low Value Procurements

*(Quotations) **

Contracts Procedure Rule No 12 - Intermediate Value Procurements

*(Quotations) **

*Contracts Procedure Rule No 13 - High Value Procurements (Tenders) **

or

- 6.2 The Chief Officer of * xxxxxxxx is recommended to approve the invocation of the following Contracts Procedure Rule:

*Contracts Procedure Rule No 4.1 (c) – Exempt Contracts**

Contracts Procedure Rules

*Contracts Procedure Rule No 18.2 - Tender Evaluation**

*Contracts Procedure Rule No 19.5 – Errors in Tenders/Quotations**

*Contracts Procedure Rule No 21.3 - Awarding Contracts**

*Contracts Procedure Rule No 21.10 – Letters of Intent**

*Contracts Procedure Rule No 26.1 – Termination of Contract**

*Contracts Procedure Rule No 31.4 – Waiver of Contracts' Procedure Rules**

7. Background documents

7.1

APPENDIX 2 – Preferred Tenderer Proforma



**INTERNAL MEMO
Procurement Unit**

To:	Dean Backhouse Procurement Compliance and Regulation Manager Procurement Unit 4 th Floor West, Civic Hall	From:	Tel: (0113) Fax: (0113) Your Ref: Our Ref: Date:
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PREFERRED TENDERER PROFORMA

Scheme Title:
Scheme ID Number:

I intend to formally award the above mentioned contract.

Please send a letter to the preferred tenderer:

Name of Successful Contractor	Address	Contact Name and E-Mail Address/Fax No.	Reason why Tender was successful

Please note the following information to be incorporated in the letter to the successful tender:

- 7 The date of the signed Form of Tender is:
- 8 The Tendered Sum that is being awarded is : £

Contracts Procedure Rules

9 The contract is due to start on --/--/---- and the completion date for the contract is --/--/----

10 Options to extend are:

In addition, please send Regret Letters to the following Tenderer(s) :

Name of unsuccessful Tenderer(s)	Address(es)	Contact Name(s) and E-Mail Address/Fax No:	Reason why Tender(s) were unsuccessful

Please note the following information as this needs to be conveyed to the unsuccessful tenderers:

- Evaluation Criteria (broken down into category/percentage);
- Score of each Tenderer: (broken down into category/percentage); and
- Score of the winning Bid: (broken down into category/percentage);

I will forward the Contract Documents and all relevant approvals to you as soon as possible for acceptance.

Yours faithfully

on behalf of

