

**6. CONTRACT PROCEDURE RULES**

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# Contracts Procedure Rules

## 1. INTRODUCTION

- 1.1 The Council is accountable to the public for the way it spends public funds. Professional Procurement activities contribute to the efficient, effective and economic delivery of services to the public, maximising the benefits available from the budgets and supporting the Council's strategic objectives and the National Procurement Policy Statement.
- 1.2 The Council is publishing these CPRs in line with their obligations under the Local Government Act 1972. In setting out how the Council will contract; it is essential that the Council complies with the Relevant Procurement Legislation. This document sets out how officers should do this. Should there be any conflicts between this document and the Relevant Procurement Legislation and its supporting guidance, legislation takes precedence. In contracting for the Council requirements, officers must note that the Council's reputation is of the utmost importance and should be safeguarded from any suggestion of dishonesty, corruption, or failure to meet its legal obligations. (Acting and being seen to act with integrity).

## 2. PURPOSE OF THE CONTRACTS PROCEDURE RULES

- 2.1 These Contracts Procedure Rules (CPRs) have been designed to ensure these accountabilities and objectives are addressed, they set out the principles and objectives of any procurement, roles and responsibilities, rules and processes to be applied when purchasing services, supplies and works contracts across the Council. They should be read in conjunction with the Council's Financial Procedure Rules, Part 4(f), as well as the Council's Procurement and Contract Management Strategy and Procedures.
- 2.2 These CPRs are supported by detailed guidance included within the Council's Procurement policies and procedures. These policies and procedures explain in more detail how officers should conduct their procurement and Contract Management activities; however, nothing within those policies and procedures override these CPRs. All procurement activity needs to adhere to the Scheme of Delegation and Financial Limits as set out in the Council's Constitution.
- 2.3 All officers must comply with these CPRs, the Council's Constitution, the Relevant Procurement Legislation and all relevant UK Legislation. Any non-compliance shall be reported to the Head of Corporate Procurement, who will decide in conjunction with the relevant Chief Officer what further action needs to be taken. Any misuse or failure to comply with any of these CPRs may result in disciplinary action and legal proceedings. Where any misconduct that has been identified during any procurement process (or previous procurement related activity), the Corporate Procurement Team reserve the right to request to remove any officer from any procurement.
- 2.4 These CPRs will be reviewed by the Head of Corporate Procurement at least every twelve months and urgent proposed amendments (In response to new guidance or

updates to the regulations) will be brought to Members and Chief Officers as required, which could be less or more frequently than twelve months.

### **3. PRINCIPLES AND OBJECTIVES**

- 3.1 All procurement processes must be transparent in their intentions and proportionate to the subject matter, value and complexity of the Contract and should not discriminate against any UK or Treaty State Suppliers.
- 3.2 In addition, officers must have regard to the following objectives:
- (a) Delivering Value for Money;
  - (b) Maximising public benefit (such as delivering Social Value);
  - (c) Sharing Information;
  - (d) Equal Treatment (non-discrimination), unless justified and does not amount to unfair treatment;
  - (e) Removing Barriers for Small and Medium Enterprises SMEs;
  - (f) Acting (and being seen to act with) Integrity (inc. accountability);

### **4. PROCUREMENT THRESHOLDS & EXEMPTIONS**

- 4.1 These rules cover the whole life cycle of purchasing in services, supplies and works; from the initial assessment of the business need to Contract Award and any extension, through to Contract Management and close out.
- 4.2 Exempt Contracts:\*
- (a) The following types of expenditure/ procurements are exempt from the Relevant Procurement Legislation;
  - (b) Council to Council (Subsidiary) arrangements:
    - (i) Vertical - The Council exercises a parent or similar control or joint control with other Authorities on the entity as it does with its own departments, the entity conducts more than 80% of its activities for the controlling Contracting Authorities and there is no private sector money in the entity;
    - (ii) Horizontal – The Council and another authority co-operate – to achieve objectives which the authorities have in common, through an arrangement that is solely for the public interest and the parties perform less than 20% of the services covered by the arrangement on the open market;
  - (c) Subject matter exemptions:
    - (i) Certain types of legal advice eg relating to judicial proceedings and/ or dispute resolution, (Legal advice on a project is not exempt);
  - (d) Certain types of financial advice eg funding or financing arrangements, investment services, lending or borrowing money;

- (e) Employment Contracts - direct employment of permanent or fixed-term employees;
- (f) Purchases made at public auction or of goods sold due to insolvency;
- (g) Land Contracts - the purchase or lease of property, land acquisition, interest in land, transaction in land or disposal. This rule does not extend to any service, supplies, or works contracts that may be required to make the land, existing buildings, or immovable property ready for acquisition, disposal or leasing;
- (h) Grants of money, (payments to external organisations) these are not Contracts; they do not include consideration and they are not services required to be delivered by the Council. See paragraph 9.10.2 below.

#### 4.3 Common Permitted Direct Awards:

- (a) The following types of expenditure/ procurements may have grounds for direct award under the Procurement Legislation:
  - (i) Contracts for the execution of either mandatory works or provision of goods or services which must be provided by a Statutory Provider (monopoly) other than the Council, eg to a public utility, to Ofsted;
  - (ii) Spot care placements which may include special educational needs (i.e. individual placements that fall outside of any block Contracting arrangements), either under User Choice or the Provider Selection Regime;
  - (iii) The acquisition or exhibiting of unique works of art or artistic performance where they are only available from a single source.

*\*Officers must ensure that any procurement conducted in relation to any of these listed exemptions/ common permitted direct awards, that the purchase is consistent with the Council's duty to obtain value for money, as well as the current procurement and Contract Management strategy and other relevant policies of the Council. The Council maintains a list of Exemptions which is reviewed on a regular basis. This can be found at: <https://5058.sharepoint.com/sites/Procurement-1/SitePages/Exemption-Codes-&-Corporate-Contracts.aspx>.*

#### 4.4 Thresholds:

- (a) Calculating the total Contract value means the estimated/aggregate spend or recurring value payable over the entire Contract period including any extensions of Contract and / or potential additional requirements. Paragraph 7.4 below provides further details on how to calculate Contract value;
- (b) The table below sets out the different procurement processes available and their financial thresholds; this has been designed to support open, fair and transparent competition whilst also balancing the aims of achieving Value for Money and delivering public benefits;

	CPR Level 1	CPR Level 2	CPR Level 3	CPR Level 4	CPR Level 5
<b>Category/ Sector (Regime) and Process Rules</b>	<ul style="list-style-type: none"> <li>one written or verbal quote or Purchase Card.</li> <li>Local Supplier if possible*.</li> </ul>	<ul style="list-style-type: none"> <li>one written quote.</li> <li>Local Supplier if possible*.</li> </ul>	<ul style="list-style-type: none"> <li>Request a minimum of three quotes in writing.</li> <li>Include two local Suppliers where possible*.</li> </ul>	<ul style="list-style-type: none"> <li>Regulated Below Threshold Tender.</li> <li>Either by invitation to selected local supplier; or</li> <li>advertised on Find a Tender Service and E-Procurement System.</li> <li>May include a discrete Conditions of Participation stage for Works Contracts above the G&amp;S threshold.</li> </ul>	<ul style="list-style-type: none"> <li>Covered Procurement/ Public Contract (above threshold)</li> <li>advertised on Find a Tender Service and E-Procurement System.</li> <li>Procedure to be designed in line with PA23.</li> <li>Regulated Below Threshold Tender – Works (all regimes) - £500k up to Works threshold.</li> <li>advertised on Find a Tender Service and E-Procurement System.</li> <li>May include a discrete Conditions of Participation stage.</li> </ul>
	Service led.	Service led.	Service led.	Service area or Procurement Team led.	Procurement Team led.
	N/A	Po required	Po required	Po required	Po required
<b>Quote(s) &amp; justification to be attached</b>	N/A	Yes	Yes	Yes	Yes
<b>Goods and Services (G&amp;S),</b>				£75,000- G&S threshold	Above G&S Threshold
<b>Light Touch Regime</b>	£0-£999.99	£1,000 to £9,999.99	£10,000 to £74,999.99		
<b>Works (All regimes)</b>				£75,000 to £499,999.99	£500k and above
<b>Concession (ALL)</b>	£0-£499,999.99 in agreement with procurement				£500k and above
<b>Utilities Contracts</b>	£0 – Threshold – in agreement with procurement				Above Threshold
<b>Approved Framework Agreements</b>	In accordance with Framework Rules and where permitted, Direct Award for Goods or Services and Light Touch up to the Goods and Services threshold AND for Works and Concessions up to £500k led by service area in agreement with procurement. Competitive Selection Process for requirements that exceed the above thresholds, led by procurement				
<b>DPS</b>	In accordance with Dynamic Purchasing System rules, up to £499,999.99, in agreement with procurement				£500k and above
<b>Dynamic Markets</b>	Not permitted for G&S below threshold.				£500k and above
	Not permitted for Works below £500k				
<b>Healthcare Services**</b>	In agreement with Procurement (under the PSR)				

(\* ) The use of Local Suppliers is promoted and encouraged for CPR levels 1 to 3, thresholds but should not supersede the primary requirement of Council Officers to deliver value for money/ best value.

*(\*\*) these services are to be procured in line with the Provider Selection Regime rules of Direct Awards A, B or C, or Most Suitable Provider or Competitive Process. Healthcare services that fall under the Provider Selection Regime (PSR) and are classified within one or more of the adopted CPV codes, as outlined in the NHS England statutory guidance on the Provider Selection Regime, NHS England » The Provider Selection Regime: statutory guidance, will need to adhere to a distinct procurement process and therefore the procurement approach will need to be agreed with Procurement.*

- (c) Value for Money should be defined and measured in terms of Price, Quality and any potential Social Value benefits that can be achieved by using Local Businesses, to create local jobs and support local economic growth;
- (d) Local Suppliers should ensure they are included in and thereby can be sourced via the Local Business Directory at <http://www.itslocalsouthend.co.uk>. A Local Supplier is defined as a Supplier who has a local presence/ an address with a Southend postcode; specifically, SS0, SS1, SS2, SS3 and SS9;
- (e) For the avoidance of doubt the Council would like to pro-actively increase the level of money it spends within the city. However, it is noted that delivery of Value for Money may prevent this and, in such cases, procurement which are not able to secure local quotes will not be subject to delay because of this;
- (f) Further detailed information on the Procurement Processes detailed in this table is contained within paragraph 7 below.

#### 4.5 Procurement Reporting and Governance:

- (a) The Corporate Procurement Team will issue regular reports to Executive Director Leadership Teams;
- (b) This reporting process will ensure there is scrutiny and monitoring of the Council's expenditure in the context of procurement activity;
- (c) The Corporate Procurement Team will also report on compliance with the CPRs, delivery of the Procurement and Contract Management Strategy, progress against the Annual/Pipeline Procurement Plan and all Exceptions Approvals over the previous period.

## 5. ROLES AND RESPONSIBILITIES

5.1 The following paragraphs set out key roles and responsibilities for The Corporate Procurement Team, the Project Team and Chief Officers in the context of procurement.

(a) The Chief Officers shall:

- (i) Agree their annual departmental procurement plans during November/December with the Head of Corporate Procurement so they are in place before the start of each financial year. The plans should accurately detail existing Contracts / spend, pending Contract renewals and any new Contract / spend identified for the next two years (as a minimum) as well as the confirmed budget;
- (ii) Appoint officers in their departments as Designated Procurement Officers who are trained in the administration of purchasing services, supplies and works;
- (iii) Appoint officers in their departments as Contract Managers who are trained in Contract Management and Supplier Relationship Management;
- (iv) Ensure Designated Procurement Officers and Contract Managers are appropriately trained, supervised, appraised and have access to the necessary systems and understand the importance of following these rules;
- (v) Be responsible for approving and delegating approval of Contracts / spends in their department, including any variations to Contracts where there are financial, legal, or commercial implications, this in line with the Council's Key Decision-making Process;
- (vi) Collaborate with the Head of Corporate Procurement and Head of Internal Audit and Counter Fraud on an Annual/Pipeline Procurement Plan to ensure compliance within their departments;
- (vii) Completion of any relevant procurement training available (either face to face or via the e-learning platform).

(b) Designated Procurement Officers must:

- (i) Appraise purchases, in a manner commensurate with their complexity and value to identify the permitted and optimal procurement methodology in line with these CPRs;
  - Check whether a suitable Corporate Contract or Framework agreement already exists that could be used for the purchase, or whether a specific procurement is required;
  - Develop a clear and precise set of purchasing requirements, including (but not limited to) written specification / scope, evaluation

criteria and assessment methodology, drawings, seasonal trends, historical data, benchmark data, timescales and delivery details;

- Conduct the evaluation and award in line with these CPRs and the Council's Procurement and Contract Management Strategy and Procedures;
  - Maintain an appropriate record of all decisions and their reasons throughout the design and delivery of the procurement process;
- (ii) Collate a report/ recommendation to purchase the services, supplies and works in accordance with these CPRs; this to demonstrate Value for Money and ensure no commitment is made without written authorisation;
- (iii) Create purchase requisitions in advance of the supply of services, supplies and works except where a Purchase Card (P-Card) Transaction or Payment without a Purchase order (PWPO) request applies. All purchase requisitions should be under the Council's agreed Terms and Conditions;
- (iv) Notify the Head of Corporate Procurement of any perceived, potential, or actual conflict of interest immediately and complete the relevant documents. This declaration must also be detailed via the Business World System so that appropriate approval is sought and provided;
- (v) Ensure advice is sought where required and/or relevant from the Corporate Procurement Team on the application of these CPRs, Relevant Procurement Legislation or the identified procurement procedure;
- (vi) Completion of any relevant procurement training available (either face to face or via the e-learning platform).
- (c) Contract Managers shall:
- (i) Hold ultimate responsibility for the creation of the procurement/ Associated Tender Documents, including working with external consultants, leading on market engagement and ensuring that the outcome will deliver the Council's requirements;
  - (ii) Ensure appropriate approvals are in place ahead of decisions and the commencement of the procurement process;
  - (iii) Lead on responding to technical Clarification questions from Suppliers, organising suitably qualified and experience individuals are available to support the evaluation process and where negotiations are permitted/ included, that the appropriate resources are available to facilitate the process;
  - (iv) Managing the Contract and collating all information needed to comply with the various transparency obligations under the Contract and in line



with the Relevant Procurement Legislation, eg direct awards, managing performance, publishing notices, managing changes;

- (v) Ensure all necessary Tender Records are collated and maintained in line with the Relevant Procurement Legislation and these CPRs;
  - (vi) Ensuring appropriate forward planning for cyclical and capital Contracts, including informing the Head of Corporate Procurement so that Contracts are included on the Annual/Pipeline Procurement Plan where CPR levels 4 or 5 and in the Pipeline Notice where the Contract has a value in excess of £2m;
- (d) Head of Corporate Procurement shall:
- (i) Deliver Contracts in a manner that maximises the opportunities to achieve key objectives such as Value for Money, Public Benefit and Integrity; whilst also ensuring compliance with the relevant Public Procurement Legislation and all relevant supporting guidance as published from time to time by the Cabinet office;
  - (ii) Ensure these CPRs, the Council's Procurement and Contract Management Strategy and related documentation remains up to date with Relevant Procurement Legislation, including providing a regular report to that effect;
  - (iii) Allocate resource to key procurement projects to ensure delivery of the Annual/Pipeline Procurement Plan and ensure that the Annual Pipeline Notice is published in line with the Relevant Procurement Legislation;
  - (iv) Ensure Procurement Advisors keep up to date with these CPRs, the Council's Financial Procedure Rules, the procurement policies and procedures, other relevant Procurement Guidelines and Procurement Legislation;
  - (v) Report to cabinet on an annual basis, the Council's Annual/Pipeline Procurement Plans - these plans will provide details of all future Level 4 and 5 procurements;
  - (vi) Oversee procurement reporting and governance, directly or by delegation to a Procurement Advisor:
    - Ensure scrutiny and monitoring of the Council's expenditure in the context of procurement activity;
    - Monitor compliance against all procurement activity and notably the CPRs;
    - Provide information as to those exceptions requested and approved/rejected;

- Monitor progress against the annual and future Annual/Pipeline Procurement Plan and the Corporate Procurement and Contract Management Strategy;
  - Record any unplanned CPR Level 4 or 5 procurement activity reported to it and the course of action taken to address any such unplanned procurement processes (subject to the normal approvals set out in paragraph 6 below);
  - Consider opportunities across departments and service areas where joint initiatives can be investigated and implemented, which in turn may deliver best value;
  - Provide information and evidence for internal audit and the fraud team which is contrary to the practices set out in the CPRs.
- (e) Corporate Procurement Team (inc. Procurement Advisors) shall:
- (i) Provide procurement advice and support to Chief Officers, Designated Procurement Officers, Contract Managers and other officers on how to purchase services, supplies and works in accordance with these CPRs. This advice includes administering adverts / frameworks, developing specifications / Tenders, conducting evaluation processes, publishing awards and operating procurement systems;
  - (ii) Ensure that procurement requirements are properly defined; procurement activity is competitive, transparent, fair and complies with the Relevant Procurement Legislation and demonstrates value for money;
  - (iii) Support the Designated Procurement Officers with all necessary Record Keeping;
  - (iv) Support each department to proactively performance manage Supplier Contracts as part of an agreed Contract Management plan;
  - (v) Support the procurement reporting and governance requirements set out in paragraph 5.1.4(f) above;
  - (vi) Ensure the timely publication of notices in line with the Relevant Procurement Legislation;
  - (vii) Maintain and update the Public Contracts Register.

## 5.2 Code of Conduct (All CPR Levels):

- (a) All officers, regardless of role or title, must always comply with the Council's Employee Code of Conduct (See Part 5c of the Constitution) which means that where their role involves procuring, managing, or using the Council's Contracts they must comply with these CPRs and Financial Procedure Rules on the award of Purchase orders and Contracts;

- (b) Officers must also not offer, promise, give or receive any gift, loan, fee, reward, regard, or advantage from or to contractors or potential contractors in respect of the award or performance of any Contract;
- (c) Breaches of the Council's Employee Code of Conduct (inside or outside of work) will be reported, investigated and may result in disciplinary action. Serious breaches of the code may be considered gross misconduct and result in dismissal without notice;

### 5.3 Conflicts of Interest (Any CPR Level):

- (a) Officers must declare any perceived, potential, or actual conflicts of interest (financial or non-financial) or relationships that may impact on their involvement in procuring, managing, or using the Council's Contracts:
  - (i) CPR Levels 1 – 3:
    - This declaration must be made at the initial point of involvement, within the Council's ERP system (Business World) and will be reviewed by their manager;
  - (ii) CPR Levels 4 – 5:
    - This declaration must be made at the initial point of involvement, to the Head of Corporate Procurement and recorded within the Council's ERP system (Business World) which will be reviewed by their manager;
- (b) This process is an essential step in managed fairly and with integrity, this applies to all individuals (officers and Members) and Suppliers involved in any stage of the Contract life cycle and will require the nominated Procurement Advisor to carry regularly update the Conflict Assessments whenever anyone new gets involved in the procurement, the approval process and/ or the management of the Contract. The assessment must also include details of any mitigations taken/ to be undertaken to mitigate potentially unfair outcomes, e.g., use of Ethical Wall agreements, use of alternative evaluators, etc.

## 6. APPROVAL TO SPEND & AWARD

6.1 Before commencing any procurement activity, or awarding a Contract, officers must check that they have the required approvals in place: This to include budgetary approval and the authorisation of the relevant officer, Head of Service, Director of Chief Officer in accordance with the Scheme of Delegation.

Threshold	Approval to Procure	Approval to Award
£0 - £9,999.99	Line Manager	
£10,000 - £74,999.99	Contracts up to £24,999.99* - Business Unit Manager Contracts up to £74,999.99 - Head of Service, Group Manager/ Assistant Director	
£75,000 up to £249,999.99	Contracts up to £249,999.99 - Director	
Contracts over £250,000	<p>For Contracts <i>not included in the approved Annual Procurement Plan</i> - Cabinet Approval/ Schools Governing Bodies</p> <p><i>For Contracts that were included in the approved Annual Procurement Plan can be commenced with the following approval</i></p> <p>Contracts Up to £500k – Director.</p> <p>Contracts up to £1m - Executive Directors</p> <p>Contracts over £1m - Chief Executive or Chief Financial office</p>	All awards over £500k must get Cabinet Approval (Key Decision) before award.

6.2 For Schools, in all cases, Head Teachers and their Authorised officers may procure and/ or award in accordance with the delegated powers stipulated by the relevant Board of Governors.

6.3 Contracts which are Capital Contracts must be included in the Capital Programme in accordance with the Financial Procedure Rules.

6.4 Contracts which have external funding must comply with the external funding rules in the Financial Procedure Rules. The Corporate Procurement Team must also be made fully aware of all related conditions and requirements around the compliant use of the external funding.

*\*Note: Contracts which have a value below £1m, but for which a longer limitation period is considered necessary to protect the Council's interests (eg design Contracts, construction Contracts) shall be executed under seal as well as all Contracts with a value over £1M.*

## **7. DETAILED PROCUREMENT RULES**

7.1 To ensure the purpose and principles set out earlier in CPRs are met, the following detailed rules must be adhered to at all times.

7.2 Contract Types & Regimes (All CPR Levels):

- (a) All spend must be classified by type and regime before a procurement process can be designed; this is due to different types and regimes having different financial thresholds and obligations. The types and regimes include;
- (b) Types:
  - (i) Goods (eg supplies, products, software, purchase of gas / electric by the Council);
  - (ii) Services (eg labour, consultants, IT advisors / support, or technical resources); or
  - (iii) Works (eg Construction Projects – including consultant if procured with the works).
- (c) Regimes:
  - (i) Utilities (provision of fixed networks for Gas, electric, Water, transport eg Buses on a fixed network);
  - (ii) Light Touch (eg social Care, legal services, education, catering, hospitality);
  - (iii) Concession (eg contracts that involve real Supplier risk and the services are paid for by service users);
  - (iv) Exempt / Excluded (Not covered).

7.3 Contract Durations (All CPR Levels):

- (a) Before calculation the Contract value or determining the route to market (procurement CPR level), officer must decide both the initial and maximum Contract durations (including any optional extensions) and what might be the justification to apply those extensions;
- (b) The Council's general position is that when setting an initial contract period, any planned extension (individually or cumulatively) should not be longer than the initial contract period without express permission from the Corporate Procurement Team (with this to be agreed as part of the options Appraisal when CPR Level 4 or 5 or using the Exceptions Approval Process for CPR Levels 2 & 3.);
- (c) For CPR Level 5 procurement, this option to extend must be included in the Tender Notice and Contracts Details Notice.

7.4 Calculating Contract Value (All CPR Levels):

- (a) Before commencing any procurements, the correct estimated Contract value must be calculated;
- (b) The estimated Contract value must include ALL monies that could be paid over the maximum life span of the Contract (or Framework/ Dynamic Market), to the successful Suppliers(s) regardless of the source; eg all planned and potential costs, additional requirements, fees / commissions, contract extensions and / or prizes / participation costs plus any contingencies, whether funded by the authority, other grants or paid for by service users (concession contract eg operation of leisure centres, bus contracts, community cafes). The total must also include Value Added Tax (VAT) at 20% (*Where buying from outside the UK, officers should seek advice from the Corporate Procurement Team*);
- (c) Officers must not underestimate or split the Contract into multiple short Contracts or into multiple small Contracts (Disaggregation) to artificially avoid certain procurement thresholds; doing so could result in future requests to modify or extend the Contract being declined;
- (d) Where the Council is unable to estimate the value of a procurement, it should be advertised in line with the rules for a Covered Procurement to ensure it is accessible to Treaty Suppliers.

#### 7.5 Duty to Consider Lots (All CPR Levels):

- (a) In determining the CPR Level and the rules that apply, officers must consider whether the Council could deliver the requirements through a number of Lots. This being a balance of removing barriers for SMEs and Council capacity to manage multiple smaller Contracts. Officers should consult with their Procurement Advisor in deciding this and the decision must be noted in the Tender Record (see paragraph 7.34 below) and in the Tender Notice (CPR Level 5 Covered Procurements only);

#### 7.6 Risk Assessments (CPR Level 4 & 5):

- (a) Contract Managers, with their Procurement Advisors, must conduct a risk assessment in the following situations;
  - (i) Where the procurement is a Covered Procurement; and
    - Is establishing a new Framework or Dynamic Market with multiple Suppliers;
    - Includes a Special Purpose Vehicle;
    - Is for a Contract duration in excess of five years;
    - Includes design liabilities and / or collateral warranties;
    - Involves intellectual property;
    - Involves a significant Health & Safety consideration;
    - Is likely to be subject to significant inflation risks; or

- Where the spend relates to substantial direct awards or contract extensions that carry risks under the Relevant Procurement Legislation.
- (b) The outcome of the risk assessment must both be:
- (i) Documented in the Invitation to Tender as it will feed into the process design and governance / approval process; and
  - (ii) Added to the Corporate Risk Register for monthly monitoring by the Contract Manager.

#### 7.7 Market Research (CPR Levels 4 & 5):

- (a) CPR Level 4 Procurement - officers are encouraged to conduct soft market testing for all CPR Level 4 procurements to ensure the most appropriate route to market is selected;
- (b) CPR Level 5 Procurement – officer must agree with their nominated Procurement Advisor whether Preliminary Market Engagement is required to design/ inform the route to market. Where Preliminary Market Engagement is used, a Preliminary Market Engagement Notice must be published, all information must be carefully collated for sharing and the Conflict Assessment referenced in paragraph 5.3 above must be updated.

#### 7.8 Approval to Procure:

- (a) Before any procurement process can commence, approval must be demonstrated in line with Paragraph 6 above;

#### 7.9 Contract Documentation (CPR Levels 2 to 5):

- (a) Standard Contracts:
  - (i) The Council has a standard set of terms and conditions to be used for all CPR Level 1 to 3 procurements that do not have complex requirements and are not to be varied, these are to be sent to the Suppliers as part of the procurement documentation;
- (b) Industry or Complex Contracts:
  - (i) Where more complex procurement requirements need tailored or specific terms and conditions (ie NEC, JCT, performance related incentives, payment terms, data protection requirements, safeguarding) usually within Tender requirements for CPR Level 4 and 5 Contracts, written approval must be sought from the Head of Corporate Procurement and / or Executive Director (Legal and Democratic Services) to vary the Council's terms and conditions. In all cases, irrespective of value, Purchase orders and Contracts shall clearly specify as a minimum:
    - Details of what is to be supplied (ie the works, materials, services, deliverables, or description of works);



- Payment terms (ie the price to be paid and when (noting the obligation to pay Suppliers within thirty days of a valid invoice)) this can be a schedule of multiple payments and / or milestone payments;
  - The dates, or times, within which the Contract is to be performed; and the provisions for the Council to terminate the Contract;
  - The Contract Management process and information to be published (where a Public Contract over £5m).
- (c) Parent Company Guarantee & Performance Bond:
- (i) All Contracts over £250k may include an option for the Council to request a Performance Bond and/ or a Parent Company Guarantee. The requirement is likely to be applied where the project or a Contractor is deemed as a high risk for failure (likelihood and/or impacts). This requirement to be agreed with the Corporate Procurement Team and the relevant Director;
  - (ii) Where a bond or guarantee is deemed necessary – this should be in a form acceptable to the Council and in consideration of the form of Contract being used;

#### 7.10 Procurement Process & Documentation:

- (a) Paragraph 4.4 above set out the threshold and processes rules (CPR levels) available. Further guidance on the process and documentation requirements for the different CPR Levels is included below;
- (b) CPR Level 1:
  - (i) In circumstances where an officer does not have a P-Card or the Supplier does not accept a P-Card, a CPR Level 2 process must be followed;
  - (ii) Officers must retain all receipts for purchases made using a purchase card; these to be provided to finance;
- (c) CPR Level 2:
  - (i) Officers must explain their requirements to the identified Supplier and the Supplier must provide a proposal that can be attached to the Council's Standard Terms and Conditions;
  - (ii) Officers must raise a PO, attach the Quote(s) and include a spend justification in the appropriate part of the P2P system;
  - (iii) Details of the Contract and an electronic copy, must be added to the Contract Register;
- (d) CPR Level 3:
  - (i) Officers must create a specification detailing the Contract requirements, this to be accompanied by the Council Standard Terms and Conditions;

- (ii) Officers must raise a Po, attach the Quote(s) and include a spend justification in the appropriate part of the P2P system;
  - (iii) A Below Threshold Contract Details Notice must be published for all Contracts with a value of £30k inc. VAT, as soon as reasonably practicable after the award;
  - (iv) Details of the Contract and an electronic copy, must be added to the Contract Register.
- (e) CPR Level 4:
- (i) Officers must consult with their nominated Procurement Advisor to agree the optimal route to market for their requirement, eg a corporate Contract, approved Framework, advertised or non-advertised opportunity. This decision should consider how the Council can remove barriers for SMEs or include Local Suppliers and open up opportunities for them to deliver Council Contracts. Equally, officers should consider whether it is practical and appropriate to include social value in line with the Corporate Social Value Policy within the Award Criteria;
  - (ii) Officers will need to develop a specification and Award Criteria and must detail how the Tenders received will be assessed; plus, appropriate Conditions of Tendering, along with a suitable Contract and amendments, as advised by the Procurement Advisor;
  - (iii) Where the procurement relates to works and the opportunity is being advertised and the value exceeds the threshold for goods and services, officers may use a discrete Conditions of Participation Stage to limit Suppliers to invite to submit Tenders. These Conditions of Participation must detail whether Excluded Suppliers and / or Excludable Suppliers will be excluded and if so, which grounds apply;
  - (iv) An advert (Below Threshold Tender Notices) must be published to invite Tenders unless using an approved framework or corporate Contract;
  - (v) A Below Threshold Contract Details Notice must be published as soon as reasonably practicable;
  - (vi) Details of the Contract and an electronic copy, must be added to the Contract Register;
- (f) CPR Level 5:
- (i) Officers must liaise with their nominated Procurement Advisor to agree the optimal route to market for their requirement, eg including but not limited to use of an existing corporate Contract, a Competitive Tendering Procedure (open Procedure or Competitive Flexible Procedure), use of an approved Framework, Dynamic Market, Dynamic Purchasing System, or Direct Award (in line with this paragraph);

- (ii) Officers will need to develop an Invitation to Tender and Associated Tender Documents, this to include:
- A Specification (including Key Performance Indicators for Public Contracts with a value over £5m inc. VAT);
  - Conditions of Participation – legal, financial and technical capacity and capability requirements the Suppliers must meet, (including details on Mandatory Exclusion Grounds and Discretionary Exclusion Grounds, Debarment and excluding Suppliers);
  - Award Criteria and Assessment Methodology, including criteria relating to cost/ price (and Value for Money), technical requirements and social value (in line with the Corporate Social Value Policy);
  - A detailed description of the Competitive Tendering Procedure being used and Conditions of Tendering. Where using the Competitive Flexible Procedure, this must include details of if and when Supplier numbers may be limited, all and any Tender rounds, any Negotiations / Dialogues / Presentations / Demonstrations etc., and any options to refine the Award Criteria;
  - A suitable Contract and if needed, Council Amendments; and
  - Any other documents as advised by the Procurement Advisor.
- (iii) A Tender Notice is required to launch/ advertise the procurement; the Associated Tender Documents should all be published at the same time. officers must consult with their nominated Procurement Advisor to agree timescales for this notice and subsequent stages in the procurement process;
- (iv) A Contract Award Notice and Standstill Period will be required in most cases; advise should be obtained from the nominated Procurement Advisor as part of the initial process design;
- (v) A Contract Details Notice will need to be published within thirty days of entering into the Contract;
- (vi) Details of the Contract and an electronic copy, must be added to the Contract Register;
- (vii) Public Contracts must be managed in line with paragraph 9 below.

#### 7.11 Procurements under an Approved Framework:

- (a) Where a Contract is to be let under an existing / approved Framework then any Competitive Selection Process or Direct Award must be made in line with the rules of the Framework, paragraph 4.4 above and the Relevant Procurement Legislation;

#### 7.12 Procurements under a Dynamic Market:

- (a) Where a procurement is to be conducted under an existing / approved Dynamic Market then a Competitive Flexible Procedure must be used in line with the rules of the Dynamic Market and the Relevant Procurement Legislation;
- (b) Dynamic Markets cannot be used for Below Threshold Contracts for Goods & Services Contracts. However, it can be used for Works contracts in line with paragraph 4.4 above and the Relevant Procurement Legislation.

#### 7.13 Procurements under a Dynamic Purchasing System (DPS):

- (a) Where a Contract is to be awarded under an existing DPS, the procurement is to be conducted in line with the DPS agreement, paragraph 4.4 above and the Relevant Procurement Legislation;

#### 7.14 Procurement under the Provider Selection Regime:

- (a) Apply to health care services provided to individuals;
- (b) Direct Award A:
  - (i) The Council must be used where there is an existing Provider and there is no realistic alternative;
  - (ii) Can only be used where there are existing Contracts.
- (c) Direct Award B:
  - (i) The Council must be used where patients are offered a choice, the number of Providers is not restricted, there is an advert and Providers can express an interest and all suitable Providers that can provide the service are offered a contract;
  - (ii) Can be used where there are existing Contracts or new requirements.
- (d) Direct Award C:
  - (i) The Council may use this option where there is an existing Provider, the services required are not changing considerably, the Provider is satisfying the requirements of the existing Contract and are likely to satisfy the requirements of the new Contract;
  - (ii) Can be used where the Council is not required to use options A or B.
- (e) Most Suitable Provider:
  - (i) The Council may use this option where, based on the information available, the Council is of the view that they can identify the Most Suitable Provider;
  - (ii) Can be used where the Council is not required to use options A or B and does not want to use option C.
- (f) Competitive Process:
  - (i) This process requires an advert and a formal Procurement process;

- (ii) This is the option that can be used to establish a Framework;
- (g) All above procurements / contracts must be let in line paragraph 4.4 above and the Relevant Procurement Legislation;
- (h) Further guidance on process and notices must be obtained from the Corporate Procurement Team.

7.15 Mixed Procurements:

- (a) Where a Contract involves spend under more than one Regime or Relevant Procurement Legislation and it is not possible to award the Contracts separately, then the Contract should be procured in line with the rules in these CPRs and the Relevant Procurement Legislation which amount to the largest share of the cost;
- (b) Further guidance on process and rules must be obtained from the Corporate Procurement Team.

7.16 Clarification Process (All CPR Levels):

- (a) The Council reserves the right to clarify any incomplete, inaccurate, or misleading information provided to it by a Supplier and to request an explanation and evidence if doing so would not put that Supplier at an unfair advantage;
- (b) All Clarification (by Suppliers and the Council) must be raised and managed through the E-Procurement System;
- (c) Where a Supplier asks a question, the questions and responses will be shared with all Suppliers; an exception being where the Supplier specifies that the question relates to sensitive commercial information and the Council accepts this;
- (d) A record of all Clarification must be maintained.

7.17 Negotiation and / or Dialogue Process (CPR Level 5 - Covered Procurement):

- (a) Where the Council uses a Competitive Flexible Procedure and includes a Negotiation or Dialogue stage(s) these will be conducted in accordance with the Relevant Procurement Legislation Guidance and the Invitation to Tender;
- (b) Only Suppliers who have not previously excluded or disregarded will be invited to participate in such activities/ Tender rounds;
- (c) The Council reserves the right to update Associated Tender Documents following such activities / Tender rounds.

7.18 Presentation and Demonstrations (CPR levels 4 & 5):

- (a) Where the Council uses Competitive Flexible Procedure and includes any of these requirements, the Council reserves the right to score the information shared during these activities and to Limit the number of Suppliers to proceed to the next stage if permitted by the Invitation to Tender;

- (b) Where the Councils uses any other procurement process, they reserve the right to include scored demonstrations and / or presentations as deemed appropriate to the nature, complexity and value of the contract.

#### 7.19 Submitting Tenders (CPR Levels 4 and 5):

- (a) In most cases, Tenders will need to be submitted electronically; however, the Council reserves the right to receive Tenders, in part or in full, hard copy, where examples or other products, samples or models are required. In all situations, details of how Tenders are to be submitted will be clearly set out in the Invitation to Tender;
- (b) It is the responsibility of Supplier to submit their Tenders in time and in line with the instructions included in the Invitation to Tender and / or on the E-Procurement System;
- (c) The Council accepts no responsibility for Tenders that are disregarded for being late or non-compliant.

#### 7.20 Late Tenders (CPR Levels 4 and 5):

- (a) The Council is unlikely to accept late Tenders; however, where it is a fault with the Council's IT / e-procurement portal that can be independently evidenced, that prevented the Supplier submitting their Tender on time/ in the required format, then the Council may accept the Tender.

#### 7.21 Opening Tenders (CPR Levels 4 and 5):

- (a) Where Conditions of Participation and / or Tenders are submitted electronically through the E-Procurement System, these will be opened / released by a member of the Corporate Procurement Team (or a designated independent verifier). That individual must not be part of the project team charged with the delivery of the procurement or any part thereof;
- (b) Where a Tender or part thereof is submitted hardcopy / physical items are submitted, the Tender must be received and open by an independent individual in the presence of a witness and the documents / items submitted recorded, dated and signed in the Tender Record.

#### 7.22 Compliance Checks & Corrections (CPR Levels 4 and 5):

- (a) Suppliers may not amend or request an amendment to their Tender after the date and time for receipt of Tenders;
- (b) The Council will conduct an initial compliance check to ensure that all documents requested have been submitted and that they have been submitted in line with the Invitation to Tender. Any Tender failing this check, who upon clarification, still fails this check (in line with the Relevant Procurement Legislation and the obligation to treat all suppliers fairly and the same) will be deemed non-compliant and the Supplier excluded from further consideration;

- (c) Following this, where there are inconsistencies or errors, the Council may seek Clarification in line with paragraph 7.16 above; these Clarification may include confirming the resolution of any arithmetical error or that of another clear, self-evident and obvious errors that has been identified during the initial review and compliance check. Where the resolution of the error is agreed by at least two officers and can be resolved without the need for additional information, the Council reserves the right to resolve this error and deem the Tender compliant;
- (d) The Clarification process may not be used to seek any amendments and / or request information that changes or enhances a Supplier's Tender, where that change / amendment would amount to an unfair advantage and / or where this might undermine the integrity of the procurement process;
- (e) Where a Supplier is excluded for a non-compliant Tender or where a correction is made, this must be included in the Tender Record.

#### 7.23 Training (CPR Levels 4 and 5):

- (a) It is the responsibility of the appropriate Chief Officer of each department or establishment involved in the procurement process to ensure that all relevant Members of staff are trained in the correct procedures in line with these CPRs;
- (b) The Corporate Procurement Team will support officers by providing training, advice and any necessary templates to enable them to understand and adhere to these CPRs and Tender effectively.

#### 7.24 Evaluation (CPR Level 3):

- (a) Before participating in an evaluation and moderation process, all officers must complete / update their Conflict-of-Interest Declaration;
- (b) Where an officer invites quotes, they will identify the preferred Supplier based on the lowest price compliant quote that meets the technical and legal requirements (without negotiation) as set out in the Specification and delivers Value for Money;
- (c) The above decision to be approved by a senior officer or the budget holder.

#### 7.25 Evaluation & Moderation (CPR Levels 4 and 5):

- (a) Before participating in an evaluation and moderation process, all officers must complete / update their Conflict-of-Interest Declaration;
- (b) Where officers invite Tenders in response to an advert, they are required to identify the Most Advantageous Tender (MAT), this to be a balance of quality and price;
- (c) Before an evaluation process commences, the nominated Procurement Advisor will check whether a Supplier is on the Debarment List, is and Excluded Supplier or is and Excludable Supplier and must, in line with the Invitation to Tender, be excluded from participation in/ the award of the Contract. (where

the procurement is a CPR Level 5 - Covered Procurement, this decision must be notified to the Cabinet office);

- (d) The Contract Manager, along with other suitably qualified and experienced individuals will then be required to carry out an individual evaluation of any Conditions of Participation, Initial / Intermediate / Final Tenders received and/or any score demonstrations or presentation; to make notes in line with the Award Criteria and Assessment Methodology and to highlight any incomplete, inaccurate, or misleading information that needs to be clarified and to share this with the nominated Procurement Advisor;
- (e) The Procurement Advisor may, at their discretion and in line with the Relevant Procurement Legislation, request an explanation and / or evidence if doing so would not put that Supplier at an unfair advantage;
- (f) The responses to such Clarification requests will be shared with evaluators and discussed as part of the moderation meeting;
- (g) Final scores and their reasons will be agreed by consensus in line with the Invitation to Tender document.

#### 7.26 Limiting Suppliers (CPR Levels 4 and 5):

- (a) Where the Council is using a discrete Conditions of Participation stage and or multiple Tender rounds, the Council may, where indicated in the Invitation to Tender (and the Tender Notice) limit the number of Suppliers to proceed from one round to another following a fair and transparent evaluation of the information provided for that stage.

#### 7.27 Internal Approval – All CPR Levels:

- (a) Before notifying any Suppliers of an intention to award, approval must be obtained in line with Paragraph 6 and the Scheme of Delegation.

#### 7.28 Assessment Summaries (CPR Level 5 - Covered Procurement):

- (a) Once a decision has been made internally, all Suppliers who had their only / final Tenders assessed will be issued with an Assessment Summary;
- (b) The assessment summary will include the scores and the reason for those scores against each of the Award Criteria in consideration of the Assessment Summary and the Supplier's bid;
- (c) For Unsuccessful Suppliers, they will receive the information at paragraph 7.28.2 above for themselves and for the Successful Supplier (less any Sensitive Commercial Information);
- (d) This document does not start the Standstill Period.

#### 7.29 Contract Award Notice & Standstill (CPR Level 5 - Covered Procurement):

- (a) Following the issuance of the Assessment Summary, the Council must, in line with the Relevant Procurement Legislation, publish a Contract Award Notice;



- (b) Where a Mandatory Standstill Period is required by Competitive Tendering Procedure or where a discretionary Standstill Period is being applied, this must be at least eight clear working days;
  - (i) Under the PA23, – this starts on the day the Contract Award Notice was published;
  - (ii) Under the PSR23, PCR15, CCR16, – this starts on the day after the Contract Award Notice was published and ending on a working day;
- (c) Once the Standstill Period has expired, the Council may enter into a Contract with the Successful Supplier at their convenience. Noting that until the Contract is signed, the Council may terminate the procurement at their sole discretion with any costs incurred to be borne by the party incurring them.

7.30 Contract Approval & Execution (All CPR Levels):

- (a) Contract execution to be completed in line with paragraph 6 above.

7.31 Signing of Non-Disclosure Agreements and Letters of Intent (LoI) (All CPR Levels):

- (a) Non-disclosure agreements can only be signed by approved signatories detailed in paragraph 6 above or by the Head of Corporate Procurement;
- (b) Generally, it is the Council's policy not to enter into discussions with Suppliers based on Letters of Intent (LoI), other than in cases of extreme urgency.

7.32 Contract Details Notice & Publication of Contracts (CPR Levels 3, 4 and 5):

- (a) Regulated Below Threshold Procurements:
  - (i) All Contracts with a value over £30k inc. VAT require a Below Threshold Contract Detail Notice to be Published.
- (b) Covered Procurements:
  - (i) All Public Contracts must have a Contract Details Notice published. Where the Contract value exceed £5m inc. VAT, this notice must set out the three most important KPIs;
  - (ii) All Public Contracts with a value in excess of £5m inc. VAT must be published (Sensitive Commercial Information and personal data (Data Protection Act) may be redacted).

7.33 The Contracts Register and Storage of Contracts (CPR Levels 2 to 5):

- (a) The Council is required to publish the following information:
  - (i) Maintaining a Contract Register of all ongoing Council Contracts with a value of £5,000;
  - (ii) Storing an electronic copy of all Contracts over £5,000 on that Contract Register;
  - (iii) Ensuring that the original copy of all Contracts executed under seal are passed to the Legal Department for storage.

- (b) For levels 1 – 3 – this information must be collated and recorded by the Service Area;
- (c) For Levels 4 & 5 – this information must be collated and recorded on the Council's E-Tendering System by the service which led of the procurement;
- (d) The service areas and allocated Contract Managers must retain a duplicate/ their own copy of the Contract to ensure it is effectively managed throughout the lifetime of the Contract.

#### 7.34 Record Keeping (CPR Levels 4 and 5):

- (a) The Designated Procurement Officers (CPR Level 4) and/or the Procurement Advisor (CPR Level 5) shall record and retain details of all decisions made, using the appropriate template/ in the Council's E-Procurement System. These decisions to include the following information as a minimum;
- (b) Procurement Stage:
  - (i) Budgetary approval and delegated authority information;
  - (ii) Pre-tender market research/ Preliminary Market Engagement;
  - (iii) Reason for the selected procurement process/ route to market/ exception;
  - (iv) A summary of the Procurement/ Associated Tender Documents and key Contract terms and conditions;
  - (v) The Award Criteria & Assessment Methodology;
  - (vi) A summary of the Tender received from Suppliers (with actual Tenders included as appendices) including:
    - Date and Time received;
    - Details of individuals that opened/ released the Tenders;
    - Number of SMEs;
    - Number of Local Suppliers;
    - Number/ Details of Excluded Suppliers;
    - Number/ Details of Disregarded Tenders;
    - Details of any corrections to arithmetical errors, etc;
    - Details of any Suppliers excluded for unfair advantage/ Conflict of Interest.
  - (vii) Supplier Clarifications;
  - (viii) Evaluation and moderation notes;
  - (ix) Council Clarifications;
  - (x) Tender negotiation (incl. minutes) (where permitted by the route to market);

- (xi) Tender decision/ recommendation;
  - (xii) Records relating to Conflicts of Interest/ Conflict Assessment;
  - (xiii) Internal governance;
  - (xiv) Assessment Summaries information;
  - (xv) Contract Award Notice & Standstill Period information;
  - (xvi) Any other decision/ information as deemed necessary to justify the proposed approach and award.
- (c) Contract Stage:
- (i) Copies of the Contract documents;
  - (ii) Contract Details Notice Information;
  - (iii) Records relating to Conflicts of Interest;
  - (iv) Communications with the successful Supplier throughout the period of the Contract;
  - (v) Quality Assurance, Health & Safety and Environmental Management of the Contract;
  - (vi) Post award Contract documentation such as variations, extensions, reviews, breaches and Performance Notices (please note that is the primary responsibility of the Contract Manager but in collaboration with the nominated Procurement Advisors on CPR level 5 Public Contracts.);
  - (vii) Full guidance is contained in the procurement policies and procedures and Contract Management tools and training;

#### 7.35 Record Retention (CPR Levels 4 and 5):

- (a) The Designated Procurement Officers (CPR Level 4) and/or the Procurement Advisor (CPR Level 5) shall retain:
  - (i) Successful Supplier Contract files executed under seal must be kept for twelve (12) years after the end of the Contract;
  - (ii) Successful Supplier Contract files executed under hand must be kept for six (6) years after the end of the Contract;
  - (iii) All other files (including the Records to be kept in paragraph 7.34 above), must be kept for three years from the date on which the Council enters into the Contract;
  - (iv) Within the Council's E-Procurement System electronic copies of successful and unsuccessful Tenders and documents may be retained for an indefinite period (even if under archive);

#### 7.36 Purchase Requisitions and Purchase orders (CPR Levels 2 to 5):

- (a) All purchases made under these CPRs require a method to transact with / pay the Supplier, the default system being to raise a requisition and Purchase order on the Council's P2P and to issue this to the Supplier with a copy of the Council's agreed terms and conditions;
- (b) When using P2P, officers must raise the requisition for approval and enter details of their purchasing requirements (to be supported by quotes) in advance of the supply of services, supplies or works, manage authorisation and then once approved, manage the Contract and make payments to Suppliers in line with the Contract. This system provides a mechanism to report on the Council's expenditure, which is an essential part of effective Contract Management;
- (c) Alternative options / exceptions include:
  - (i) Procurement Purchase Card (P-Card); or
  - (ii) Payment Without Purchase Order (PWPO).
- (d) P-Cards should only normally be used for purchases under £1k and should not be used to circumvent these rules. This being more efficient than setting up a Supplier on the P2P for single / low value requirements. Receipts must be maintained and stored for all such purchases;
- (e) PWPO should only be used where it would not be practical to raise a purchase requisition in advance of supplying services, supplies or works;
- (f) Under no circumstances should purchase requisitions be raised retrospectively to cover any invoiced services, supplies or works. If, however exceptional circumstances apply then a PWPO form would need to be attached to any retrospective order raised on Business World;

#### 7.37 Contract Management (All CPR Levels).

- (a) Officers is responsible for accepting the services, supplies or works received from the Supplier; and ensuring it meets the standards set in the Purchase order or Contract;
- (b) In addition to the above, all Contracts that are CPR level 4 or 5 must be managed via the Council's Contract Management system in line with paragraph 9 below unless agreed otherwise by the Corporate Procurement Team;
- (c) All CPR Level 5 Covered Procurement/ Public Contracts must also be managed in accordance with the Relevant Procurement Legislation.

## **8. EXCEPTIONS TO THE CONTRACTS PROCEDURE RULES**

8.1 In exceptional circumstances, an officer may request an exception to one or more of the CPRs to award a Contract without competition:

- (a) Exceptions are reserved for exceptional circumstances and can only be granted where there are very good reasons that be sufficiently evidenced;

- (b) For Below Threshold (and Exempt) Procurements, the decision to allow the Exception is for the Council to decide, subject to their Key Decision rules (insert reference to scheme of delegation) and the contract value being below £499,999.99 (or for Goods & Services, the Goods & Services Threshold), the request can be approved by the Head of Corporate Procurement alone or with an Executive Director in line with the table below;
- (c) Where the request relates to a Public Contract, approval must be in line with the Relevant Procurement Legislation; and lack of planning or convenience are not acceptable grounds;
- (d) Before any exception is sought, the requesting officer must ensure the budget allocation for the exception is in place. Where a Direct Award of a Public Contract is agreed, the relevant notices must be published;

8.2 Exception Request Approval Process for each Procurement Threshold:

- (a) Officers must complete a Tender/Procedural Exception Request Form and submit for approval in line with the following requirements;

Threshold	Exception Approval Requirements
£0 - £999.99	Not required if best value is ascertained.
£0 - £9,999.99	Not required if best value is ascertained.
£10,000 - £74,999.99	Head of Corporate Procurement (or senior Procurement Advisor)
£75,000 up to £499,999.99	Head of Corporate Procurement (or senior Procurement Advisor) AND Executive Director or Director ( <i>except Goods and Services which is capped at the Goods and Services threshold, in line with paragraph 4.4</i> )
Above £500,0000	Cabinet Approval (Key Decision)

- (b) Any Exception Request made against any of the CPRs Levels must be sought in advance of any contractual agreement. Exception Requests cannot be made or granted retrospectively;
- (c) A request to seek quotes rather than advertise a requirement (CPR Levels 4) must also follow the above process;
- (d) Where an award of a new contract is agreed for contracts in excess of £30,000 (inclusive of VAT), the relevant notices must be published. In respect of contracts relating to healthcare services that fall within the Provider Selection Regime, the relevant notices must be published in agreement with the Corporate Procurement Team;
- (e) It is unlawful for officers or councillors to seek to avoid or circumvent the Relevant Procurement Legislation. Therefore, approval of any Exception Requests equal to or over the Public Contract threshold will only be permitted

where the Head of Corporate Procurement has been consulted and identified a lawful justification under the Relevant Procurement Legislation;

- (f) All Exception Requests to these CPRs will be reported to the relevant governance board/s as required;
- (g) Note: Where the Corporate Procurement Team believe it to be prudent; an exception will be referred to internal audit for further action.

### 8.3 Emergencies - Immediate (direct) awards:

- (a) These CPRs allow for both immediate and urgent action to be taken by the Council under separate and differing circumstances and approvals. The immediate action permissible under an emergency situation by designated officers are set out below:
  - (i) Designated Procurement Officers may make an immediate (direct) award in the case of unforeseeable emergencies which represent or without action would result in:
    - Immediate danger to life or health;
    - Immediate severe damage to property;
    - Any other circumstance where the consequences of which would be equal to or greater than those above.
- (b) Designated Procurement Officers / Contract Managers may make immediate, potential multiple (direct) awards where the total Contract Value equates to a CPR Level 3 procurement or below. The emergency circumstances must require the Council to respond immediately to events which are beyond the genuine control of the Council. This includes but is not limited to natural or manmade disasters such as flooding, fires, or civil unrest. Any emergency procurement must be reported to the Head of Corporate Procurement, by the officer who put in place the emergency procurement as soon as practically possible and in any event, within seventy-two hours;
- (c) Any such Contract entered into on this emergency basis by the Council must not be for a term of more than four weeks: during which time, the Council must procure all further contracts needed to deal with any outstanding issues related to, or originating from, an Emergency Situation via a compliant procurement process. This includes, but is not limited to, the appropriate use of the urgent action permitted as part of the Exception Process.

### 8.4 Emergencies - Urgent (Direct) Award:

- (a) All Procurement Legislation include an option for Direct Award where the works or the supply of either goods or services are strictly necessary for reasons of extreme and unavoidable urgency and this urgency is not attributable to any act or omission of the Council and it was not foreseeable;

- (b) Where such an option is being relied upon, this must be agreed with the Head of Corporate Procurement before a Contract is awarded;
- (c) Where such award is agreed, a Transparency Notice detailing the intention to award the Contract and this must be followed by a Contract Award Notice (applying a voluntary Standstill Period) and a Contracts Details Notice in line with the Relevant Procurement Legislation.

#### 8.5 Other Grounds for Direct Award:

- (a) User Choice Contracts:
  - (i) Award of Light Touch Contracts that are supplied for the benefit of a particular Individual.
- (b) Single Supplier:
  - (i) Where there is a monopoly/ single Supplier due to Intellectual Property rights or competition is absent for technical reasons and there are no reasonable alternatives to these goods, services or works;
  - (ii) Creation of unique pieces of art or artistic performance;
- (c) Prototype or Development:
  - (i) Where the Council is seeking a prototype or novel goods or services to be developed for the Council;
- (d) Additional or Repeat goods, services or works:
  - (i) Where the use of an alternative Supplier would be incompatible with existing good, services or works, or alternatives would result in disproportionate technical difficulties in operation or maintenance; or
  - (ii) Where the additional requirements were expressly allowed for as part of a Competitive Tendering Procedure and a Transparency Notice detailing the award is published within five years of the original Tender Notice.
- (e) Provider Service Regime direct awards under Process A, B or C:
  - (i) Where the purchase relates to Health Care Services, these being defined in *The Health Care Services (Provider Selection Regime) Regulations 2023, Schedule 1* – relevant CPV codes.
- (f) In all of the above circumstances, the officer must complete Tender/Procedural Exception Request Form; this to detail the proposed grounds for the Direct Award and a justification, eg where proposing there is a single Supplier, the market research/ testing that has been conducted to evidence this justification.

## 9. CONTRACT MANAGEMENT

9.1 For a Contract classified as a CPR level 4 and 5, the Chief Executive, Executive Directors, Directors, Contract Managers, Designated Procurement Officers and nominated Procurement Advisors must ensure that the Council's Contract Management processes as set out below are adhered to.

9.2 Definition and Scope of Contract Management Activities within the Council:

- (a) Contract Management is the active management of the relationship between the Council and a Supplier over the term of the Contract for the provision of services, supplies and works to a set of agreed standards;
- (b) Contract Management activities should be proportionate to the value, duration, risk and complexity of the Contract;
  - (i) Simple purchase Contracts (ie an item of office furniture) will usually only require inspection on receipt and payment of the invoice whilst for complex or high value Contracts;
  - (ii) Contracts that are complex or high value and assessed at Level 1 (risk) or Level 2 (risk) will need to appoint a full-time Contract Manager and follow the Contract Management Framework and use documents sourced from the Contract Management Framework;
- (c) The following are the Council's key Contract Management principles and are also set out within the Corporate Contract Management Framework, Contract Management Manual and other tools available within the Teams Channels for Contract Managers.

Principle	Meaning of Principle
Governance.	Contract governance refers to the framework and processes established by organisations to oversee and control their Contracts effectively. It involves defining policies, procedures and standards for creating, negotiating, executing and monitoring Contracts to ensure alignment with organizational goals and objectives. Contract governance aims to minimize risks, enhance compliance and optimize Contract outcomes by providing clear guidelines and accountability mechanisms for managing Contracts.
Monitoring and Reporting.	Involves tracking the performance and compliance of Contracts throughout their lifecycle. Collecting, analysing and presenting data related to Contract performance. This helps in making informed decisions and maintaining transparency.
Financial Controls.	Effective financial controls help organizations manage their Contracts more efficiently, reduce financial risks and ensure that Contractual obligations are met within budget.



Relationship Management.	Ensuring that all parties involved in a Contract maintain a positive and productive working relationship. This involves fostering trust, open communication and mutual respect to achieve the Contract's objectives effectively.
Risk and Continuity Management.	Essential for ensuring that Contracts are executed smoothly and that any disruptions are minimised.
Change and Exit Management.	Effective change and exit management help organisations adapt to new circumstances, minimise risks and maintain strong business relationships.

### 9.3 Contract Manager will be responsible for:

- (a) Managing relationships with Suppliers, including arranging and attending all necessary meeting, ensuring all necessary Management Information is provided and all necessary reporting is completed. This includes;
- (b) Monitoring performance against the Contract requirements / Key Performance Indicators (where the Contract is a Public Contract with a value in excess of £5m inc. VAT);
- (c) Managing all and any modifications (variations or extensions) to the Contract in line with the Contract, the Relevant Procurement Legislation and the rules set out in these CPRs;
- (d) Forward planning for renewals, termination and exit management;
- (e) Publishing Contracts, modified Contract and notices relating to Contract Management activities:
  - (i) Contract Change Notice – used to publish detail of a proposed modification to a Contract where there is an increase of decrease in the estimated Contract value over a specific value;
  - (ii) Contract Performance Notice – used to report on KPIs (depending on value of Contract) and whether the Contract is being delivered to the required standards / there has been a Breach of Contract;
  - (iii) Contract Termination Notice - used where the Council terminates a Contract in full.

### 9.4 Procurement Advisors will, in collaboration with the Contract Manager(s):

- (a) Attend Contract meetings with our key strategic (those Contracts assessed at CPR level 4 or level 5) Suppliers to review performance and compliance against the Contract;
- (b) Assist in managing any contractual issues raised by either the Contract Manager or Supplier;
- (c) Assist in managing any non-conformance identified by the Contract Manager or Supplier;

- (d) Review any proposed contract variations and/or extensions for compliance with the Relevant Procurement Legislation and these CPRs;
- (e) Ensure the Council complies with its obligations to publish various Contract Management notices including:
  - (i) those listed in paragraph 9.3.(d)(iii) above; and
  - (ii) Payment Compliance Notice – used to publish the Councils payment performance;
- (f) Ensure that key Contract documentation is retained on file as set out in paragraphs 7.34 and 7.35 above;
- (g) Promote the potential use of the ECMS.

#### 9.5 Variations and Extensions Modifications:

- (a) Below Threshold Contracts;
- (b) Where the Council wishes to modify (vary or extend) this type of contract, officers should liaise with the Supplier to mutually agree the modification and this must then be documented in writing;
  - (i) Where the modification relates to an extension of time, if included in the original contract this can be mutually agreed, where no such option exists, this must be approved using the Exceptions Approval Process above. Unplanned extensions should not be longer than the duration of the original contract (except in exceptional circumstances and must be agreed with the Corporate Procurement Team);
  - (ii) Where the modification relates to a variation to the scope (more of the same) this modification is limited to a cumulative increase of 50% of the original contract value (except in exceptional circumstances and must be agreed with the Corporate Procurement Team). This applies to planned and unplanned changes equally;
  - (iii) If a proposed modification will increase the contract value to a value that exceeds the relevant threshold/ turns the contract into a Public Contract, then officers will need approval from the Corporate Procurement Team;
  - (iv) The resultant modification/ updated Contract must be added to the Contract Register.
- (c) Public Contracts:
  - (i) Where the Council wishes to modify (vary or extend) this type of contract, officers will need to comply with the Relevant Procurement Legislation and only where the modification is deemed permitted by that Relevant Procurement Legislation, will the modification be approved. Modifications can be planned or unplanned, these are set out below;

- (ii) Planned Modifications – this includes modifications that have been expressly provided for within the initial procurement process and the resultant contract eg planned extensions, additional works and/ or stages, known risks;
  - (iii) Unplanned Modification – these are changes that were not foreseen and therefore not expressly provided for in the Contract. There will likely be some restriction on what will be permitted for such changes. This could include the introduction of annual inflationary uplift, unexpected additional requirements.
- (d) In both of the above cases, officers should consult with the Corporate Procurement Team to ensure the proposed modification (variations and extension) are compliant with not just with the Relevant Procurement Legislation but also the Financial Procedure Rules. This assessment must consider both the cost of the proposed modification and any previous modifications and the initial Contract value and duration to ensure that the proposed modification does not breach the limits set out in the Relevant Procurement Legislation;
- (e) Depending on which of the Relevant Procurement Legislation the contract was awarded under and the nature of the modification, there may be a requirement to publish a Contract Change Notice before or after implementing a modification. Officers should seek advice from the Corporate Procurement Team as to which legislation applies and what processes and notices are required and when.

#### 9.6 Contract Manager must ensure the following:

- (a) A budget is approved in line with the Financial Procedure Rules (ie Key Decision-making process) before the modification is agreed;
- (b) The modification is being made in the best interests of the Council;
- (c) The modification does not amount to a Material / Substantial change to the scope, value, or duration of the Contract;
  - (i) The relevant notices are published in accordance with the Relevant Procurement Legislation.

#### 9.7 Approval of Contract Modifications:

- (a) Planned Modification:
  - (i) If the option to extend/ vary the contract was expressly and unambiguously included in the original contract as approved in line with paragraph 6 above, then subject to the proposed modification being in line with what was included in the contract, the modification can be applied subject to budget and Chief Officer / Director approval in line with paragraph 6.1 above;

(b) Unplanned Modifications:

- (i) If no express option to vary and / or extend the contact was allowed for in the original / approved contract, the modification will fall under the exception process (para 8):
- Where the total value of this and any cumulative modifications is less than £500,000 *and the modification is permitted by the Relevant procurement legislation* and there is available budget, the modification can be approved in line with paragraph 6 above;
  - Where the total value of this and any cumulative modifications is more than £500,000 and subject to *the modification being permitted by the Relevant procurement legislation*, it will need both budget and cabinet approval;
  - If the initial contract value when awarded was below £500,000 and the modification(s) takes the total/ cumulative contract value above £500,000 then subject to budget, it will need cabinet approval.

9.8 Collaborative Procurements:

- (a) Where the Council is required under its own powers or at the request of a partner authority to procure on its behalf, those procurements must comply with Relevant Procurement Legislation and other relevant legislation more generally;
- (b) Each Council must comply with their own rules with regards financial, procurement and delegated authority requirements and then equally, their own Scheme of Delegation for Contract signature.

9.9 Community Right of Challenge:

- (a) Section 81 of the Localism Act 2011 permits relevant bodies (charities, community bodies, town and parish Authority Services and Staff) to submit Expressions of Interest to provide Council Services. Corporate Services shall maintain and publish a timetable for the submission of interest.

9.10 Grants:

- (a) Application Process:
- (i) The Council is the recipient and administrator of substantial funding from central government and potentially, other funders;
- (ii) Where the funding received is being used to purchase goods, services, or works on behalf of the Council and in line with the Council's specific requirements, the requirements must be procured in line with these CPRs;

- (iii) Where this funding is to be granted to organisation to deliver aims and objectives in a manner decided by the recipient, for the local community, this needs be administered through a fair and formal process;
  - (iv) Further guidance on accessing grants can be found at [insert link].
- (b) Grant Agreements:
- (i) Where a grant is issued, it must be awarded in accordance with the Council process for advertising, selecting and awarding grants;
  - (ii) All grants must include:
    - Details of what the applicant has committed to provide for the funding;
    - Payment details including any payment conditions and frequency; and
    - Any flow-down requirements relating to obligations that apply to the Council, including where relevant, reporting and clawback options;
    - All grants which include clawback options MUST be executed as a Deed.
- (c) Monitoring & Reporting:
- (i) A register of all grants issued must be maintained, this to include details of the recipient, the value, the funder and the purpose;
  - (ii) Where the funding including reporting or other delivery / payment obligations, this information must also be included in the register, eg conditions, monies paid and delivery against the funding;
  - (iii) Where the grant includes reporting obligations, periodic meetings (as agreed as part of the grant agreement) must be held between the recipient and the Council to ensure the recipient is both delivering as per their application and providing the required information. Notes and data from these meetings must be stored against the Grant Register.
- (d) Further detail is available in Part X of the Constitution.

**10. GLOSSARY OF TERMS**

10.1 For the purpose of these Rules the following terms have the meanings as set out below:

10.2 A Glossary of terms can be found here: [CPR Glossary of Terms.pdf](#) .

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