

Contract Procedure Rules

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INTRODUCTION

Contract Procedure Rules (CPRs) set out the Council's rules and requirements in respect of all matters relating to the advertising, tendering, award and extension (in terms of both time and content) of contracts. They set out the way in which business and relationships with suppliers of goods, works and services should be conducted. They represent the minimum standard required, and may be supplemented as deemed necessary by additional checks and controls by the relevant ~~chief officer~~director or his/her staff.

There are separate EC Directives that concern higher value contracts. The requirements regarding tendering, notices and negotiations set out in these take precedence over CPRs, but CPRs should still be applied in an appropriate manner

These CPRs should be read in conjunction with the Council's Procurement Strategy and Procurement Manual, Financial Regulations and officers may act only within the authority bestowed upon them by the Scheme of Delegation and the Authorised Signatory List. The Procurement Strategy sets out the aims and objectives that the Council wishes to achieve from procurement activities, and the Manual provides detailed guidance on how the aims and objectives may be achieved within the context of the CPRs.

There is also a specific policy for major construction projects. This sets out the various responsibilities and roles that need to be fulfilled in respect of such projects, and again should be read in conjunction with the CPRs.

DEFINITIONS/GLOSSARY OF TERMS

Supplier/contractor

Both these terms are used to refer to a provider or potential provider of goods, works or services. They may be used interchangeably, having the same meaning in intent. Once a contract has been placed with a supplier, that supplier may be more precisely referred to as a contractor.

A supplier or contractor may be any form of legal entity, and thus includes sole traders, partnerships, consortia, limited companies (private or public), governmental organisations or other public bodies.

Quotations and tenders

The terms "quotation" and "tender" are used throughout these Rules. For the purposes of the application of these Rules the following definitions should be used:

Quotation: a price given by a supplier for a specified piece of work, goods or service based largely on the supplier's terms and conditions but with relevant conditions as determined by the Council.

Tender: a price given by a supplier in response to a full specification of the goods, works or services required and based upon terms and conditions specified by the Council. These terms and conditions may be as laid out in a commonly used standard form of contract.

The processes for seeking and receiving quotations and tenders are set out within these CPRs. The precise requirements in respect to any specific contract will have to be assessed according to the nature and complexity of the contract as well as its value.

Procurement Card

This refers to a charge card issued by the Council under the Government Procurement Card contract to an individual member of the Council's staff.

Responsible Purchasing

The Council's overarching approach to the acquisition of goods and services, ensuring that purchasing decisions are made with the best long-term interest of the environment in mind, particularly having regard to sustainability issues.

Specification

The use of the word specification is made to refer to a statement of the Council's minimum purchase requirements. For illustrative purposes, it includes as appropriate such matters as:

- a) Technical drawings
- b) Recognised international standards
- c) Method of delivery
- d) Terms and conditions of supply and delivery
- e) Responsible purchasing requirements.

Professional services ("consultants")

Consultants are used for a wide variety of purposes. Generally the term is therefore used to relate to the providers of professional skills and expertise which, for whatever reason, cannot be provided by the Council's own staff. Regardless of the rôle to be played, for the purposes of Contract Procedure Rules, contracts for provision of professional expertise will be regarded in the same manner as other contracts for the supply of goods, works and services.

Appointment of a person through an employment agency or an appropriate professional body to fill on a temporary basis a vacant post that is within the Council's establishment will not be subject to Contract Procedure Rules but must meet the relevant job description and person specification of the post concerned. This is in recognition that the appointment is a personal one that takes account of a person's skills and experience.

Contract

This term is used to refer to any procurement transaction or planned procurement transaction.

Contract value

All references to contract values refer to the estimated value unless otherwise specified. The estimated value is calculated over the entire period of the contract. The calculation of the value should be assessed exclusive of Value Added Tax.

Matrix

Under the requirements of Best Value, a local authority is required to adopt the best option for service delivery. This will be identified as a result of balancing a number of factors including public expectations, financial and other resources available and the state of the market for the goods, works or services. Factors including sustainability and whole-life costs should also be considered in accordance with the Council's Procurement Manual.

To identify the best value option, a matrix assessment must be used, as outlined in the Procurement Manual. Various matrices can be used at all relevant stages of a procurement exercise. A matrix will be required which sets out the assessment criteria and the minimum requirements for each along one axis, and the suppliers along the other. It will be used to evaluate each quotation or tender against each of the criteria. It may be supplemented as agreed and appropriate with a scoring and weighting formula. It will be used in this way to identify the best value option.

EC Directives on procurement

These are rules that override these CPRs for large value contracts. EC Directives must be applied once the value of the contract reaches or exceeds the relevant financial threshold. ~~In all instances these rules must take precedence, but as far as is possible the requirements of CPRs should be used in conjunction. The Head of Legal and Estates Services should be consulted to ascertain current thresholds. Their application and link to CPRs is outlined above in the introduction. The value of contracts that are subject to these Directives is revised annually and it will be necessary to seek confirmation of current values from the Legal Services Manager.~~

Goods/works/services

A contract will be in connection with the acquisition of one or more of these categories of purchases. The use of one of these terms should be taken to mean all the terms unless expressly stated to the contrary.

Relevant Director

This term is used to denote the Chief Executive, Deputy Chief Executive (S.151 Officer) or a strategic director (i.e. the appropriate head of the department) in person. Where an officer from one department is working in circumstances where they are responsible to another department for the purposes of a procurement exercise, then it is that other director who is the responsible **chief officer/director**. In some CPRs the Chief Executive and the S.151 Officer are mentioned by title; where this is done, they are not acting as the relevant director. Reference to the S.151 Officer includes, when that officer is absent for an extended period, the Deputy S.151 Officer.

Relevant head of service

This term is used to denote the head of the service responsible for the contract. Where head of service is working in circumstances where they are responsible to another head of service for the purposes of a procurement exercise, then it is that other head of service who is the responsible head of service.

Relevant Portfolio holder

This refers to the elected Member of the Council who at the time the procurement exercise is being undertaken is the relevant member of the Council's Executive responsible for the service in question.

Gender specific terms

Use of the male or female pronoun should be taken as meaning both as may be appropriate.

Quotations or tenders to be received in writing through the postal system

Until such time as the Council has installed a secure and controlled method of inviting and receiving competitive prices by electronic means (other than by way of general e-mail facilities), reference to the receipt of quotations or tenders in writing through the postal system represents the only secure means open to the Council. Once an approved electronic facility has been installed, references to "in writing..." shall be construed as including this facility. Where CPRs refer to a quotation or tender being in writing, this means they are to be received in sealed envelopes bearing no marks or markings that would identify the person or organisation submitting it through the postal system. The envelope shall be clearly marked with the title or description of the contract to which it relates.

Term tender ("call-off contracts")

This term is used to describe a contract that is entered into for a specified period but where the total value and quantity of items ordered cannot be quantified at the outset. An example might be a

contract for the supply of office stationery. Such contracts may also be referred to as “call-off contracts”. Prices are specified for the duration of the contract, subject as necessary to fluctuation according to agreed formulae.

Partnership contracts

Partnership contracts are designed to enhance cooperation between the Council and a contractor/other parties to the contract. The purpose is to enable services to be reviewed and delivery arrangements amended at various times within the life of the contract. Whilst terms and conditions may require amendment as a consequence, it is not intended that this should impede smooth working and transition to new arrangements should be facilitated. Therefore different arrangements will apply to allow amendment to terms and conditions in a planned and controlled manner.

Highest/lowest price

The term “lowest price” (where payment is to be made by the Council) shall also be taken to mean the highest price (where payment is to be made to the Council).

Land and buildings

Disposal of land and buildings refers to outright sale and long-term leases. It does not include short-term leases of three years or less. The disposal of small parcels of land, such as to private residents for extension of gardens, may be the subject of standard procedures that may be agreed between the relevant director and the S.151 Officer in accordance with CPR E103.

Lists prepared by third parties

This refers to such lists as “Constructionline” and similar lists of contractors that have been assessed by other organisations.

Guidance

Guidance notes may be issued from time-to-time by the Council’s Corporate Management Team that give practical advice and instruction on how to ensure CPRs are implemented. Whilst these do not have the same status as CPRs, officers are required to heed and abide by them. This includes, but is not limited to, the Council’s Procurement Manual and CPR guidance.

Scheme of Delegation

This term refers to the Council’s Scheme of Delegation, which specifies the extent to which the conduct of the Council’s affairs is delegated to Council officers. If at any time there appears to be a conflict between the Scheme of Delegation and Contract Procedure Rules, the former shall take precedence.

Authorised Signatory List

This is the List of officers authorised make financial transactions. Service head approval is required before an officer may be included in the List.

Financial Regulations

This refers to the set of rules that govern the way the Council's finances are administered and controlled. They are maintained by the S.151 Officer.

South East Centre of Excellence Improvement and Efficiency South East (IESE)

This terms refers to the government-funded body known as Improvement and Efficiency South East the South East Centre of Excellence whose purposes include is to promote and development of good practice in procurement within the south east of England.

S.151 Officer

This refers to the officer responsible for the Council's financial administration as defined by the Local Government Act 1972.

Monitoring Officer

This refers to the officer appointed in accordance with the Local Government and Housing Act 1989.

Corporate Management Team

The Corporate Management Team is the meeting of the Chief Executive and strategic directors, which is advised by service heads as appropriate.

Corporate contract

A corporate contract is one which serves more than one service or department of the Council.

Open tendering

Open tendering refers to a situation where all contractors that have expressed an interest in a contract are sent an invitation to tender. It is distinct from selective/restrictive tendering in that assessment of the contractors will take place once the tenders/quotations are received using a questionnaire and an assessment of their financial stability, references and insurances.

Selective/restricted tendering

Selective or restricted tendering refers to a situation where contractors expressing an interest in tendering/supplying a quotation are asked to complete a pre-qualification questionnaire. The completed questionnaire is assessed, and an assessment of

the contractors' financial stability, references and insurances is undertaken in order to produce a short-list of contractors that will be invited to tender/provide a quotation.

A. FINANCIAL THRESHOLDS AND NUMBERS OF QUOTATIONS OR TENDERS REQUIRED

A101 ~~Upon~~ Prior to commencement of a procurement exercise, an assessment of the

- the responsible purchasing requirements, and
- likely value of the contract

~~must be made by the appropriate chief officer/director or nominated representative/relevant director, head of service or other nominated lead officer.~~

A102 The assessment of the responsible purchasing requirements shall be undertaken using the matrices attached to these CPRs at appendices 1 – 2 as appropriate (for goods or works/services). The assessment will enable decisions to be taken, and the completed matrices shall be retained together with a full record of decisions made and the reasons. The matrices shall be used to identify the most appropriate product at the outset, or to aid the selection of the short-listed contractors at the invitation to tender and/or tender assessment stages.

A103 For contracts estimated to be within threshold 3 and above, if the estimated value is within 90% and 100% of the upper limit of the financial threshold as contained in this CPR, the agreement of the S.151 Officer should be sought to seek either quotations or tenders in accordance with the requirements of the threshold or those of the next (higher) threshold. The financial thresholds to which reference is made throughout these CPRs will be reviewed annually, and revised as deemed appropriate, by the S.151 Officer. The thresholds currently are as follows:

- Threshold 1: up to £4,200
- Threshold 2: from £4,200 to £11,900
- Threshold 3: from £11,900 to £58,800
- Threshold 4: from £58,800 to £117,700
- Threshold 5: over £117,700

~~A102~~A104 Where the cheapest quotation or tender received is ~~10% or more~~ above the upper limit of the estimated contract value threshold or any sum authorised by the Council for the procurement of the goods, works or services, the approval of the S.151 Officer shall be sought to accept the tender or quotation, ~~or if the variance is £10,000 or more then a report shall be made to the Executive seeking the approval or for agreement of action to be taken.~~ If either the S.151 Officer or the Executive ~~determines~~decides not to accept the tender or quotation, they shall indicate the course of action to be taken.

Contracts within threshold 1 in value

A1035 Where the estimated contract value is within threshold 1, subject to the approval of the relevant head of service and to the requirements of CPR A106, one quotation may be sought unless market conditions suggest that it

is feasible to easily obtain alternative quotations. If the purchase has been made using a procurement card, the details shall be recorded in the Council's official log of such transactions.

A1046 ~~In exceptional-Where~~ circumstances suggest that competitive tenders may be required, owing to the nature or complexity of the contract. ~~Where a tender is appropriate,~~ the tendering methodology should be discussed and agreed with the relevant head of service and the S.151 Officer and the relevant CPRs shall be applied.

Contracts within threshold 2 in value

A1057 Where the contract value is estimated to be ~~over within~~ threshold ~~2 and up to threshold 2~~ in value, a minimum of two alternative quotations shall be sought.

A1068 Where a quotation is sought, competitive prices may be received by the relevant head of service either by fax, e-mail or in writing through the postal system. The officer seeking them shall maintain a log showing:

- a) the date the quotation was requested;
- b) a brief description of the goods required;
- c) the name and address of the supplier;
- d) the date the quotation was received;
- e) the price quoted;
- f) the quotation accepted and the reason;
- g) the reference number of the order placed; and
- h) his/her name, signature and the date.

This log shall be retained for a minimum of three years. Under no circumstances shall the provisions in this CPR be applied to tenders. Tenders shall be received and opened in accordance with CPR J.

A1079 Where circumstances suggest that competitive tenders may be required, owing to the nature or complexity of the contract, the tendering methodology should be discussed and agreed with the relevant head of service and the S.151 Officer and the relevant CPRs shall be applied. ~~Where a tender is appropriate, owing to the nature or complexity of the contract, the tendering methodology should be discussed and agreed with the relevant head of service and the S.151 Officer, with reference to CPR J. In no instance where a tender is sought shall the provisions of CPR A106 apply; tenders shall be received in accordance with CPR J102~~

Contracts within threshold 3 in value

~~A108~~A110 Where the contract value is estimated to be ~~over within~~ threshold ~~2 and up to threshold~~ 3, a minimum of three alternative quotations shall be sought in writing through the postal system in accordance with CPR J101. Where a tender is appropriate, CPR A1079 and CPR J102 shall apply.

Contracts within threshold 4 in value

A109A111 Where the contract value is estimated to be ~~over threshold 3 and up to within~~ threshold 4, a minimum of three tenders shall be sought in writing through the postal system in accordance with CPR J102.

A1102 If the nature of a contract suggests that a quotation is more appropriate, on the grounds of the straightforward nature of the purchase or contract, then the relevant head of service and the S.151 Officer shall be consulted and the agreement of both obtained in writing before a quotation may be sought.

A1143 Any additional safeguards over and above the anticipated terms and conditions of the contractor identified by the consultation shall be included in the invitation to submit a quotation, and the contractor shall be required to acknowledge these in his quotation.

Contracts within threshold 5 in value

A1124 Where the contract is estimated to be within threshold 5 in value, a minimum of four tenders shall be sought in writing through the postal system.

Contracts for professional servicesEmergency provisions

A1135 ~~Notwithstanding the waiver provisions contained within CPR W, Where the professional services of consultants goods, works or services are required urgently due to unforeseen circumstances, a contract for a value not exceeding threshold 2 may be placed without the need to advertise and obtain alternative quotations or tenders. Where the estimated value is within threshold 3 or above, provided that the relevant head of service shall obtain the agreement of the S.151 Officer, to waive the requirement to obtain alternative tenders or quotations, and shall advise the relevant portfolio holder of the actions and make a report to the next meeting of the Executive. In all other cases, the above contract thresholds apply to the procurement of professional services.~~ Any extension to a contract so awarded shall be subject to the provisions of CPR Q103.

B. FORM OF CONTRACT

B101 As any acceptance of a quotation or a tender, whether made orally or in writing, may constitute a contract in law, no indication of acceptance shall be made to any contractor except by an officer authorised so to do. If any doubt exists, the approval of the ~~relevant chief officer~~ Head of Democratic and Legal Services should be sought, or the Council's Authorised Signatory List should be checked to confirm whether an officer has been authorised by their ~~chief officer~~ head of service in person to authorise an order.

B102 Contracts valued at up to threshold 4 in value shall be the subject of an official order unless a tender has been received, in which case a formal contract shall be prepared in accordance with the requirements of the ~~Head of Legal and Estates Services~~ Head of Democratic and Legal Services and signed by the relevant director or head of service, as specified within the Council's Scheme of Delegation. The requirement to issue an official order may be waived if the purchase has been made using a Waverley

procurement card, in which case a record of the purchase must be made using the official log of purchases.

B103 All contracts within threshold 5 in value shall be the subject of a formal contract under seal prepared by the ~~Head of Legal and Estates Services~~Head of Democratic and Legal Services and signed by the ~~Head of Legal and Estates Services~~Head of Democratic and Legal Services. Contracts below threshold 5 may be under seal if the ~~Head of Legal and Estates Services~~Head of Democratic and Legal Services advises that it is appropriate.

B104 All contracts shall

- a) specify the goods, materials or services to be supplied and/or the works to be undertaken, the price to be paid, payment terms and conditions, details of any discounts or penalties, the period of the contract and any other terms and conditions that may be agreed
- b) provide for the payment of liquidated damages where they are appropriate
- c) contain details of any security that is required by the Council (CPR P refers).

B105 No works, goods or services to be the subject of a contract shall commence until such time as all parties have signed the relevant form of contract and it has been sealed as necessary. This requirement may be waived in exceptional circumstances upon the authority of the Chief Executive (subject to their not being the relevant ~~chief officer~~director and the provisions of CPR W) who may require adequate other safeguards are provided pending signing and/or sealing of the contract.

C. JOINT COMMISSIONING, CONSORTIA, TERM TENDERS AND FRAMEWORK AGREEMENTS

C101 For contracts estimated to be within threshold 3 and above, where the Council either

- wishes to become party to a contract with a consortium, which has undertaken the task of obtaining competitive prices, or
- seeks to jointly commission a contract with other local authorities or organisations, or
- seeks to jointly deliver services in partnership with other local authorities or organisations

the approval of the S.151 Officer shall be sought to waive the need to seek additional quotations or tenders or to approve the alternative methodology for obtaining quotations or tenders. The S.151 Officer shall ensure that the requirements of CPRs and/or the EC Directives have been satisfied. The approval of the ~~Executive S.151 Officer~~ shall be sought to any alternative CPRs (or equivalent) that shall operate in respect of any partnerships joint commissions.

C102 The use of a term-tender should be made wherever one exists for the purchase in question. Such contracts should be sought wherever regular

purchases of a similar nature are made and the level ~~and frequency of use~~ purchases warrants the resources necessary to tender such a contract.

- C103 Where an officer identifies a need for an additional such contract, it shall be discussed with the relevant head of service. Where the purchases are likely to be made by all departments or more than one Council service a corporate approach must be adopted and Corporate Management Team should give agreement to the terms and conditions of the contract sought.
- C104 Regard shall be paid to EC Directives when preparing a term tender, and tendering procedures shall conform to those regulations.

D. CONTRACTS INVOLVING THE TRANSFER OF STAFF AND/OR COUNCIL-OWNED ASSETS

- D101 If a contract involves the transfer of staff or other Council-owned assets or resources to the contractor, the Head of Human Resources shall be consulted at the earliest opportunity and ~~his-their~~ advice incorporated into the proposed terms and conditions of the contract. Agreement must be sought from the Executive to the terms and conditions of the contract and the transfer.
- D102 Once received, tenders shall be evaluated by the officers concerned and notified to the relevant portfolio holder before seeking approval from the Executive to enter into a contract with any contractor.

E. DISPOSAL OF COUNCIL PROPERTY

Land and buildings

- E101 Disposal (including sales, leases, easements and wayleaves) of land and buildings owned and funded by the General Fund shall first be valued by a qualified valuer. The ~~Head of IT, Customer and Officer Services shall report to the Head of Legal and Estates Services~~ Corporate Management Team shall to then-determine whether, in the light of the valuation and location, there are strategic issues, risks or conditions of disposal relative to the Asset Management Plan ~~(or equivalent)~~ and Corporate Plan. If such considerations exist, the disposal shall be referred to the Asset Corporate Management Team, which will report its views and recommendations to the ~~Corporate Management Team~~ Corporate Management Team. ~~Otherwise, the disposal shall proceed in accordance with CPRs.~~
- E102 Disposal (including sales, leases, easements and wayleaves) of land and buildings owned and funded by the Housing Revenue Account, with the exception of sales under the Right to Buy Scheme, shall first be referred to the Head of Housing ~~Strategy and Management~~ who shall consult the ~~Strategic Director (Housing and Community) relevant director~~ (or ~~otherwise~~ as may be specified in the Scheme of Delegation) to consider any risks associated with the disposal and the strategic and long-term issues in the light of the Asset Management Plan ~~(or equivalent)~~. The Head of Housing ~~Strategy and Management~~ shall obtain a current valuation of the land and/or buildings and report his views and recommendations to the Council's ~~Corporate Management Team~~ Corporate Management Team.

E103 Any resultant proposal to dispose of the land and/or buildings shall then be discussed by the chairman of the Asset Management Team (or equivalent) or the Head of Housing ~~Strategy and Management~~ (as appropriate) with the S.151 Officer and the relevant portfolio holders responsible for the services in question and the management of the Council's assets. A report outlining the reasons why disposal is recommended, and showing how it would be in accordance with the Asset Management ~~Plan-Plan~~ (or equivalent) and the proposed method of disposal of the land and/or buildings shall be presented to the Executive for approval.

Other Council assets

E104 Proposed disposals of other Council-owned assets, including surplus or obsolete furniture or equipment, shall be discussed with the relevant head of service to obtain agreement that there is no further need for the items. Items shall first be offered for transfer to other sections or departments of the Council.

E105 Any items that remain for disposal shall be sold at the highest price possible. An estimated sale value shall be agreed by the relevant head of service and the S.151 Officer or Deputy S.151 Officer, taking note of any value included in the Council's accounts and any professional valuations as may be deemed appropriate by the S.151 Officer. A note shall be made and retained on file as evidence to support the adopted approach and the valuation. The method of disposal shall be agreed with the S.151 Officer or Deputy S.151 Officer.

E106 If deemed appropriate by the relevant chief officers/service head and the S.151 Officer Deputy S.151 Officer, items may either be

- a) sold to a member of staff at an agreed price (where the item is of little or no intrinsic value); or
- b) offered for sale to all members of staff at the price agreed; or
- c) advertised for sale in local papers or relevant trade magazines, as appropriate, at the price agreed; or
- d) offered for sale at the best sealed bid received where it is difficult to place a value. This may include the use of suitable, secure internet services. The relevant head of service and the S.151 Officer may set a reserve price below which an item may not be sold without the approval of the relevant portfolio holder responsible for the management of the Council's assets.

E107 If it is considered that there is a ready market for the item(s) in question, then sealed bids shall be invited from contractors or organisations that are identified as having a potential interest. The minimum number of bids sought shall be determined in accordance with the thresholds contained in CPR A1013.

E108 All sealed bids shall be treated as being tenders and their receipt, opening and acceptance shall be in accordance with CPRs J, K, L and N.

E109 Where there is the option of trading an old piece of equipment in part-exchange for a new piece, this option shall be expressly mentioned in any invitation to tender or provide a quotation.

E110 Disposal of any stocks and stores that are recorded in the Council's accounts shall be disposed of after obtaining the agreement in writing of the relevant chief officer/director and the S.151 Officer and shall be undertaken in accordance with the provisions of the Council's Financial Regulations.

F. ASSESSMENT OF CONTRACTORS

F101 Assessment of a contractor's financial standing need not be undertaken in respect of contracts estimated to fall within thresholds 1 and 2 as defined in CPR A. Before inviting tenders or quotations for contracts estimated to be over within or above threshold 3 in value, or where a contractor has expressed an interest in being included in a standing list compiled under CPR H, an assessment should be made of a contractor's

- a) financial stability and resources
- e)b) _____ insurances
- b)c) _____ technical and other relevant references
- d) business continuity plans
- e) qualifications and experience
- f) environmental, ethical and employment policies
- g) previous experiences of dealings with the contractor
- h) responsible purchasing policies
- i) details of other contracts already, or proposed to be, awarded to the contractor.

and any other issues that may be considered by the relevant head of service as being relevant to the contract. Items (a), and (eb) and (d) shall be undertaken in conjunction with the S.151 Officer, and item (d) shall be undertaken in conjunction with the Head of Finance and Performance Assessment of responsible purchasing policies shall be undertaken by the relevant head of service using the appropriate matrix attached at appendices 1 and 2.

F102 If a contractor is an individual person, financial vetting (which may include obtaining their credit rating) cannot take place until the express permission of the contractor has been obtained in writing.

F103 A contractor that does not meet the Council's minimum requirements shall not be invited to submit a tender, or be admitted to a standing list, as appropriate.

F104 If it is thought that the nature of the contract renders such an assessment unnecessary, the agreement of both the relevant head of service and the S.151 Officer shall be sought prior to the dispatch of invitations to tender.

~~G. METHOD OF TENDERING (ALL CONTRACTS) AND SEEKING QUOTATIONS FOR CONTRACTS UP TO AND INCLUDING THRESHOLD 3~~

~~G101—All invitations to tender, and any quotations for a contract estimated to be up to and including threshold 3 in value shall be sought in accordance with CPR J from contractors selected at the discretion of the relevant chief officer, subject to any specific requirement to advertise at the instruction of the~~

Council, Executive or other responsible committee in accordance with CPR H below.

~~G102 The relevant head of service may, at his discretion, maintain a standing list of contractors for contracts up to and including threshold 3 in value. Such a list shall be maintained and operated in accordance with the requirements of CPR H, and the relevant head of service shall maintain a log of contracts placed using the list including a list of those contractors invited to tender and the successful contractor.~~

H. METHOD OF SELECTING CONTRACTORS TO PROVIDE QUOTATIONS OR TO TENDERING – CONTRACTS OVER THRESHOLD 3 IN VALUE

Select lists

~~H101 The relevant head of service may, at his discretion, maintain a standing list of contractors for contracts up to and including threshold 3 in value. Select lists shall not be applied to contracts estimated to be over threshold 3 in value, in which case one of the other tendering routes specified in this CPR shall be used.~~

~~H102 A standing list shall be renewed at least every three years. The relevant head of service may determine that a list may be maintained and reviewed on a rolling basis whereby over a period of no more than three years all contractors admitted to the list shall have been reviewed in accordance with CPR H106 and readmitted (or not) or replaced.~~

~~H103 Expressions of interest may be sought in writing or by electronic means. Contractors seeking inclusion on such a list shall be sent a qualification questionnaire seeking information that will enable the suitability of the contractor to be assessed. As a minimum, the information sought shall be sufficient to enable the financial assessment to be undertaken in accordance with CPR F. An assessment matrix shall also be provided that explains the process and the criteria to be used in evaluating the suitability of a contractor, and the minimum qualification requirements shall be stated.~~

~~H101 All contracts over threshold 3 in value, or in any other instance where the Council, Executive or other responsible committee shall determine, shall be tendered in accordance with one of the options as set out in this CPR.~~

~~H102 Under each of the options, advertisements shall be placed on the internet portal of the South East Centre of Excellence and may also be placed on the Council's website and in either a local newspaper or a relevant trade newspaper or journal. The advertisement shall provide details of the contract sought, specify a time limit (not being less than 14 days from the latest date of publication of an advertisement) by which time expressions of interest are to be received and the name and address of the person to whom the expressions should be returned. The advertisement shall also indicate whether or not further details can be obtained and, if so, how they can be obtained.~~

~~H104 The relevant head of service shall invite the requisite number of contractors included in the list to provide a quotation or tender (as appropriate) for any~~

contract for goods, works or services as are the subject of the list without the need to advertise the contract or undertake further assessment of the contractors. Quotations or tenders shall be received, stored and opened in accordance with CPRs J and K. If fewer than the number of contractors as required by CPR A are considered to be capable of performing the contract, the approval of the Head of Internal Audit shall sought as to whether or not invitations may be sent to fewer than the requisite number, or what tendering option should be followed to increase the number of tenders sought.H103

~~Expressions of interest shall be sought in writing or by electronic means.~~

Open tendering

H1045 Once the closing date for receipt of expressions of interest has been reached, tender documents shall be dispatched to all who have expressed an interest in tendering. The contractors shall also be sent a qualification questionnaire seeking information that will enable the suitability of the contractor to be assessed. As a minimum, the information sought shall be sufficient to enable the financial assessment to be undertaken in accordance with CPR F. An assessment matrix shall also be provided that explains the process and the criteria to be used in evaluating the suitability of a contractor, and the minimum qualification requirements shall be stated.

Selective/restricted tendering

H1056 Once the closing date for receipt of expressions of interest has been reached, a pre-qualification shall be sent to all contractors that have expressed an interest. The pre-qualification questionnaire will seek information to enable the suitability of the contractor to be assessed. As a minimum, the information sought shall be sufficient to enable the financial assessment to be undertaken in accordance with CPR F. A date by which completed questionnaires are to be received by the Council shall be specified. An assessment matrix shall also be provided that explains the process and the criteria to be used in evaluating the suitability of a contractor, and the minimum qualification requirements shall be stated.

H107 Upon receipt of completed pre-qualification questionnaires, the information shall be analysed; an assessment of the contractor's finances shall only be undertaken if the requirements of the technical assessment have been met. Tender documents shall be dispatched to sufficient the number of contractors as required by CPR A that have been assessed as meeting the minimum technical and financial requirements in respect of a contract of the relevant estimated value. The contractors shall be selected after each contractor has been assessed against pre-determined selection criteria.

~~H106 The relevant chief officer shall select the contractors to be invited to tender, taking account of an assessment of the contractors':~~

- ~~a) financial stability and resources~~
- ~~b) technical and other relevant references~~
- ~~c) adequacy of insurances~~
- ~~d) business continuity plans~~
- ~~e) qualifications and experience~~

~~f) environmental, ethical and employment policies.~~

~~Items (a) and (c) above shall be undertaken by the S.151 Officer so that he/she shall be reasonably satisfied that no unacceptable risk will arise to the viability of the contract during the contract period. Item (d) shall be undertaken by the Head of Finance and Performance. The assessment shall also take into account such other matters as the relevant head of service considers necessary for evaluation of best value.~~

H1078 If fewer than the required minimum number of contractors either meet the minimum qualification requirements or express an interest, the relevant chief officer~~director~~ should be consulted to agree whether to seek additional tenderers or to obtain approval from the Corporate Management Team to seek fewer than the minimum required number of tenders.

Standing lists

~~H108 The relevant head of service may maintain a standing list of the names of contractors that may be invited to submit tenders. Such a list shall be renewed at least every three years. The relevant head of service may determine that a list may be maintained and reviewed on a rolling basis whereby over a period of no more than three years all contractors admitted to the list shall have been reviewed in accordance with CPR H106 and readmitted (or not) or replaced. Contractors shall only be admitted to the list after an assessment of their abilities has been undertaken in accordance with CPR F.~~

H109 ~~Invitations to tender shall be sent to the number of contractors as required by CPR A in respect of a contract of the relevant estimated value whose names are contained in the list. The relevant chief officer shall consult the S.151 Officer regarding the selection of contractors. If fewer than the number of contractors as required by CPR A are deemed to be capable of performing the contract, the approval of the S.151 Officer shall sought as to whether or not invitations may be sent to fewer than the requisite number, or what tendering option should be followed to increase the number of tenders sought.~~

Lists prepared by third parties

H110 Lists of contractors prepared by third parties (other than consultants acting on Waverley's behalf) may be used provided that the criteria for admission to the lists are no less stringent than would have been the case had the Council have sought to prepare the list itself.

H111 The criteria should be set as if the Council were undertaking the assessment in accordance with CPR F, and sample checks should be undertaken as soon as possible to verify that the correct assessment as to suitability and capability has been made. Invitations to tender shall be sent to the number of contractors as required by CPR A in respect of a contract of the relevant estimated value whose names are contained in the list.

H112 Contractors suggested by consultants or other contractors working on Waverley's behalf shall be subjected to the same checks and assessments as required under CPR F101. The relevant chief officer~~head of service~~ shall seek quotations or tenders from at least one contractor who is not suggested

by the consultant in addition to any sought from contractors suggested by the consultant. The total number of quotations or tenders sought shall be as required by CPR A.

Limit on the number and value of contracts awarded to contractors

H113 Throughout the process of seeking expressions of interest and assessing contractors, the relevant head of service shall consider the number and value of other contracts already awarded, or proposed to be awarded, to a contractor. In the interests of probity and risk management no contract may be awarded a contract if this would mean that 35% or more of the contractor's business would be generated from the Council's contracts or the number of contracts would be 4 or more unless the approval of Corporate Management Team has been obtained.

G. METHOD OF ADVERTISING CONTRACTS

G101 Advertisements for all forthcoming contracts subject to a tender, excluding contract to be let using a select list but including applications for admission to a select list as defined in CPR H101, and all contracts for which quotations are to be obtained that are within threshold 2 or above, shall be placed on the Council's website. Contracts subject to a tender that are over threshold 4 in value shall also be advertised using the internet portal of the Improvement and Efficiency South East (IESE) agency and may also be placed in either a local newspaper or a relevant trade newspaper or journal.

G102 The advertisement shall provide details of the contract sought, specify a time limit (not being less than 14 days from the latest date of publication of an advertisement) by which time expressions of interest are to be received and the name, address, e-mail address and contact telephone number of the person to whom the expressions should be returned. The advertisement shall also indicate whether or not further details can be obtained and, if so, how they can be obtained. In addition, any specific requirement to advertise at the instruction of the Council, Executive or other responsible committee shall also be taken into account.

I. DISPATCH OF INVITATIONS TO TENDER

- I101 Invitations to tender or submit a quotation shall include details of the:
- a) person to whom the completed tenders should be submitted
 - b) address to which they should be sent
 - c) date and time by which they should be received
 - d) an instruction to return the tender in a plain, securely-sealed envelope that bears the word "Tender"
 - e) title of the contract in question.

A suitable self-addressed and appropriately marked envelope should be enclosed with the invitation and quotation/tender documents. In respect of tenders within threshold 2, paragraphs (d) ~~and (e)~~ may be ignored if the ~~S.151 Officer is in agreement either of the options to receive quotations by fax or e-mail as provided in CPR A108 is to be used.~~

- I102 The invitation to tender shall be accompanied by all relevant specifications, terms and conditions, technical drawings and any other relevant supporting documentation. The advice of the ~~Head of Legal and Estates Services~~Legal Services Manager shall be sought in the preparation of tender and contract documentation.
- I103 Where ~~other than the lowest price is to be accepted, and~~ the best value option is to be identified after a full appraisal using assessment criteria, the invitation shall specify the assessment criteria and associated weightings that will be used in evaluating tenders or quotations received (CPR ~~N-L~~ refers).
- I104 If there are to be post-tender negotiations, the invitation to tender shall advise the contractor of the process that will be followed (CPR L~~107-110~~ refers).

J. RECEIPT AND CUSTODY OF TENDERS AND QUOTATIONS SOUGHT IN WRITING

- J101 Quotations sought in writing through the postal system in respect of contracts ~~up to and including below~~ threshold ~~3-4~~ in value shall be returned to the relevant head of service. They shall be kept in a secure manner and shall not be opened until the agreed date and time for their opening and recording.
- J102 Quotations sought in writing through the postal system for contracts estimated to be over threshold 3 in value and **all** tenders shall be returned to the Head of Democratic Services, who shall arrange for their secure keeping until the agreed date and time for their opening and recording.

K. OPENING OF QUOTATIONS AND TENDERS

- K101 The relevant head of service shall nominate two representatives to open quotations sought in writing for a contract estimated to be ~~up to below~~ threshold ~~3-4~~ in value. The quotations shall be opened together at one time. The relevant head of service shall arrange for a record to be maintained in accordance with CPR K104.
- K102 All quotations sought in writing ~~through the postal system for contracts~~ and **all** tenders for contracts estimated to be ~~over within~~ threshold ~~3-4 and up to~~ **threshold 4** in value shall be opened together at one time in the presence of the relevant head of service and the Head of Democratic ~~and Legal~~ Services or their nominated representatives. The S.151 Officer shall also be invited to attend (or nominated representative). The Head of Democratic ~~and Legal~~ Services shall arrange for a record to be maintained in accordance with CPR K104.
- K103 All quotations sought in writing ~~through the postal system for contracts~~ and **all** tenders for contracts estimated to be within threshold 5 in value shall be opened together at one time in the presence of the relevant ~~chief officer~~director, the Head of Democratic Services and the S.151 Officer or their nominated representatives. ~~The S.151 Officer shall also be invited to attend (or nominated representative).~~ The Head of Democratic Services shall arrange for a record to be maintained in accordance with CPR K104.
- K104 A register of all quotations sought in writing and all tenders that have been opened at one time shall be maintained showing the:

- a) title of the contract
- b) date and time by which tenders were to be returned
- c) date on which they were opened
- d) time at which they were opened
- e) names and positions held of the persons present
- f) names of the tenderers invited to tender/provide a quotation
- g) value of the tender (where submitted).

- K105 Where a contractor has not submitted a tender or quotation, the register shall be marked "no [quotation or tender] submitted" as appropriate against the name of the contractor.
- K106 All persons present shall sign and date the register, including any that attended in order to observe the proceedings.
- K107 A copy of the relevant register folios shall be forwarded to the relevant portfolio holder in respect of contracts over threshold 5.
- K108 In all instances regardless of the estimated value of the contract, the Chief Executive and S.151 Officer shall be consulted and their approval obtained before any tenders or quotations that are received late, or have been overlooked or misplaced, are opened. If it is agreed that they shall be opened, they shall be taken into account in the evaluation process as set out in CPR L.

L. EVALUATION OF QUOTATIONS AND TENDERS

- L101 The normal practice shall be to accept the offer from the contractor who, having satisfied the Council's minimum requirements, has offered the lowest price. This approach may be waived if the relevant ~~chief officer~~director considers in advance of seeking quotations or tenders that there are other issues that should be taken into account and that the best value solution should be sought. An assessment of the most cost-effective product may be undertaken in advance of seeking and accepting the lowest price quotation or tender without recourse to using the full best value solution option as contained in CPR L102 to L105 provided this assessment is approved in advance by:
- a) the relevant head of service where the contract is estimated to be up to and including threshold 3 in value; or
 - b) the S.151 Officer where the contract is estimated to be within threshold 4 in value; or
 - c) the Corporate Management Team where the contract value is estimated to be within threshold 5 in value.

Best value solution

- L102 Where there are such other ~~matters~~factors apart from price that should be taken into account when evaluating a tender/quotation, the relevant head of service shall be responsible for ensuring that the assessment criteria ~~shall be~~and matrix are determined during the preparation of the contract specification and are duly approved. ~~—~~This shall include:

- the assessment criteria
- the scoring mechanism system and the weightings to be applied to each criteria
- the minimum scores to be achieved (as appropriate)
- shall form the basis of the evaluation matrix as defined in the definitions/glossary of terms above, and shall be referred:

Approval of evaluation teams and assessment criteria

L103 The assessment criteria and matrix shall be referred for approval as follows:

- a) where the contract is estimated to be within threshold 5 in value, to the Council's Corporate Management Team ~~for approval. The Corporate Management Team shall also be asked to approve the names of the officers and any members who shall form the evaluation panel;~~ or
- b) where the contract is estimated to be within threshold 4 in value, to the ~~S.151 Officer~~ relevant director, ~~for approval. The S.151 Officer shall also be asked to approve the names of the officers and any members who shall form the evaluation panel;~~ or
- c) where the contract is estimated to be up to and including threshold 3 in value, to the relevant director head of service, ~~for approval, who shall approve the names of the officers who shall form the evaluation panel.~~

~~L103~~L104 The relevant head of service shall nominate the membership of the ~~An~~ evaluation panel and seek the approval of the panel's membership from the relevant director, S.151 Officer or Corporate Management Team when as appropriate with reference to CPR L103. Membership of a panel shall consist of no less than two officers plus any other persons ~~as approved by the Corporate Management Team, S.151 Officer or relevant director as applicable~~ who are not members of the Council's staff.

~~L104~~L105 The documentation on which the criteria and associated definition of minimum financial and non-financial requirements, scoring mechanism and weightings are detailed shall be signed and dated by ~~the Chief Executive or the relevant director as appropriate~~ the officers as determined by CPR L103. The documents shall be kept securely by the relevant ~~chief officer~~ director until the assessment of the tenders or quotations commences.

~~L105~~L106 The lowest-priced tender or quotation that meets the assessment criteria as defined in accordance with CPR L102 shall be accepted subject to approval of the person or persons ~~that approved the assessment criteria (in accordance with CPR L102)~~ as determined by CPR L103. If other than the lowest-priced tender or quotation is considered to offer the best value solution, approval to accept it shall be sought from the Executive unless the approved assessment methodology as required by CPR L104 has set a framework whereby the lowest-priced may be rejected in favour of another that would give a greater benefit to the Council.

Post-tender/quotation (pre contract) negotiations

~~L106~~L107 In circumstances where the relevant head of service is of the view that post-tender/quotation negotiations ~~are will be~~ necessary in order to ensure that the Council awards a contract to the contractor offering the best value option, the S.151 Officer, Monitoring Officer and the ~~Head of Legal and Estates Services~~~~Head of Democratic and Legal Services Manager~~ must all approve use of post-tender negotiations before the contract is tendered.

~~L107~~L108 In instances where the EC Directives apply, post-tender negotiations must conform to the requirements of those Directives.

~~L108~~L109 If post-tender/quotation negotiations are to be used, this must be stated in the contract documentation and in any advertisement inviting expressions of interest. Contract documents shall set out the Council's approach to post-tender/quotation negotiations which is as follows:

- a) the S.151 Officer, Monitoring Officer and the ~~Head of Legal and Estates Services~~~~Legal Services Manager~~ shall be involved in the process;
- b) the Council reserves the right to enter into post-tender/quotation negotiations on any aspect of the tender;
- c) all post-tender/quotation negotiations shall be conducted in a manner that provides equal opportunity for all tenderers and that maintains high standards of probity.

L1109 A person to whom the appropriate level of delegated authority has been delegated in writing by the relevant ~~chief officer~~director will conduct all post-tender/quotation negotiations. Post-tender/quotation negotiations shall be fully documented and documentation will be kept on file as evidence to support the action taken. Each contractor will be invited to submit a best and final offer at the end of negotiations under the same procedure that applied to the receipt and opening of the original tenders.

Financial examination of quotations and tenders

~~L110~~L111 An examination of at least the two lowest tenders/quotations shall be undertaken to identify any errors and omissions. If an arithmetical error or omission is detected in any, the contractor shall be asked to confirm or amend the price and the award or assessment of the tender/quotation shall be completed accordingly subject to consultation with the S.151 Officer. Where an arithmetical error or omission relegated a tender to at least the third lowest then the next lowest tender shall be evaluated and so on until the two lowest tenders are identified.

~~L111~~L112 In the event that during the assessment of tenders or quotations the relevant ~~chief officer~~director identifies a need to hold post-tender/quotation discussions, the S.151 Officer shall be consulted and the approach agreed before any negotiations are held. Negotiations shall conform with the requirements of CPRs L1067 to L1109.

~~L112~~L113 Where a contractor appears to have misunderstood part of the specification or other requirements, the relevant ~~chief officer~~director shall discuss and agree the course of action with the S.151 Officer.

L113L114 Where a contractor has introduced qualifications to the tender/quotation, the course of action shall be agreed with the S.151 Officer.

L114L115 A full record of errors and omissions, the contractors' responses and the consequent evaluation shall be maintained.

Examination of quotations and tenders where the best value solution is sought

L115L116 Where there is to be an evaluation of factors other than price, all tenders received must be examined and subjected to the full assessment process, using the assessment matrix and scheme as approved beforehand in accordance with CPR L102. The assessment shall include checks to detect errors. The evaluation process must be applied to all tenders received, and the best value solutions identified and ranked according to the assessment criteria and the associated weightings. Financial assessment shall be dealt with in accordance with the process set out in CPR L111 to L1145.

L116L117 No amendment shall be made to the assessment matrix unless the approval of the Executive is obtained in accordance with CPR L103 beforehand ~~at the earliest opportunity.~~

L117L118 A comprehensive record shall be kept of the assessment criteria and the evaluation process and the findings and assessment made. Records shall be retained in accordance with the Council's policy on document retention and other relevant statutory requirements.

L118L119 Once the evaluation process has identified the tender or quotation that offers the best value solution, the contract may be awarded in accordance with CPR L105.

Other matters to be taken into account in the evaluation of tenders/quotations

L119L120 The relevant head of service shall identify relevant Council policies, strategies and statements that are applicable to the contract, and shall ensure that an adequate and appropriate assessment of tenderers' own policies and practices and/or readiness to comply with the Council's is included in the assessment of tenders/quotations. This shall apply regardless of whether the best value solution or the lowest price is to be selected, and the assessment matrix prepared in accordance with CPR L102 shall include relevant criteria applicable to the assessment.

L120L121 Such assessment shall encompass as a minimum the following:

- a) customer care
- b) sustainability
- c) equality and diversity
- d) anti-fraud and corruption
- e) health and safety

and shall include any other matter that the relevant head of service considers appropriate. Should the relevant head of service consider that any of the items (a) to (d) above do not apply, he shall prepare a written statement explaining the reasons and shall sign that statement.

M. EC PROCUREMENT DIRECTIVES

- M101 The decision as to the tendering route, the assessment criteria and the contract advertising and letting timetable shall conform to any requirements set out within the EC Directives. The estimated value of the contract shall be assessed over the whole life of the contract.
- M102 The need to apply the EC Directives is dependent upon a combination of the value of the contract and the nature of the contract. Different value thresholds apply according to whether the contract is in respect of goods, works or services (or a combination).
- M103 Once it has been determined that the Directives will apply, the relevant head of service in conjunction with the ~~Head of Legal and Estates Services~~Legal Services Manager shall ensure that adequate research into the EC Directives is undertaken to enable the contract to be tendered and let in full accordance with the requirements of the Directives.

N. ACCEPTANCE OF TENDERS AND QUOTATIONS

- N101 The selected contractor shall be notified in writing that they are the preferred contractor. Other contractors should not be notified that they have been unsuccessful until the selected contractor has been awarded the contract with the Council on the terms and conditions specified and after any agreed amendment to the original price has been applied.
- N102 Where there have been post-tender negotiations, the tender or quotation accepted shall be that submitted at the end of the negotiations in accordance with CPR L.
- N103 The relevant ~~chief officer~~director shall seek the ~~S.151 Officer's~~Head of Internal Audit's view on the need to undertake further assessments of the selected contractor's financial stability during the period of the contract. The relevant head of service shall request the ~~S.151 Officer~~Head of Internal Audit to undertake the financial reassessments at the agreed times.

O. CONDITIONS RELATING TO SUB CONTRACTORSCONTRACTING

- O101 Contract terms and conditions shall specify that the contractor shall not sub-contract all or any part of the contract without the express consent of the Council and that the Council reserves the right to be consulted for approval of the contractor's preferred sub-contractor and to undertake an assessment of their ability to perform the sub-contract. The relevant head of service shall consult the ~~S.151 Officer~~Head of Internal Audit before determining what level of assessment shall be undertaken.
- O102 In contracts where the Council wishes to a nominate a sub-contractor, the contract shall specify whether or not the Council will be undertaking the tendering process to select the nominated sub-contractor.
- O103 The same tendering or quotation requirements shall be applied to selected nominated sub-contractors as contained in CPR A, subject to any requirements of the EC Directives, and the tendering methods as set out in CPRs ~~G and H~~ shall apply. If the relevant head of service determines that it is not feasible or practical to obtain tenders or quotations, the S.151 Officer

shall be asked to approve the waiver of the requirement to invite tenders or quotations and approve the contractor to be appointed.

O104 Assessment of nominated sub-contractors shall be undertaken in full accordance with CPR F.

P. SECURITY TO BE PROVIDED BY THE CONTRACTOR IN RESPECT OF THE CONTRACT AND EXTENSIONS TO THE PERIOD OF THE CONTRACT

P101 Adequate financial security shall be sought from the successful contractor. Appropriate financial security and/or a performance bond shall be required for all contracts within threshold 5 in value unless after a comprehensive analysis of the risks and their financial impact is submitted to the S.151 Officer who may approve a waiver of the requirement. Where a bond is to be sought, this shall only be in a form and from a bondsman approved by the ~~Head of Legal and Estates Services~~ Legal Services Manager.

P102 For contracts up to and including threshold 4 in value, the relevant head of service shall discuss with the S.151 Officer to agree what assessment of the risks associated with the contract shall be undertaken. A bond or other form of appropriate security shall be obtained if, after this assessment has been considered by the S.151 Officer, it is determined that the circumstances and nature of the contract warrant it. For contracts below threshold 3 in value, security will not be sought unless the relevant head of service, in considering the nature and profile of the contract, considers that there are circumstances to warrant an appropriate form of security subject to obtaining the formal agreement of the S.151 Officer.

P103 Where a waiver of the need to obtain a performance bond is to be sought, a comprehensive analysis of the risks and their financial impact shall be undertaken and submitted by the relevant head of service to the S.151 Officer. The S.151 Officer shall be entitled to (and the relevant contractor shall be informed that the S.151 Officer will) make any further investigations or enquiries as he considers necessary before giving a decision on the request to waive the requirement.

P104 In any case where the form of security proposed is other than a performance bond, the S.151 Officer shall approve the form prior to acceptance of the proposal.

P105 The value of the performance bond (or other security) shall be equal to 10% of the contract price. Where the value of the bond is to be less than 10% of the contract price the written approval of the S.151 Officer must be obtained.

P106 Where the contract price is to be varied (outside of those obligations specifically allowed in the contract) and increases subsequent to the determination of the value of the performance bond (or other security) or the period of the contract is extended during the life of the contract the ~~Head of Legal and Estates Services~~ Legal Services Manager must be consulted in order to determine whether there is a need to seek the agreement of the bondsman of this increase in order to maintain adequate or continued cover under the bond.

P107 A retention shall be deducted unless the relevant head of service agrees otherwise with the S.151 Officer in respect of all contracts falling into the thresholds as defined in CPR A109¹¹ and CPR A11²⁴. Retentions may be deducted from payments and recorded in contract records in respect of other contracts if the relevant head of service determines this to be necessary.

Q. EXCEPTIONS TO CONTRACT PROCEDURE RULES

Q101 Contract Procedure Rules shall not apply in the following circumstances (N.B. this CPR should be read in conjunction with Q103):

- a) extensions to the duration and/or value of an existing contract, provided that the extension is within the terms and conditions of the original contract, to a maximum of 23 years unless otherwise required by EC Directives or as stated in the notices placed in the Official Journal of the European Union, subject to
 - the provisions of CPR Q103, and
 - where the sum of the proposed extension and any previous extension(s) is more than 32 years or 20% in value of the original contract value (whichever is the greater), the approval of the Executive is required prior to the award of the proposed extension, and
 - there has been a decision of the Council to make adequate budgetary provision that will be sufficient to meet the costs of the extension in any financial year covered by the extension;
- b) proprietary goods, works or services that are necessary to maintain proprietary equipment owned or hired by the Council and the Council is responsible for the maintenance and repair;
- c) proprietary goods which can only be obtained from one contractor;
- d) goods, works or services required urgently, except for professional services which are subject to CPR A11³⁵, due to unforeseen circumstances, provided the estimated cost does not exceed threshold 2 and the expenditure is reported to the Corporate Management Team at the earliest opportunity. These circumstances should be documented and this documentation retained on the contract file. The relevant head of service should append his/her signature to the document(s);
- e) contracts for the acquisition of property, in which circumstances the Asset Corporate Management Team shall advise and seek the approval of the Executive as to the procedure to be followed;
- f) where, subject to an assessment of the associated risks undertaken in consultation with the Head of Legal and Estates Services Legal Services Manager, the Council is letting a contract on behalf of another public body or partner organisation under the tendering and contract-letting rules and requirements of that other body or organisation;
- g) where there is insufficient credible competition;
- h) variation (additional work) to an existing contract where the variation is outside the scope of the contract but the circumstances are such that

it would be inappropriate to offer the additional work to competition. These circumstances should be documented and this documentation retained on the contract file. The relevant head of service should sign the document(s).

- Q102 Contract Procedure Rules shall not apply to contracts of employment and orders placed against a call-off or government framework contract.
- Q103 The agreement of the relevant director shall be sought prior to awarding a contract or extension to a contract as defined in and under the provisions of CPR Q101. In addition the approval of the S.151 Officer shall be sought where:
- the contract or extension value is over the lower financial threshold as defined in CPR A 10911; or
 - where it is proposed to amend any existing contract terms and conditions; or
 - where it proposed to extend a contract let under the provisions of CPR A1135.
- Q104 In any other circumstances where the relevant head of service considers that there is good reason not to obtain competitive quotations or tenders, which are not adequately covered by the exceptions set out in Q101, a request to seek a single tender or quotation may be made to the S.151 Officer. Such a request must be supported by the relevant strategic director. The S.151 Officer shall ensure that:
- the request does not contravene the council's statutory obligations;
 - the request considers the requirements of CPR H113;
 - there is adequate and appropriate reason for awarding a contract without competition;
 - the award of a contract would provide good value for money and shall specify the evidence to be supplied to evidence this;
 - the necessary checks regarding the proposed contractor have been undertaken in accordance with F101/H106 (as appropriate) and that the results do not indicate that a contract award presents undue risk to the Council; and
 - an assessment of any associated risks has been undertaken.

The S.151 Officer may, after consideration of the facts, specify that the request be treated as a request for a waiver in accordance with CPR W.

- Q105 Where a contract is awarded under Q104, the provisions of Q101 will not apply. Any extension or variation to the contract shall be submitted to the Executive for approval in accordance with CPR W. The award of any contract under Q104 shall be reported to the Executive at the earliest opportunity.

R. MANAGEMENT OF CONTRACTS

- R101 The relevant head of service shall nominate, in agreement with other heads of service as may be necessary in respect of a corporate contract, an officer to lead a procurement exercise which will result in the letting of a contract.

- R102 This lead officer shall ensure that the appropriate skills, experience and knowledge are brought to play in the procurement exercise. He shall involve other officers of the Council as necessary, and if supplementary advice and resources are required he shall arrange for the procurement thereof.
- R103 The relevant head of service shall also ensure that the management responsibilities and arrangements are identified and put in place to manage the resultant contract.
- R104 Guidance on the management of procurement projects and contract management shall be obtained by reference to the Council's Procurement Manual.

R105 Where the contract is a partnership contract, the lead officer shall ensure that the relevant head of service is advised of any proposed amendments to the terms and conditions. The relevant head of service shall ensure that a full report is presented to the Corporate Management Team before any changes are agreed. The Corporate Management Team shall provide direction and advice as to any actions it wishes to be taken.

S. STANDARD CONTRACT CLAUSES ADDRESSING RELEVANT LEGISLATION

- S101 Every written contract shall contain a clause empowering the Council to cancel the contract, and recover from the contractor any loss resulting from such cancellation, should the contractor have offered or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the contractor's knowledge), or if in relation to any contract with the Council, the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
- S102 Every written contract shall contain a clause that requires the contractor to work in partnership with the Council in combating fraud and corruption as applicable to the contract.
- S103 Appropriate clauses shall be included in written contracts to ensure the contractor complies with Waverley's policies, statements and practices as defined in accordance with CPR L120 throughout the period of the contract.
- S104 Where a contract is of a nature of a partnership, where the Council and contractor will work over the period of the contract to develop and improve the specification of the contract to improve service delivery, there shall be a clause within the contract to grant the Council officers, including the Council's internal auditors, access to the contractor's records appertaining to the contract. This shall include such considerations, but not restricted to,

financial, governance, business continuity, transactions and performance data.

T. COMPLIANCE OF CONTRACTORS WITH CONTRACT PROCEDURE RULES

- T101 It shall be a condition of engagement by the Council of any person (not being an officer or member of the Council) to supervise a contract that he shall act in full accordance with these Contract Procedure Rules when supervising the contract as if he were an officer of the Council. It shall be the responsibility of the relevant head of service to ensure that the person is made aware of the requirement and to provide them with a copy of Contract Procedure Rules and any other relevant documentation.

U. REGISTER OF CONTRACTS

- U101 The relevant head of service shall ensure that any contract over threshold 3 in value shall be recorded in the Council's Register of Contracts, maintained by the Head of Democratic and Legal Services. The Head of Democratic and Legal Services shall make appropriate arrangements to ensure that contracts are duly notified on a timely basis.

V. CONTRACTS INVOLVING STAGE PAYMENTS

- V101 Where any contract will involve stage payments, the relevant head of service shall ensure that the contract documentation is prepared with the agreement of the ~~Head of Legal and Estates Services~~ Legal Services Manager.
- V102 ~~All payments made under a contract within threshold 4 and above in value shall be recorded in the contract payments register maintained by the S.151 Officer. Where the contract value falls within threshold 3, but is not less than £40,000, the S.151 Officer shall ensure that the requirements of the deputy S.151 Officer shall regarding the maintenance of a be consulted as to whether the contract shall be recorded in the contracts register are fulfilled. The relevant chief officer shall ensure that payment details are submitted for recording in the register prior to payment being made.~~
- V103 A final account in respect of all contracts ~~recorded in the contracts register in threshold 5~~ shall be ~~prepared and presented for~~ subject to an examination by the ~~S.151 Officer~~ Head of Internal Audit before final payment is made.

W. WAIVERS OF AND VARIATIONS TO CONTRACT PROCEDURE RULES

- W101 In circumstances where there is a demonstrable and justifiable need to waive one or more of these CPRs due to reasons that are not covered by any other CPR, whether this be on the grounds of urgency or other specific cause, the approval of the Executive shall be sought by the relevant ~~chief officer~~ director. Waiver shall only be permitted where the Executive gives approval. If the matter is of such urgency that it cannot wait until the Executive is next scheduled to meet or until the Executive can be convened, a request shall be

made in writing seeking the approval of the Chief Executive. The Chief Executive may either give approval personally or refer the matter to the relevant portfolio holder for approval.

- W102 All requests for a waiver shall be made in writing, detailing:
- a) the specific CPRs to be waived
 - b) the reasons why a waiver is sought
 - c) the proposed course of action
 - d) the signature of the requesting officer..
- W103 In any instance where the relevant head of service is required to consult the S.151 Officer, where the S.151 Officer is also the line manager of the relevant head of service the Chief Executive shall be consulted and their approval or advice sought.
- W104 In any instance where the relevant head of service is required to consult the Chief Executive, where the Chief Executive is also the line manager of the relevant head of service, the Chairman of the Executive Leader of the Council shall be consulted and their approval or advice sought.
- W105 The approval of a waiver shall be evidenced by the Chief Executive or the Chairman of the Executive annotating the request with “approved” and signing the request in person. This approval document shall be retained by the relevant head of service for a minimum of seven years or otherwise as in accordance with the Council’s policy on document retention.

X. NOVATION OF CONTRACTS

- X101 When a request is received from a contractor to novate or otherwise re-assign their contract, the relevant head of service shall make arrangements to assess the options open to the Council. If it is considered that the best option is to agree to the novation, the relevant head of service shall make such enquiries as set out in CPR H106 to assess the suitability and standing of the proposed new contractor. The agreement of the S.151 Officer to the novation shall be sought. The Head of Legal and Estates Services Legal Services Manager shall be requested to undertake the necessary legal processes to effect the novation.

APPENDIX 1

A RESPONSIBLE PURCHASING MATRIX FOR THE SUPPLY OF GOODS

	Yes	No
1. <u>Is the product made of any scarce, damaging, polluting or ionising materials?</u>		
2. <u>Is the product made from non-renewable resource?</u>		
3. <u>If the product is natural or naturally derived, is it suitably managed?</u>		
4. <u>If a version of the product is able to be made in the whole or part from recycled materials is this version of the product being selected?</u>		
5. <u>Does the company manufacturing the product have a sound environmental reputation?</u>		
6. <u>Are considerable distances involved between where it is made and here?</u>		
7. <u>Could it be purchased more locally?</u>		
8. <u>Is any environmental damage caused in its manufacture?</u>		
9. <u>Is the product non-toxic?</u>		
10. <u>Has the testing and compliance associated with the product release been cruelty-free?</u>		
11. <u>Does the manufacture of the product create unusable waste materials?</u>		
12. <u>Does the product have a longer than average serviceable life?</u>		
13. <u>Does the product create waste in its usage?</u>		
14. <u>Can components of the product be replaced or recycled?</u>		
15. <u>If possible is the product biodegradable?</u>		
16. <u>Is the product energy efficient?</u>		

17. <u>Is the product inherently hazardous?</u>		
18. <u>Is the product packaging of a reasonable quality and able to be returned to the manufacturer?</u>		
19. <u>Is the manufacturer known for compliance with environmental regulations?</u>		
20. <u>Are the benefits from the purchase widely distributed?</u>		
21. <u>Is the product being purchased from a socially worthwhile organisation?</u>		
22. <u>Is the ultimate workplace situation satisfactory?</u>		
23. <u>Is the company's reputation for staff treatment satisfactory?</u>		
24. <u>Does the company have a fair wage policy?</u>		
25. <u>Do we really need this product?</u>		
26. <u>Does the manufacturer actively promote equality and diversity considerations?</u>		
27. <u>Does the manufacturer of the product, or its subsequent use, represent a significant carbon impact?</u>		

APPENDIX 2

A RESPONSIBLE PURCHASING MATRIX FOR THE SUPPLY OF WORKS OR SERVICES

	Yes	No
<u>1. Does the contractor have an environmental policy, statement or equivalent?</u>		
<u>2. Is the contractor aware of the environmental impact assessment of their work on the local environment?</u>		
<u>3. Does the contractor take appropriate measures to minimise the environmental impact of transport both through vehicles used and fuel choices?</u>		
<u>4. Does the contractor take steps to reduce the consumption of fossil fuels used for heating and for lighting?</u>		
<u>5. Does the contractor minimise the use of polluting chemicals especially pesticides and herbicides?</u>		
<u>6. Is the contractor's operations peat-free?</u>		
<u>7. Does the contractor have a policy for the supply of its goods with a matrix similar to the above matrix?</u>		
<u>8. Is the contractor a fair employer?</u>		
<u>9. Does the contractor have an environmental champion?</u>		
<u>10. Does the contractor support any environmental organisations?</u>		

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