

# **CONTRACT PROCUREMENT RULES (CPRS – OCTOBER 2018)**

<b>Owned by:</b>	Procurement Advisory Board
<b>Created date:</b>	30/05/2017
<b>MB approval date:</b>	05/07/2017
<b>Audit Committee approval date:</b>	24/07/2017
<b>Date of latest revision</b>	25/09/2018
<b>Date for review:</b>	01/04/2019
<b>Version</b>	2.4

## Contents

<b>GENERAL .....</b>	<b>3</b>
1. INTRODUCTION.....	3
2. SCOPE .....	4
3. COMPLIANCE .....	5
4. GENERAL PRINCIPLES APPLYING TO CONTRACTS.....	5
5. SOCIAL VALUE .....	5
6. TRANSPARENCY .....	6
<b>PREPARING FOR THE PROCUREMENT.....</b>	<b>6</b>
7. PRE-CONTRACT CONSIDERATIONS / SIGN OFF .....	6
8. DECLARATION OF INTERESTS .....	6
9. EXCEPTIONS, WAIVERS AND JOINT COMMISSIONING .....	7
10. ASSESSMENT OF SUPPLIERS.....	8
11. STANDING LIST OF SUPPLIERS .....	8
12. FRAMEWORK AGREEMENT .....	8
13. DYNAMIC PURCHASING AGREEMENT (DPS AGREEMENT) .....	9
14. TUPE IMPLICATIONS .....	9
15. FINANCIAL VALUES .....	9
<b>PROCEDURAL STEPS OF THE PROCUREMENT .....</b>	<b>12</b>
16. TENDERING PROCEDURES.....	12
17. OPENING OF QUOTATIONS AND TENDERS.....	13
18. EVALUATION OF QUOTATIONS AND TENDERS .....	13
19. CONTRACT SIGN OFF / SCHEME OF DELEGATION .....	14
<b>CONTENT OF CONTRACTS .....</b>	<b>14</b>
20. FORM OF CONTRACT .....	14
21. SUB CONTRACTORS.....	15
22. CONTRACTS INVOLVING STAGE PAYMENTS .....	15
23. FINANCIAL SECURITY.....	15
<b>CONTRACT MANAGEMENT.....</b>	<b>15</b>
24. MANAGEMENT OF CONTRACTS.....	15
25. NOVATION & ASSIGNMENT.....	16
26. DISPOSAL OF COUNCIL ASSETS .....	16
<b>GLOSSARY OF TERMS .....</b>	<b>18</b>

These Contract Procurement Rules (CPRs) should be read in conjunction with the council's Financial Regulations, Scheme of Delegation and Authorised Signatory List.

## **GENERAL**

### **1. INTRODUCTION**

- 1.1 These CPRs set out the minimum requirements the council must follow when procuring and/or entering into Contracts for the supply of goods, works and services including consultants.
- 1.2 The CPRs are put in place to ensure that the council gets value for money for residents, complies with all legal requirements, minimises the risk of challenge / undue criticism, supports social value and sustainability and provides transparency as to how it spends public money.
- 1.3 All purchasing and resulting Contracts made by or on behalf of the council must also comply with:
  - 1.3.1 all applicable statutory provisions;
  - 1.3.2 the Public Contracts Regulations 2015 and separate EU Directives which govern the award of higher value Contracts; and
  - 1.3.3 the council's constitution, including the Financial Regulations and the Scheme of Delegation to Officers.

If there is any conflict between the above, the EU law takes precedence, followed by UK legislation, the council's constitution and these CPR's, in that order.

- 1.4 Further information and guidelines on best practice are set out in the council's internal Purchasing Guide.
- 1.5 The Thresholds referred to in these CPRs and the appropriate process to follow is set out in the table on page 11.
- 1.6 The Procurement Officer is responsible for ensuring the CPRs are up to date and reflect current legislation.
- 1.7 The Section 151 Officer (referred to as the S151 Officer) is ultimately responsible for the content of the CPRs.

## 2. SCOPE

2.1 These CPRs do not apply to the following types of Contract:

Type of Contract	Policy/ Law which covers Contracts out of scope
Contracts of employment for permanent / fixed term employees / agency staff	HR / Recruitment policies
Land transactions;	In accordance with the Local Government act 1972/ Housing act 1985 or any related acts or authorities
Where the Contract relates to a financing transaction;	Not subject to competition due to their nature
Works orders placed with statutory undertakers;	Not subject to competition due to their nature
Grants being given by the council;	Governed by Grant Funding -Service Level Agreements 2017-18
Contracts for goods and services estimated to be below Threshold 4 which have been dealt with or jointly procured by another local authority, public sector consortium or collaboration of which the council is a party but where the council is not the lead authority and the Contract is to be procured in accordance with the applicable Contract standing orders of that public authority; and	The procurement of Contracts of this nature will be governed by the Constitution of the Contracting authority
Orders for goods and services estimated to be below Threshold 4 placed against a call-off Contract or Framework Agreement where the call-off Contract or Framework Agreement has been awarded in accordance with these CPRs.	The establishment of the call-off Contract or Framework Agreement will be governed by the CPRs in the first instance, as such any call offs / mini competitions ran under such agreement will have already complied with these CPRs.
Where good, services or works are awarded as a result of a declared emergency as authorised by the Emergency Planning and Resilience Officer, where any Contracts awarded are not to exceed the estimated period of recovery	Business continuity management policy March 2016 Version 2
Where the Chief Executive has activated the council's 'Emergency Plan' or a business recovery plan (as outlined in the business continuity management strategy) in response to a Major Incident being declared by resilience partners	Business continuity management policy March 2016 Version 2

2.2 All other Contracts made by or on behalf of the council must comply with these CPRs unless there is an Exception, Waiver or Joint Commissioning (CPR 9).

### **3. COMPLIANCE**

- 3.1 Any members of staff purchasing on behalf of the council is expected to comply with these CPRs.
- 3.2 Where there is evidence of deliberate non compliance with the CPRs disciplinary action may be taken.
- 3.3 Staff must not deliberately break down a Contract with the intention of disaggregating spend for the purpose of avoiding the appropriate governance.

### **4. GENERAL PRINCIPLES APPLYING TO CONTRACTS**

- 4.1 There are four financial value thresholds:
  - Threshold 1: £0 - £4,999
  - Threshold 2: £5,000 - £24,999
  - Threshold 3: £25,000 - £99,000
  - Threshold 4: £100,000 +
- 4.2 All Contracts must be in writing (which can include emails for Contracts valued within Threshold 1).
- 4.3 The value of any Contract must be determined by its aggregate or total spend forecast.
- 4.4 For every Contract estimated to be within Threshold 1, quotations and tenders may be sought using the council's electronic tendering portal, the South East Shared Services e-sourcing Portal provided by "In-Tend", otherwise quotes can be solicited via email.
- 4.5 For every Contract estimated to be within Threshold 2 or above, all quotations and tenders must be sought using the council's electronic tendering portal, the South East Shared Services e-sourcing Portal provided by "In-Tend".
- 4.6 In the case of recurring procurements for the same goods and services, prior written approval from the S151 Officer must be obtained in order to request quotations from the same suppliers on more than three consecutive occasions.
- 4.7 Details of all Contracts awarded valued at £5,000 and above more must be added to the council's Contract Register on the E-tendering portal together with all supporting documentation.
- 4.8 With regards to non-OJEU Tenders, no supplier may be awarded a Contract if this would result in 50% or more of that supplier's turnover being generated from the Council's Contracts, unless the prior written approval of the S151 Officer has been obtained.
- 4.9 Prior to any invoices being received a purchase/ official order must be raised on the councils official order system or Orchard.
- 4.10 Prior to any procurement a contract manager should be identified who will be responsible for ensuring the delivery of the contract.

### **5. SOCIAL VALUE**

- 5.1 The Public Services (Social Value) Act came into force on 31 January 2013. It places a requirement on people who commission, or buy, public services to consider securing added economic, social or environmental benefits for their local area.
- 5.2 The Act currently applies only to service Contracts over the EU threshold but should be considered in all procurements where applicable.

## **6. TRANSPARENCY**

- 6.1 **Publication of spend, Contract opportunities and awards** – in accordance with government requirements we publish all council expenditure with suppliers that exceeds £500 and post all Contracts valued at £5,000 and above on our publicly accessible Contracts register, this can be found on the councils public website. Any advertised opportunity valued over £25,000 must be advertised on Contracts finder, for Contracts over £25,000 a Contract award notice must also be published.
- 6.2 **Freedom of Information** – in accordance with the Freedom of Information Act (FOIA) 2000 and Environmental Information Regulations (EIR) 2004, we have an obligation to publish specific information and to provide information to members of the public upon request. By exception confidential or commercially sensitive information may be withheld. Suppliers should be given the opportunity to identify areas of their tender submission they do not wish to be disclosed.

## **PREPARING FOR THE PROCUREMENT**

### **7. PRE-CONTRACT CONSIDERATIONS / SIGN OFF**

- 7.1 Before commencing a procurement process, officers must ensure:
- 7.1.1 They have conducted an options appraisal and that a procurement is required
  - 7.1.2 that there is adequate budgetary provision for the goods, services or works that they are procuring
  - 7.1.3 that they have the appropriate level of (delegated) authority to procure the goods or services on behalf of the council
  - 7.1.4 that there is no existing Contract or framework that is appropriate and that
  - 7.1.5 where appropriate they have engaged with the procurement officer
  - 7.1.6 that each tender package / request for quotation be accompanied by a comprehensive specification
  - 7.1.7 an assessment, appropriate to the scale and scope of the Contract, of associated risks shall be undertaken by competent officers or consultants to include, but not limited to, technical, commercial, health and safety and reputational risks posed to the council.
  - 7.1.8 that the chosen route to market has been signed off by the appropriate authority (see table page 11)

### **8. DECLARATION OF INTERESTS**

During the procurement process, if an officer becomes aware that he has a direct or indirect pecuniary interest in a Contract which the council has entered into, or proposes to enter into, their interest must be recorded on the register maintained by the council's Committees team for this purpose.

## 9. EXCEPTIONS, WAIVERS AND JOINT COMMISSIONING

9.1 The CPRs will not apply in the circumstances set out in CPRs 9.2 (Exceptions) 9.3 (Waivers), or 9.4 (Joint Commissioning) provided that the S151 Officer has given his prior approval to the exception, waiver or joint commissioning before the Contract is entered into.

9.2 **Exceptions** - there may be an exception to the CPRs where:

9.2.1 there is an extension to the duration and/or value of an existing Contract that does not contain a provision for extension provided that the extension is (i) on the same terms as the original Contract and (ii) adequate budgetary provision has been made. Where an extension concerns an OJEU contract or where an extension would lead to a contract falling within the relevant OJEU threshold the prior written approval of the Executive is required to award the proposed extension;

9.2.2 there is insufficient credible competition and the S151 Officer has agreed the competition assessment;

9.2.3 there is a variation (additional work) to an existing Contract where the variation is outside the scope of the Contract but it would be inappropriate to offer the additional work to competition; or

9.2.4 the S151 Officer is satisfied that it is appropriate for a single tender or quotation and that

9.2.4.1 it does not breach the council's statutory obligations,

9.2.4.2 the request considers the requirements of CPR 4, GENERAL PRINCIPLES APPLYING TO CONTRACTS

9.2.4.3 there is adequate and appropriate reason for awarding a Contract without competition,

9.2.4.4 the award of a Contract would provide good value for money and shall specify the evidence to be supplied to evidence this,

9.2.4.5 the necessary checks regarding the proposed Contractor have been undertaken in accordance with CPR 10 ASSESSMENT OF SUPPLIERS (as appropriate) and that the results do not indicate that a Contract award presents an undue risk to the council, and

9.2.4.6 an assessment of any associated risks has been undertaken.

9.3 **Waivers** –the CPRs may be waived only in exceptional circumstances where:

9.3.1 there is a demonstrable and justifiable need to waive or vary one or more of the CPRs on the grounds of urgency; and

9.3.2 if the estimated value of the Contract falls below the EU threshold the prior written approval of the S151 Officer has been obtained; or

9.3.3 if the estimated value of the Contract falls within the relevant EU threshold the S151 Officer has obtained the prior written approval of the Executive.

9.4 **Joint Commissioning** –the CPRs may be waived for Contracts where the council:

9.4.1 wishes to become party to a Contract with a consortium, which has undertaken the task of obtaining competitive prices;

9.4.2 seeks to jointly commission a Contract with other local authorities or organisations; or

9.4.3 seeks to jointly deliver services in partnership with other local authorities or organisations.

## **10. ASSESSMENT OF SUPPLIERS**

- 10.1 No assessment of a suppliers financial standing is needed for Contracts estimated to be within Thresholds 1 or 2 unless the goods being purchased are a proprietary item, in which case a financial assessment must be conducted.
- 10.2 A financial assessment of potential suppliers must be undertaken for all Contracts estimated to be within or above Threshold 3
- 10.3 If a Contractor has expressed an interest in being included in a Standing List of Suppliers an assessment will be made of a Contractor's:
- 10.3.1 financial stability and resources;
  - 10.3.2 insurances;
  - 10.3.3 technical and other relevant references;
  - 10.3.4 business continuity plans;
  - 10.3.5 qualifications and experience;
  - 10.3.6 environmental, ethical and employment policies;
  - 10.3.7 previous experiences of dealing with the Contractor;
  - 10.3.8 responsible purchasing policies;
  - 10.3.9 details of other Contracts already, or proposed to be, awarded to the Contractor; and
  - 10.3.10 any other issues that may be considered by the relevant Head of Service as being relevant to the Contract.
- 10.4 A Contractor that does not meet the council's minimum requirements shall not be admitted to a Standing List of Suppliers.
- 10.5 Suppliers that are sole traders can be awarded an individual Contract with a value within Threshold 1 or 2 but the approval of the relevant Head of Service must be obtained to approve such an award with a value within Threshold 3 or above.  
Contract

## **11. STANDING LIST OF SUPPLIERS**

- 11.1 The relevant Head of Service may maintain a standing list of suppliers for Contracts up to and including Threshold 3 in value.
- 11.2 The council's e-tendering portal must be used to obtain expressions of interest from suppliers to join the standing list.
- 11.3 Potential candidates for inclusion on the standing list of suppliers will be assessed in accordance with CPR 10.
- 11.4 The standing list must be reviewed at least every 1 year and the assessments set out in CPR 10 repeated.

## **12. FRAMEWORK AGREEMENT**

- 12.1 Prior to entering into a Framework Agreement, approval from the S151 officer must be sought.
- 12.2 A Framework Agreement may be procured using either the Open or Restricted Procedure.
- 12.3 The term of a Framework Agreement must not exceed 4 years.
- 12.4 Contracts based on existing Framework Agreements may be awarded by either:



- 12.4.1 Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call off) without reopening competition; or
- 12.4.2 Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition.

### **13. DYNAMIC PURCHASING AGREEMENT (DPS AGREEMENT)**

- 13.1 Prior to entering into a DPS Agreement, approval from the S151 officer must be sought.
- 13.2 A DPS Agreement may be procured using either the Open or Restricted Procedure.
- 13.3 The term of a DPS Agreement must not exceed 7 years.
- 13.4 Contracts based on existing DPS Agreements may be awarded by either:
  - 13.4.1 Applying the terms laid down in the DPS Agreement (where such terms are sufficiently precise to cover the particular call off) without reopening competition; or
  - 13.4.2 Where the terms laid down in the DPS Agreement are not precise enough or complete for the particular call-off, by holding a mini competition.

### **14. TUPE IMPLICATIONS**

- 14.1 When an employee of the authority or of a supplier providing a service that may be affected by any staff transfer arrangement, Officers must ensure that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) issues are considered and obtain legal advice from the Borough Solicitor before proceeding with the Tender / Request for Quotation.

### **15. FINANCIAL VALUES**

- 15.1 Prior to commencing a procurement exercise officers must estimate the aggregate value; this will determine which threshold the procurement falls under.
- 15.2 The financial values will be reviewed bi-annually.
- 15.3 If the cheapest tender received is above the upper limit of the estimated CPR financial value as set out in the Threshold Table and/or any approved budget for the procurement of the goods, works or services, the prior written approval of the S151 Officer must be obtained to accept the tender or quotation. Where the OJEU thresholds are crossed a tender must be re-run e.g. if the budget for a services tender is £170k but the received bids all exceed the OJEU limit of £181k then the exercise but be repeated with a more appropriate procedure.
- 15.4 The Threshold Table (page 11) sets out the general rules applying to the choice of purchasing procedure for Contracts at the stated threshold financial values, it states,

#### **15.5 For purchases valued below £5,000**

- a) A minimum of one quote must be sought, this is only a required minimum and best practices dictates you seek multiple quotes to prove you are obtaining true value for money.
- b) The quotes can be sourced via In-tend or email.
- c) Local suppliers should be asked to quote where appropriate.
- d) An official order will constitute the Contract
- e) The purchase and written approval / signing of the Contract can be conducted by any authorised officer

#### **15.6 For purchases valued from £5,000 - £24,999**

- a) A minimum of three quotes must be sought; fewer than three is required if written approval is given by the relevant head of service.
- b) All quotes must be obtained via In-tend.
- c) All quotes must be sealed
- d) The relevant Head of Service must approve the route to market
- e) The approval / signing of the Contract can be conducted by the relevant Head of Service or above
- f) An official order will constitute the Contract and must be recorded on In-tend

#### **15.7 For purchases valued from £25,000 - £99,999**

- a) A minimum of three quotes must be sought.
- b) All quotes must be obtained via In-tend.
- c) All quotes must be sealed
- d) The S151 Officer or Deputy S151 Officer must sign off on the chosen route to market
- e) Where the opportunity is advertised it must also be advertised via Contracts Finder, as must be the Contract award.
- f) The Contract must be Signed by the relevant Head of Service or above

#### **15.8 For purchases valued over £100,000**

- a) All tenders must be run via In-tend.
- b) A minimum of 4 bidders must be invited to submit a response
- c) All tenders must be sealed
- d) Management Board must sign off on the chosen route to market
- e) Legal Services to advise if a Seal is required. If Seal is required it must be witnessed in accordance with Schedule of Authorisations to the Scheme of Delegation.
- f) Signed by S151 Officer or Deputy S151 Officer where Seal is not required.

15.8.1 Where the Contract is estimated to be above the relevant OJEU threshold, an OJEU compliant procedure must be used (see CPR section 14, TENDERING PROCEDURES. Current OJEU Limits as of 1<sup>st</sup> January 2018 are £181,302 for services and £4,551,413 for works.

**Procedure for Procurement (minimum requirements)**

	Aggregate value	Advertising required	Contract Award Notice required	Minimum No of quotes	Receipt of quotes/ tenders	Financial assessment required?	Required Contract type	Who signs Contract/ approves order?
Threshold 1	£0-£4,999	None required	No	Minimum of one quote sought (local suppliers should be used where appropriate)	Via email	No	Official Order	Authorised Officer
Threshold 2	£5,000 - £24,999	In-Tend	No	Minimum of three quotes sought (HoS can agree to fewer)	In-tend	No	Official Order & record on In-tend	HoS or above
Threshold 3	£25,000 - £99,999	In-tend & Contracts Finder	Yes	Minimum of three quotes sought	In-tend	Yes	Written, copy to be stored on the councils electronic procurement portal	HoS or above
Threshold 4	Over £100,000	In-tend, Contracts Finder & OJEU if applicable	Yes	Minimum of four tenderers sought, OJEU Procedure where limit exceeded: <b>Goods/Services:</b> £181,302* <b>Works:</b> £4,551,413*	In-tend	Yes	Written - agreed by Legal Services & under seal if required, copy to be stored on the councils electronic procurement portal	Legal Services to advise if a Seal is required. If Seal is required it must be witnessed in accordance with Schedule of Authorisations to the Scheme of Delegation. Signed by S151 Officer or Deputy S151 Officer where Seal is not required.

\*OJEU thresholds are subject to change, any change in threshold levels will be reflected in an update to these CPRs.

## **PROCEDURAL STEPS OF THE PROCUREMENT**

### **16. TENDERING PROCEDURES**

#### **16.1 General:**

- 16.1.1 The council may apply any procedure that conforms to the Public Contracts Regulations 2015 in its procurement process.
- 16.1.2 Subject to CPR 9 the appropriate process set out in the Threshold Table must be followed for each procurement determined by the estimated value of that procurement.
- 16.1.3 Invitations to tender or requests for quotations must be issued electronically (via email for Threshold 1 and via the council's e-tendering portal for and procurement within or exceeding Threshold 2).
- 16.1.4 All tenders or quotations must be returned to the council electronically (via email for Threshold 1 and via the council's e-tendering portal for and procurement within or exceeding Threshold 2).
- 16.1.5 A Contract Procurement Report must be completed and stored on E-tendering portal for each tender or quotation within or exceeding Threshold 2
- 16.1.6 For all quotes/ tenders the award criteria must be stipulated before request/tender is published, this includes;
  - The assessment criteria
  - The scoring system and weighting to be applied
  - The minimum scores to be achieved (where appropriate)

#### **16.2 Existing arrangements**

- 16.2.1 In the first instance anyone purchasing on behalf of the council must check to see if there is an existing arrangement already in place which covers the purchase.
- 16.2.2 Where a framework / dynamic purchasing system / select list has been established to deliver the need, these will be considered alongside other routes in an options analysis.

#### **16.3 Request for Quotation (RFQ)**

- 16.3.1 This approach only applies for purchases below £100k where suppliers are requested to submit a quote for the requirements. Like a tender you can apply a price / quality split when evaluating the responses but the award criteria must be stated upfront in the RFQ documentation.

#### **16.4 Open Procedure (One Stage)**

The open procedure is where a bidder progresses straight to invitation to tender (ITT), there is no pre-qualification stage involved. This procedure shall apply where:

- a) the value of the Contract award will be below the EU threshold;

- b) the value of the Contract award will be above the EU threshold and the council has decided that a single stage tender is appropriate.

### **16.5 Restricted Procedure (Two Stage)**

- 16.5.1 This procedure can only apply where the value of the Contract award will be above the EU threshold
- 16.5.2 The required advertising and tendering periods must be observed.
- 16.5.3 The advertisement must state that a restricted tendering procedure will be used.
- 16.5.4 Once the closing date for receipt of expressions of interest has been reached a Standard Selection Questionnaire (“SSQ”) must be sent to all suppliers that have expressed an interest in tendering.
- 16.5.5 Upon receipt of the completed SSQ the information will be analysed.
- 16.5.6 Invitation to Tender documents shall be dispatched to a sufficient number of suppliers that have been assessed as meeting the minimum technical and financial requirements.
- 16.5.7 If fewer than the required minimum number of suppliers either meet the minimum qualification requirements or express an interest, the relevant director must be consulted to agree whether to seek additional tenderers or to obtain prior written approval from the Management Board to seek fewer than the minimum number of tenders.

### **16.6 Competitive with negotiation procedure**

- 16.6.1 Prior to undertaking a negotiated procedure approval from the S151 officer and Borough Solicitor must be sought.
- 16.6.2 This procedure can only apply where the value of the Contract award will be above the EU Threshold
- 16.6.3 The competitive with negotiation procedure allows award following the initial ITT stage before negotiations have commenced providing this is stipulated in the tender documentation.

## **17. OPENING OF QUOTATIONS AND TENDERS**

- 17.1 Any quotation or tender received after the specified date and time or at a location other than the one specified will be rejected unless the S151 Officer considers that there are exceptional circumstances that warrant it and this will only be done up to the time when the other tenders are opened.

## **18. EVALUATION OF QUOTATIONS AND TENDERS**

- 18.1 Offers will be evaluated against the award criteria stipulated at the point of publishing a RFQ / Tender. The available options are
  - 18.1.1 **Price only** - accept the offer from the Contractor who, having satisfied the council's minimum requirements, has offered the lowest price.

- 18.1.2 **Price / Quality** – where a price quality split is stipulated, the supplier who ranks highest over all shall be awarded the Contract, this is otherwise known as the Most Economically Advantageous Tender (M.E.A.T).
- 18.1.3 Where the most economically advantageous tender is to be sought, an assessment criteria and associated weightings will be specified in the invitation to tender.

## **19. CONTRACT SIGN OFF / SCHEME OF DELEGATION**

- 19.1 A Contract can only be signed / authorised by an officer for which they have authority / delegated authority under the scheme of delegation. The authority levels are:
- £0-£4,999 – Authorised Officer
  - £5,000 - £24,999 – Relevant Head of Service or above
  - £25,000 - £99,999 – Relevant Head of Service or above
  - Over £100,000 – Legal Services to advise if a Seal is required. If Seal is required it must be witnessed in accordance with Schedule of Authorisations to the Scheme of Delegation. Signed by S151 Officer or Deputy S151 Officer where Seal is not required.

## **CONTENT OF CONTRACTS**

### **20. FORM OF CONTRACT**

- 20.1 No indication of acceptance shall be made to any Contractor except by an officer authorised so to do.
- 20.2 Contracts valued up to and including Threshold 2 in value shall be the subject of a purchase order unless otherwise stated, in which case a formal Contract shall be prepared in accordance with the requirements of the Borough Solicitor.
- 20.3 All Contracts within Threshold 4 and above in value shall be the subject of a formal Written Contract - agreed by Legal Services & under seal if required, copy to be stored on the council's electronic procurement portal.
- 20.4 All Contracts shall:
- 20.4.1 specify the goods, materials or services to be supplied and/or works to be undertaken, 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;
  - 20.4.2 provide for the payment of liquidated damages where they are appropriate;
  - 20.4.3 contain details of any security that is required by the council; and
  - 20.4.4 prohibit the Contractor from sub-Contracting or assigning all or any part of the Contract without the express consent of the council.
- 20.5 Except in exceptional circumstances with the prior written approval of the Chief Executive, all Contracts must be signed or sealed before their commencement.
- 20.6 Every Contract in excess of £100,000 must contain a comprehensive Business Continuity plan.
- 20.7 Every Contract shall require compliance with current legislation with respect to health and safety at work and sexual and racial equality.

20.8 Every officer who conducts a procurement in excess of £5,000 is responsible for ensuring the details are updated on the councils Contract register.

## **21. SUB CONTRACTORS**

21.1 In Contracts where the council wishes to 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.

21.2 The council will apply these CPRs to the tender process to select and assess the nominated sub-contractor.

## **22. CONTRACTS INVOLVING STAGE PAYMENTS**

Where any contract that falls into Threshold 4 (£100,000+) will involve stage payments a final account shall be prepared and presented for examination by the relevant Head of Service before final payment is made. The Financial Regulations should be consulted for more details on Final Payments and Retention monies.

## **23. FINANCIAL SECURITY**

23.1 Adequate financial security and/or a performance bond must be required for all Contracts within Threshold 4 and above in value.

23.2 Adequate financial security and/or a performance bond may be required if considered necessary by the S151 Officer Procuring Officer.

23.3 A retention to the Contract sum must be made in respect of all Contracts within Threshold 4 and above unless otherwise agreed by the S151 Officer (HoS can agree if the Contract is for works).

23.4 A retention to the Contract sum may be made if the relevant Head of Service determines this to be necessary.

## **CONTRACT MANAGEMENT**

### **24. MANAGEMENT OF CONTRACTS**

24.1 Any extensions or variations to a Contract may only be made in accordance with CPR 9.2.1 Exceptions.

24.2 Any proposed amendments to a partnership Contract shall only be agreed with the prior written approval of the Management Board.

24.3 If a Contract is proposed to be terminated for whatever reason, the advice of the Borough Solicitor must be sought in the first instance.

24.4 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 CPRs when supervising the Contract as if he were an officer of the council.

24.5 It is the procuring officers responsibility to ensure that there is a robust Contract management plan in place that is proportionate to the scale and scope of the Contract, this should include, but is not limited to:

- a) Regular Contract reviews – to be documented
- b) Clear procedures on the reporting and escalation of Contract failings
- c) Identification of contacts responsible for the Contract within each organisation
- d) The capturing of performance data

## **25. NOVATION & ASSIGNMENT**

The council may agree to the novation or assignment of a Contract if an assessment of the Contractor has been carried out under CPR 10, ASSESSMENT OF CONTRACTORS, and the prior written approval of the Head of Service and S151 Officer has been obtained.

## **26. DISPOSAL OF COUNCIL ASSETS**

### **Land and buildings**

- 26.1 This section refers to disposals that are subject to market conditions.
- 26.2 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 Director of Finance and Resources shall report to the Corporate Management Team to 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 Advisory Group, which will report its views and recommendations to the Corporate Management Team.
- 26.3 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 Strategic Housing who shall consult the 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 Strategic Housing shall obtain a current valuation of the land and/or buildings and report his views and recommendations to the council's Corporate Management Team.
- 26.4 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 Strategic Housing (as appropriate) with the S151 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 (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**

- 26.5 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.
- 26.6 The Asset Advisory Group will be consulted on the disposal of assets where deemed appropriate by the relevant head of service.
- 26.7 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 S151 Officer or Deputy S151 Officer, taking note of any value included in the council's



accounts and any professional valuations as may be deemed appropriate by the S151 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 S151 Officer.

26.8 If deemed appropriate by the relevant Head of Service and the S151 Officer, items may either be

26.8.1.1 sold to a member of staff at an agreed price (where the item is of little or no intrinsic value); or

26.8.1.2 offered for sale to all members of staff at the price agreed; or

26.8.1.3 advertised for sale in local papers or relevant trade magazines, as appropriate, at the price agreed; or

26.8.1.4 sold via an open electronic auction, run on the council's E-tendering portal where appropriate providing its use is approved by Legal and the S151 officer. The relevant Head of Service and the S151 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.

26.9 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 15.5, 15.6, 15.7 and 15.8.

26.10 All sealed bids shall be treated as being tenders and their opening evaluation and acceptance shall be in accordance with CPRs 17, 18 and 19.

26.11 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 request for quotation.

26.12 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 director and the S151 Officer and shall be undertaken in accordance with the provisions of the council's Financial Regulations.

## GLOSSARY OF TERMS

Authorised Signatory List	This is the list of officers authorised to make financial transactions. Head of Service approval is required before an officer may be included in the List.
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. Prices are specified for the duration of the Contract, subject as necessary to fluctuation according to agreed formulae.
Contract	This term is used to refer to any procurement transaction or planned procurement transaction.
Contract	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, including the period of any possible extensions to the term of the Contract. Where the term of the Contract is not known, a term of 4 years must be assumed and applied when calculating the Contract value. The calculation of the value must be assessed exclusive of Value Added Tax.
Corporate Management Team	The Corporate Management Team is the meeting of the Chief Executive and Directors, which is advised by Heads of Service and other Officers as appropriate.
EU Directives on procurement	These are rules that override these CPRs for large value Contracts. EU Directives must be applied once the value of the Contract reaches or exceeds the relevant financial threshold. Their application and link to CPRs is outlined above in the introduction. The Directives are implemented into UK law as the Public Contracts Regulations 2015 (“the Regulations”), and reference to those Regulations in these CPRs includes any subsequent amendments to those Regulations and any replacement Regulations (and amendments thereto). 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 Borough Solicitor.
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 Section 151 Officer.
Framework Agreement	A Framework Agreement is an arrangement of one or more Contracting authorities with one or more suppliers in order to establish the terms governing the Contracts awarded and includes both Public Sector Framework Agreements and council Procured Framework Agreements.
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.
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 Section 151 Officer in accordance with CPR 24.
Lists prepared by third parties	This refers to such lists as “Constructionline” and similar lists of Contractors that have been assessed by other organisations.
Official order	This term is interchangeable with the term purchase order. An official order must be raised prior to receiving an invoice either via the councils official order system or the Orchard system.
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.
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.
Professional services (“consultants”)	<p>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 role to be played, for the purposes of these CPRs Contracts for the provision of professional expertise will be regarded in the same manner as other Contracts for the supply of goods, works and services.</p> <p>Appointment of a person through an employment agency or an appropriate professional body to fulfil duties that otherwise would be performed by a member of staff will not be subject to CPRs. A separate procedure is available from Employee Services concerning this. Engaging a person to undertake a specific piece of work with specific terms of reference is deemed to be consultancy and must be procured in accordance with the CPRs.</p>
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.
Quotations and tenders	The terms “quotation” and “tender” are used throughout these CPRs. For the purposes of the application of these CPRs the following definitions should be used:
Relevant Director	This term is used to denote the Chief Executive, Director of Finance and Resources (Section 151 Officer) or the Director of Operations in person. Where an officer from one service is working in circumstances where they are responsible to another service for the purposes of a procurement exercise, then it is that other director who is the responsible director. In some CPRs the Chief Executive and the Section 151 Officer are mentioned by title; where this is done, they are not acting as the relevant director.
Relevant Head of Service	This term is used to denote the head of the service responsible for procuring a Contract.
Relevant Portfolio	This refers to the elected Member of the council who at the time the

holder	procurement exercise is being undertaken is the relevant member of the council's Executive responsible for the service in question.
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.
Section 151 Officer	This refers to the council's Chief Finance Officer, being the officer responsible for the council's financial administration as defined by the Local Government Act 1972.
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 Procurement Rules, the former shall take precedence.
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.
Specification	The use of the word 'specification' refers 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.
Standard Selection Questionnaire	This is the questionnaire which has been developed to simplify the supplier selection process for businesses using the Restricted Procedure to procure goods or services. It has replaced the Pre Qualification Questionnaire.
Supplier/Contractor	Both these terms are used to refer to a provider or potential provider of goods, works or services. Once a Contract has been placed with a supplier, that supplier may be more precisely referred to as a Contractor.
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.