

Contract Procedure Rules

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INTRODUCTION

[These](#) 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 director or his/her staff.

The [Public Contracts Regulations 2015](#) ~~and~~ ~~are~~ separate [EU](#) Directives ~~that govern the award of~~ ~~concern~~ higher value contracts. The requirements regarding tendering, notices and negotiations set out in these [Regulations and Directives](#) take precedence over [the](#) CPRs, but [the](#) CPRs should still be applied in an appropriate manner.

These CPRs should be read in conjunction with the Council's Financial Regulations and officers may act only within the authority specified in the [Council's Scheme of Delegation and the Authorised Signatory List, available from the Head of Finance](#).

DEFINITIONS/GLOSSARY OF TERMS

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.

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-CPRs](#). For the purposes of the application of these [Rules-CPRs](#) 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.

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 role to be played, for the purposes of ~~these Contract Procedure Rules~~, 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.

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 Contract Procedure Rules~~. A separate procedure is available from HR 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.

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, 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 ~~should~~ must 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 as appropriate. The matrix sets a template for evaluating these factors and may be supplemented as appropriate with a scoring and weighting formula. It will be used in this way to identify the best value option.

EUG Directives on procurement

These are rules that override these CPRs for large value contracts. EUG 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 [Legal Services Manager/Borough Solicitor](#).

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~~[Executive Director](#), ~~Deputy Chief Executive~~[Director of Finance and Resources](#) (Section 151 Officer) or the ~~Director of Operations~~[strategic director](#) 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~~[Executive Director](#) and the ~~S.151 Officer~~[Section 151 Officer](#) are mentioned by title; where this is done, they are not acting as the relevant director.—

Relevant ~~head of service~~Head of Service

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

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

~~Reference to the receipt of quotations or tenders in writing through the postal system represents the only secure means open to the Council currently. 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 [E40324](#).

Lists prepared by third parties

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

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 [to](#) make financial transactions. [Service head](#) [Head of Service](#) 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](#) [Section 151 Officer](#).

Improvement and Efficiency South East (IESE)

~~This term refers to the government funded body known as Improvement and Efficiency South East whose purposes include is to promotion and development of good practice in procurement within the south east of England.~~

~~S.151 Officer~~Section 151 Officer (or Deputy ~~S151~~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.

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~~[Executive Director](#) and ~~strategic~~[Directors](#), which is advised by ~~service heads~~[Heads of Service and other Officers](#) as appropriate.

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.

1 EUG PROCUREMENT DIRECTIVES

- 1.1 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 EUG Directives [and Regulations](#). The estimated value of the contract shall be assessed over the whole life of the contract.
- 1.2 The need to apply the EUG Directives [and Regulations](#) 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).
- 1.3 ~~Once it has been determined that the Directives will apply, t~~The relevant ~~head of service~~ [Head of Service](#) in conjunction with the ~~Legal Services Manager~~ [Borough Solicitor](#) shall ensure that adequate research into the EUG Directives is undertaken to [determine whether the Directives and Regulations apply and to](#) enable the contract to be tendered and let in full accordance with the requirements of the Directives [and Regulations](#).

2 EXCEPTIONS TO CONTRACT PROCEDURE RULES

- 2.1 Contract Procedure Rules shall not apply in the following circumstances (N.B. this CPR should be read in conjunction with 2.3):
 - a) ~~Where no extension provision currently exists in a contract,~~ [Extensions to the duration and/or value of an existing contract, where no extension provision currently exists in that contract,](#) provided that the extension is [within the terms and conditions ofon the same terms and conditions as](#) the original contract, to a maximum of 2 years unless otherwise required by EUG Directives or as stated in the notices placed in the Official Journal of the European Union, subject to
 - the provisions of CPR 2.3, [and](#)
 - where the sum of the proposed extension and any previous extension(s) is more than 2 years or 20% in value of the original contract value, 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 where it can be demonstrated that they can only be obtained from one contractor;](#)
 - ~~e)~~ [b\) _____](#)
 - ~~d)~~ [c\) _____](#) contracts for the acquisition of property, in which circumstances the Asset Management Team shall advise and seek the approval of the Executive as to the procedure to be followed;
 - ~~e)~~ [d\) _____](#) where, subject to an assessment of the associated risks undertaken in consultation with the ~~Legal Services Manager~~ [Borough Solicitor](#), 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;

~~f)~~e) where there is insufficient credible competition (the Head of Finance must sign off the competition assessment);

~~g)~~f) ~~variation~~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~~Head of Service ~~should~~shall sign the document(s).

2.2 Contract Procedure Rules shall not apply to contracts of employment and orders placed against a call-off or government framework contract.

2.3 The agreement of the ~~S.151 Officer~~Section 151 shall be sought prior to awarding a contract or extension to a contract as defined in and under the provisions of CPR 2.100.

2.4 In any other circumstances where the relevant ~~head of service~~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 CPR 2.1-~~0~~, a request to seek a single tender or quotation may be made to the ~~S.151 Officer~~Section 151 Officer. Such a request must be supported by the relevant strategic director. The ~~S.151 Officer~~Section 151 Officer shall ensure that:

- the request does not contravene the ~~e~~Council's statutory obligations;
- the request considers the requirements of CPR 9.8;
- 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 CPR 11.1 (as appropriate) and that the results do not indicate that a contract award presents undue risk to the Council; and
- ~~an~~An assessment of any associated risks has been undertaken.

The ~~S.151 Officer~~Section 151 Officer may, after consideration of the facts, specify that the request be treated as a request for a waiver in accordance with CPR 3.

2.5 Where a contract is awarded under 2.4, the provisions of 2.1- will not apply. Any extension or variation to the contract shall be submitted to the Executive for approval in accordance with CPR 3.~~—~~

3 WAIVERS OF AND VARIATIONS TO CONTRACT PROCEDURE RULES

3.1 In circumstances where there is a demonstrable and justifiable need to waive or vary 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 the need to utilise an alternative procurement route, the approval of the ~~S.151 Officer~~ [Section 151 Officer](#) shall be sought by the relevant ~~head of service~~ [Head of Service](#). If the estimated value of the contract in question falls within threshold 3, the ~~S.151 Officer~~ will need to consult with the Finance Portfolio Holder and relevant service Portfolio Holder, where appropriate, and the proposal will only continue if their agreement is given. If the estimated value is within threshold 4, the approval of the Executive must be given before it proceeds~~..~~.

3.2 All requests for a waiver shall be made by e-mail, detailing:

- a) the specific CPRs to be waived/varied
- b) the reasons why a waiver is sought
- c) the proposed course of action
- d) any risks associated with the proposed action

~~3.3~~ the e-mail will be printed and signed by the requesting officer once approval has been given. In any instance where the relevant ~~head of service~~ [Head of Service](#) is required to consult the ~~S.151 Officer~~ [Section 151 Officer](#), where the ~~S.151 Officer~~ [Section 151 Officer](#) is also the line manager of the relevant ~~head of service~~ [Head of Service](#), the ~~Chief Executive~~ [Executive Director](#) shall be consulted and their approval or advice sought.

~~3.4~~

~~3.5~~ ~~3.3~~ The approval of a waiver shall be evidenced by the ~~Deputy Chief Executive~~ [Director of Finance and Resources](#) or annotating the request with “approved” and signing the request in person. This approval document shall be retained by the relevant ~~head of service~~ [Head of Service](#) for a minimum of seven years or otherwise as in accordance with the Council’s policy on document retention.

4 JOINT COMMISSIONING, CONSORTIA, TERM TENDERS AND FRAMEWORK AGREEMENTS

4.1 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~~ [Section 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~~ [Section 151 Officer](#) shall ensure that the requirements of CPRs and/or the ~~ECEU~~ Directives have been satisfied. The approval of the ~~S.151 Officer~~ [Section 151](#)

Officer shall be sought to any alternative CPRs (or equivalent) that shall operate in respect of any joint commissions.

- 4.2 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 purchases warrants the resources necessary to tender such a contract.
- 4.3 Where an officer identifies a need for an additional such contract, it shall be discussed with the relevant ~~head of service~~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.
- 4.4 Regard shall be paid to EGEU Directives when preparing a term tender, and tendering procedures shall conform to those regulations.

5 FINANCIAL THRESHOLDS

- 5.1 Prior to commencement of a procurement exercise, an assessment of the
- the responsible purchasing requirements, and
 - estimated value of the contract

must be made by the relevant director, ~~head of service~~Head of Service or other nominated lead officer. For procurements in thresholds 3 and 4 an explanation of how the estimated value has been calculated must be provided. If external assistance is required to calculate the estimate, this must not be provided by potential contractors for that procurement.

- 5.2 The assessment of the responsible purchasing requirements shall be undertaken using the guidance provided in the 'Short Guide'. 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.
- 5.3 ~~The CPRs,~~ including the financial thresholds to which reference is made throughout these CPRs, will be reviewed bi-annually. ~~The financial thresholds for the aggregate value of the contract are currently as follows:~~

Threshold 1: up to and including -£10,000

Threshold 2: from ~~-~~£10,000 up to and including £25,000

Threshold 3: from ~~-~~ £25,000 up to and including £17200,000

Threshold 4: ~~from~~ over £17200,000*

*Threshold 4 value aligns broadly to the OJEU limit for supplies and services. This will be updated automatically if the OJEU limit changes

NEW EU PROCUREMENT THRESHOLDS ARE thresholds from (1st January JAN 2014 to -31 DECEMBER ebruary 20152 are:

);

- Supplies £17,23,514,934
- Services £17,23,514,934
- Works £4,32,248,012,350

5.4 Where the cheapest quotation or tender received is above the upper limit of the estimated -CPR financial threshold and/or any approved budget for the procurement of the goods, works or services, the approval of the ~~S.151 Officer~~[Section 151 Officer](#) shall be sought to accept the tender or quotation or for agreement of action to be taken. If ~~the S.151 Officer~~[Section 151 Officer](#) decides not to accept the tender or quotation, they shall indicate the course of action to be taken which may involve seeking Member approval.

6 ELECTRONIC TENDERING (E-TENDERING)

6.1 All quotations and tenders shall be sought using the Council's electronic tendering portal, the South East Shared Services e-Sourcing Portal, provided by 'In-Tend'.

6.7 NUMBERS OF QUOTATIONS OR TENDERS REQUIRED

Contracts within threshold 1 in value

~~6.17.1~~ Where the estimated contract value is within threshold 1, a minimum of two alternative quotations must be sought. However, subject to the written approval of the relevant ~~head of service~~[Head of Service](#) and to the requirements of CPR 7.2, one quotation may be sought. The ~~Head of Service~~[Head of Service](#) may choose to seek additional quotations if appropriate. In the case of recurring procurements for the same goods or services, if the officer wishes to request a quotation from the same contractor for more than two consecutive times then the approval of the ~~S151~~[Section 151 Officer](#) will be necessary.-

~~6.27.2~~ 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~~[Head of Service](#) and the ~~S.151 Officer~~[Section 151 Officer](#) and the relevant CPRs shall be applied.

Contracts within threshold 2 in value

~~6.37.3~~ Where the contract value is estimated to be within threshold 2 in value, a minimum of two alternative quotations -must be sought. The ~~Head of Service~~[Head of Service](#) may choose to seek additional quotations if appropriate. In the case of recurring procurements for the same goods or services, if the officer wishes to request a quotation from the same 2 contractors for more than two consecutive times then the approval of the ~~S151~~[Section 151 Officer](#) will be necessary.

~~6.4~~ Where a quotation is sought, competitive prices may be received by the relevant ~~head of service~~ Head of Service via the Council's e-tendering portal. The e-tendering portal records and maintains a record of these facts. ~~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.~~

~~7.4~~ 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 13.

~~6.57.5~~ 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~~ Head of Service and the ~~S.151 Officer~~ Section 151 Officer and the relevant CPRs shall be applied.

Contracts within threshold 3 in value

~~6.67.6~~ Where the contract value is estimated to be within threshold 3, a minimum of three alternative quotations shall be sought in writing via the Council's e-tendering portal. ~~through the postal system in accordance with CPR 12.1.~~ The ~~Head of Service~~ Head of Service may choose to seek additional quotations if appropriate. In the case of recurring procurements for the same goods or services, if the officer wishes to request a quotation from the same 3 contractors for more than two consecutive times then the approval of the ~~S151 Section officer~~ 151 Officer will be necessary. Where a tender is appropriate, CPR 7.5~~5~~ and CPR 1.1 shall apply.

Contracts within threshold 4 in value

~~6.77.7~~ Where the contract value is estimated to be within threshold 4, the OJEU procedure must be followed for all procurements of supplies or services. Where the procurement is for works and the value is estimated to be less than the OJEU limit for 'works', a minimum of four tenders shall be sought via the Council's e-tendering portal. ~~in writing through the postal system in accordance with CPR 12.2.~~

~~6.87.8~~ If the nature of a contract suggests that a quotation is more appropriate than tenders, on the grounds of the straightforward nature of the purchase or contract, then the relevant ~~head of service~~ Head of Service and the ~~S.151 Officer~~ Section 151 Officer shall be consulted and the agreement of both obtained in writing before a quotation may be sought.

6.9 — If a quotation route is agreed, 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.

6.107.9 _____ -

Emergency provisions

6.117.10 _____ Notwithstanding the waiver provisions contained within CPR 3, where professional services of consultants 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, the relevant ~~head of service~~ Head of Service shall obtain the agreement of the ~~S.151 Officer~~ Section 151 Officer to waive the requirement to obtain alternative tenders or quotations, and shall advise the relevant portfolio holder(s) of the actions and make a report to the next meeting of CMT. If no or insufficient budget provision exists to make the emergency procurement, subsequent approval must be sought in accordance with the Financial Regulations and the Constitution. Any extension to a contract so awarded shall be subject to the provisions of CPR 2.3. This provision does not apply to procurements with a value within threshold 4.

78 METHOD OF ADVERTISING CONTRACTS OTHER THAN WHERE SELECT LISTS ARE USED

7.18.1 _____ Where appropriate, advertisements for all forthcoming contracts subject to a tender, excluding contracts to be let using a select list but including applications for admission to a select list as defined in CPR 10.1, and all contracts for which quotations/tenders are to be obtained that are within threshold -4, shall be placed on the Council's e-tendering portal ~~website~~. Contracts subject to a tender that are over threshold 4 in value can also be advertised using the Council's e-tendering portal ~~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.

7.28.2 _____ 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. —

89 METHODS OF TENDERING OTHER THAN SELECT LISTS

Open tendering

8.19.1 _____ Once the closing date for receipt of expressions of interest has been reached, tender documents shall be dispatched electronically via the council ~~Council's e-tendering portal~~ to all suppliers 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 11. 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

~~8.29.2~~ Once the closing date for receipt of expressions of interest has been reached, a pre-qualification **questionnaire (PQQ)** shall be sent **electronically via the Council's e-tendering portal** to all **suppliers who**~~contractors that~~ have expressed an interest **in tendering**. 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 11. 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.

~~8.39.3~~ 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 **a** sufficient number of contractors as required by CPR 5 that have been assessed as meeting the minimum technical and financial requirements in respect of a contract of the relevant estimated value.

~~8.49.4~~ If fewer than the required minimum number of contractors either meet the minimum qualification requirements or express an interest, the relevant 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.

Lists prepared by third parties

~~8.59.5~~ Lists of contractors prepared by third parties (other than consultants acting on ~~Waverley's the Council'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.

~~8.69.6~~ The criteria should be set as if the Council were undertaking the assessment in accordance with CPR 11, 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 5 in respect of a contract of the relevant estimated value, whose names are contained in the list.

~~8.79.7~~ Contractors suggested by consultants or other contractors working on ~~Waverley's the Council's~~ behalf shall be subjected to the same checks and assessments as required under CPR 11.1. The relevant ~~head of service~~ **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 5.

Limit on the number and value of contracts awarded to contractors

~~8.89.8~~ Throughout the process of seeking expressions of interest and assessing contractors, the relevant ~~head of service~~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 contractor may be awarded a contract if this would mean that 35% or more of the contractor's overall business would be generated from the Council's contracts, unless the approval of Corporate Management Team has been obtained. The ~~head of service~~Head of Service will need to produce a risk assessment to support the case to be considered by CMT.

910 SELECT LISTS

~~9.410.1~~ The relevant ~~head of service~~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.

~~9.210.2~~ A standing list shall be renewed at least every three years. The relevant ~~head of service~~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 11 and readmitted (or not) or replaced.

~~9.310.3~~ Expressions of interest may be sought via the Council's e-tendering portal~~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 11. 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.

~~9.410.4~~ The relevant ~~head of service~~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 electronically via the Council's e-tendering portal~~, stored~~ and opened in accordance with CPRs 13 and 14. If fewer than the number of contractors as required by CPR 5 are considered to be capable of performing the contract, the approval of the ~~Internal Audit Manager~~Head of Finance 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.

4011 ASSESSMENT OF CONTRACTORS

~~40.411.1~~ 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 5.3. Before inviting tenders or quotations for contracts

estimated to be 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 8, an assessment ~~should~~ shall be made of a contractor's

- a) financial stability and resources
- b) insurances
- 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~~ Head of Service as being relevant to the contract. Items (a), (b) and (d) shall be undertaken in conjunction with the ~~S.151 Officer~~ Section 151 Officer. For procurements falling in threshold 4, an assessment of responsible purchasing policies shall be undertaken by the relevant ~~H~~ head of S ~~service~~ using the guidance included in the 'Short Guide'.

~~10.2~~ 11.2 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. Contractors who are ~~sole traders~~ individual people can be awarded an individual contract with a value within threshold 1 or 2. If the value falls within threshold 3 or 4 the ~~Head of Service~~ Head of Service will need to approve the award to the individual person having regard to any associated risks.

~~10.3~~ 11.3 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.

~~10.4~~ 11.4 If it is thought that the nature of the contract renders such an assessment unnecessary, the agreement of both the relevant ~~head~~ Head of ~~s~~ Service and the ~~S.151 Officer~~ Section 151 Officer shall be sought prior to the dispatch of invitations to tender.

~~11.12~~ DISPATCH OF INVITATIONS TO TENDER

~~11.12.1~~ 12.1 Invitations to tender or submit a quotation shall be issued electronically via the Council's e-tendering portal. include details of the: The e-tendering portal has templates with mandatory fields for essential information and optional fields for supplementary information.

- ~~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, paragraph (d) may be ignored if the either of the options to receive quotations by fax or e-mail as provided in CPR 6.4 is to be used.~~

~~11.212.2~~ 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 Borough Solicitor Legal Services Manager Head of Finance Borough Solicitor shall be sought in the preparation of tender and contract documentation.**

~~11.312.3~~ Where the best value option is to be identified after a full appraisal using assessment criteria, the invitation shall specify the headline assessment criteria and associated weightings that will be used in evaluating tenders or quotations received (CPR 15 refers).

~~11.412.4~~ If there are to be post-tender negotiations, the invitation to tender shall advise the contractor of the process that will be followed (CPR 15.7 - 15.10 refer).

~~1213~~ **RECEIPT AND CUSTODY OF TENDERS AND QUOTATIONS SOUGHT IN WRITING OR E-MAIL**

~~13.1~~ All tenders shall be returned via the Council's e-tendering portal.

~~12.1~~ Quotations sought via the Council's e-tendering portal in writing through the postal system in respect of contracts in threshold 1 and 2 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. Quotations requested by e-mail must be sent to a generic procurement Waverley e-mail or web-portal address which will be controlled by the performance and procurement officer. At the submission deadline, the team will forward all e-mailed quotations to the relevant service officer for evaluation.

~~12.2~~ All tenders shall be returned via the Council's e-tendering portal. The Head of Policy & Governance shall be nominated as 'Opening Ceremony User' on the portal and shall open.. to the Head of Legal and Democratic Services, who shall arrange for their secure keeping until the agreed date and time for their opening and recording.

~~1314~~ **OPENING OF QUOTATIONS AND TENDERS**

~~13.114.1~~ The e-tendering portal provides two main options for opening quotations and tenders: 'informal' and 'formal'. The Head of Policy & Governance or representative shall be nominated as 'Opening Ceremony User' on the portal and shall supervise the opening of tenders. The relevant head of service shall nominate two representatives to open quotations sought in writing for a contract estimated to be below threshold 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 14.413.4.

~~13.214.2~~ The informal opening procedure allows quotations to be opened at separate times by each of the 'opening ceremony users', but not to be viewed

~~by the 'project users' (evaluation panel members) until all 'opening ceremony users' have opened them. All quotations sought in writing through the postal system and tenders for contracts estimated to be within 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 14.413.4. 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 Section 151 Officer considers that there are exceptional circumstances that warrant including it and this will only be done up to the time when the other tenders are opened.~~

~~13.3~~14.3 ~~The formal opening procedure requires all 'opening ceremony users' to be present when opening tenders online. All quotations sought in writing through the postal system and tenders for contracts estimated to be within threshold 4 in value shall be opened together at one time in the presence of the relevant Director, the Head of Policy & Governance Head of Democratic Services and the S.151 Officer Section 151 Officer or their nominated representative(s). The Head of Democratic Services shall arrange for a record to be maintained in accordance with CPR 14.413.4.~~

~~13.4 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).~~

~~13.5 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.~~

~~13.6 All persons present shall sign and date the register, including any that attended in order to observe the proceedings.~~

~~13.7 A copy of the relevant register folios shall be forwarded to the relevant portfolio holder in respect of contracts in threshold 4.~~

~~13.8~~14.4 ~~In all instances, regardless of the estimated value of the contract, the Chief Executive Executive Director and S.151 Officer Section 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 15.~~

14.15 EVALUATION OF QUOTATIONS AND TENDERS

14.15.1 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 will not apply in cases where the relevant 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. Whichever method is adopted, the ~~head of service~~Head of Service must be able to demonstrate that value for money has been properly assessed. An assessment of the most cost-effective product or service 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 15.2 to 15.6 provided this assessment is approved in advance by:

- a) the relevant ~~head of service~~Head of Service where the contract is estimated to be up to and including threshold 2 in value; or
- b) the ~~S.151 Officer~~Section 151 Officer where the contract is estimated to be within threshold 3 in value; or
- c) the Corporate Management Team where the contract value is estimated to be within threshold 4 in value.

Best value solution

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

- the assessment criteria
- the scoring system and the weightings to be applied to each criteria
- the minimum scores to be achieved (as appropriate)
- the evaluation matrix as defined in the definitions/glossary of terms above.

Approval of evaluation teams and assessment criteria

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

- a) where the contract is estimated to be within threshold 4 in value, to the Council's Corporate Management Team; or
- b) where the contract is estimated to be within threshold- 3 in value, to the relevant director, or
- c) where the contract is estimated to be up to and including threshold -2 in value, to the relevant ~~head of service~~Head of Service.

14.415.4 The relevant ~~head of service~~Head of Service shall nominate the membership of the evaluation panel and seek the approval of the panel's membership from the relevant director, ~~S.151 Officer~~Section 151 Officer or Corporate Management Team when as appropriate with reference to CPR

15.3. Membership of a panel shall consist of no less than two officers plus any other persons who are not members of the Council's staff.

44.515.5 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 officers as determined by CPR 15.3. The documents shall be kept securely by the relevant director until the assessment of the tenders or quotations commences.

44.615.6 The lowest-priced tender or quotation that meets the assessment criteria as defined in accordance with CPR 15.3 shall be accepted subject to approval of the person or persons as determined by CPR 15.4. 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 15.3 has set a framework whereby the lowest-priced may be rejected in favour of another that would give a greater benefit to the Council. Minimum and/or maximum quality thresholds may be considered to be appropriate and, when this is included in the evaluation pre-determined methodology, contractors whose quality score falls outside of the agreed levels can be eliminated regardless of price.

Post-tender/quotation (pre contract) negotiations

44.715.7 In circumstances where the relevant ~~head of service~~ Head of Service is of the view that post-tender/quotation negotiations 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~~ Section 151 Officer, Monitoring Officer and the ~~Head of Democratic and Legal Services Manager~~ Borough Solicitor ~~Borough Solicitor~~ must all approve use of post-tender negotiations before the contract is tendered.

44.815.8 In instances where the ~~ECEU~~ EU Directives apply, post-tender negotiations must conform to the requirements of those Directives.

44.915.9 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~~ Section 151 Officer, Monitoring Officer and the ~~Legal Services Manager~~ Borough Solicitor 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.

44.1015.10 A person to whom the appropriate level of delegated authority has been delegated in writing by the relevant ~~d~~ 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

~~44.11~~15.11 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~~[Section 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.

~~44.12~~15.12 In the event that during the assessment of tenders or quotations the relevant director identifies a need to hold post-tender/quotation discussions, the ~~S.151 Officer~~[Section 151 Officer](#) shall be consulted and the approach agreed before any negotiations are held. Negotiations shall conform ~~with~~to the requirements of CPR 15.7 - 15.10.

~~44.13~~15.13 Where a contractor appears to have misunderstood part of the specification or other requirements, the relevant director shall discuss and agree the course of action with the ~~S.151 Officer~~[Section 151 Officer](#).

~~44.14~~15.14 Where a contractor has introduced qualifications to the tender/quotation, the course of action shall be agreed with the ~~S.151 Officer~~[Section 151 Officer](#).

~~44.15~~15.15 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

~~44.16~~15.16 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 15.3. 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 15.11 to 15.15.

~~44.17~~15.17 No amendment shall be made to the assessment matrix unless approval is obtained in accordance with CPR 15.3 beforehand.

~~44.18~~15.18 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.

~~44.19~~15.19 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 15.6.

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

~~44.20~~15.20 The relevant ~~head of service~~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 15.3 shall include relevant criteria applicable to the assessment. *[Note: this need only apply if the assessment has not taken place at the short-listing stage – see CPR 11.]*

~~44.24~~15.21 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
- f) environmental credentials
- g) locality and impact on the local economy

and shall include any other matter that the relevant ~~head of service~~Head of Service considers appropriate. Should the relevant ~~head of service~~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.

1516 ACCEPTANCE OF TENDERS AND QUOTATIONS

~~45.1~~16.1 The selected contractor shall be notified in writing or by e-mail if appropriate 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.

~~45.2~~16.2 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 15.7 to 15.10.

~~45.3~~16.3 The relevant director shall seek the ~~S.151 Officer~~Section 151 Officer'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~~Head of Service shall request the Head of ~~Internal Audit~~Finance to undertake the financial reassessments at the agreed times.

1617 FORM OF CONTRACT

~~46.1~~17.1 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 Head ~~of Democratic and Legal~~

~~Services~~Finance should be sought, or the Council's Authorised Signatory List should be checked to confirm whether an officer has been authorised by their ~~head of service~~Head of Service in person to authorise an order.

16.217.2 Contracts valued at up to threshold -3 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 Borough Solicitor~~Democratic and Legal Services and signed by the relevant ~~d~~Director or ~~head of service~~Head of Service, as specified within the Council's Scheme of Delegation. ▸

16.317.3 All contracts within threshold 4 in value shall be the subject of a formal contract under seal prepared by the ~~Borough Solicitor~~Head of Democratic and Legal Services and signed by the ~~Borough Solicitor~~Head of Democratic and Legal Services. Contracts below threshold -4 may be under seal if the ~~Borough Solicitor~~Head of Democratic and Legal Services advises that it is appropriate.

16.417.4 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 19 refers).

16.517.5 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~~Executive Director (subject to their not being the relevant director and the provisions of CPR 3) who may require adequate other safeguards are provided pending signing and/or sealing of the contract.

1718 CONDITIONS RELATING TO SUB-CONTRACTING

17.118.1 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~~Head of Service shall consult the Head of ~~Finance~~Internal Audit before determining what level of assessment shall be undertaken.

17.218.2 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.

17.318.3 The same tendering or quotation requirements shall be applied to selected nominated sub-contractors as contained in CPR 5, subject to any requirements of the ~~ECEU~~Directives, and the tendering methods as set out in CPR 8 shall apply. If the relevant ~~head of service~~Head of Service determines

that it is not feasible or practical to obtain tenders or quotations, the ~~S.151 Officer~~Section 151 Officer shall be asked to approve the waiver of the requirement to invite tenders or quotations and approve the contractor to be appointed.

~~17.4~~18.4 Assessment of nominated sub-contractors shall be undertaken in full accordance with CPR 11.1.

~~18~~19 SECURITY TO BE PROVIDED BY THE CONTRACTOR IN RESPECT OF THE CONTRACT AND EXTENSIONS TO THE PERIOD OF THE CONTRACT

~~18.4~~19.1 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 4 in value unless, after a comprehensive analysis of the risks and their financial impact is submitted, the ~~S.151 Officer~~Section 151 Officer approves an alternative measure. Where a bond is to be sought, this shall only be in a form and from a bondsman approved by the ~~Legal Services Manager~~Borough Solicitor.

~~18.2~~19.2 For contracts in thresholds 3 and 4 in value, the relevant ~~head of service~~Head of Service shall discuss with the ~~S.151 Officer~~Section 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~~Section 151 Officer, it is determined that the circumstances and nature of the contract warrant it. For contracts ~~within~~ thresholds 1 and 2 in value, security will not be sought unless the relevant ~~head of service~~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~~Section 151 Officer.

~~18.3~~19.3 Where an alternative to a performance bond is requested, a comprehensive analysis of the risks and the financial impact shall be undertaken and submitted by the relevant ~~head of service~~Head of Service to the ~~S.151 Officer~~Section 151 Officer. The value and type of financial security will be determined on a case by case basis but, as a guide, 10% of the contract value would be considered to be an appropriate safeguard.

~~18.4~~ In any case where the form of security proposed is other than a performance bond, the ~~S.151 Officer~~Section 151 Officer shall approve the form prior to acceptance of the proposal.

~~18.5~~19.4

~~18.6~~19.5 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 ~~Legal Services Manager~~Borough Solicitor 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.

~~18.7~~19.6 ~~A retention~~Retention shall be deducted unless the relevant ~~head of service~~Head of Service agrees otherwise with the ~~S.151 Officer~~Section 151

Officer in respect of all contracts falling into the threshold 4. Retentions may be deducted from payments and recorded in contract records in respect of other contracts if the relevant ~~head of service~~Head of Service determines this to be necessary.

1920 MANAGEMENT OF CONTRACTS

~~19.1~~20.1 The relevant ~~head of service~~Head of Service shall nominate, in agreement with other ~~h~~Heads of ~~s~~Service in respect of a corporate contract, an officer to lead a procurement exercise which will result in the letting of a contract.

~~19.2~~20.2 This lead officer shall ensure that the appropriate skills, experience and knowledge are brought to play in the procurement exercise. ~~He~~The lead officer shall involve other officers of the Council as necessary, and if supplementary advice and resources are required he shall arrange for the procurement thereof.

~~19.3~~20.3 The relevant ~~head of service~~Head of Service shall also ensure that the management responsibilities and arrangements are identified and agreed prior to the contract being awarded to manage the resultant contract. These must include details of how variations will be managed, how performance will be measured and monitored, how valuations of work will be determined and when milestones will be reached. For contracts in threshold 3 to 4 this must be signed off by the director. The contract must be signed by both parties prior to the contract start or delivery date.

~~19.4~~20.4 Guidance on the management of procurement projects and contract management shall be obtained by reference to the Council's Procurement Manual.

20.5 Where the contract is a partnership contract, the lead officer shall ensure that the relevant ~~head of service~~Head of Service is advised of any proposed amendments to the terms and conditions. The relevant ~~head of service~~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.

~~19.5~~20.6 In the event that a contract is to be terminated for what ever reason, advice of the Borough Solicitor should be sought in the first instance.

2021 STANDARD CONTRACT CLAUSES ADDRESSING RELEVANT LEGISLATION

~~20.1~~21.1 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 the Bribery Act 2010 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.

~~20.2~~21.2 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.

~~20.3~~21.3 Appropriate clauses shall be included in written contracts to ensure the contractor complies with [Waverley's the Council's](#) policies, statements and practices as defined in accordance with CPR 15.21 throughout the period of the contract.

~~20.4~~21.4 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.

~~21.22~~ SPECIAL PROVISIONS

Contracts involving the transfer of staff and/or ~~council~~Council-owned assets

~~21.1~~22.1 If a contract involves the transfer of staff or other Council-owned assets or resources to the contractor, the ~~Head of Organisational Development~~[Borough Solicitor \(and Strategic HR Manager if staff are involved\)](#) -shall be consulted at the earliest opportunity and 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.

~~21.2~~22.2 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.

Contracts involving stage payments

~~21.3~~22.3 Where any contract will involve stage payments, the relevant ~~head of service~~[Head of Service](#) shall ensure that the contract documentation is prepared with the agreement of the ~~Legal Services Manager~~[Borough Solicitor](#).

~~21.4~~22.4 The relevant ~~head of service~~[Head of Service](#) shall ensure that the requirements of the deputy ~~S.151 Officer~~[Section 151 Officer](#) regarding the maintenance of a contracts register are fulfilled.

~~21.5~~22.5 A final account in respect of all contracts in threshold 4 shall be prepared and presented for examination by the ~~Head of Finance~~[Audit Manager](#) before final payment is made.

Register of contracts

~~21.6~~22.6 The relevant ~~head of service~~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~~Borough Solicitor. The ~~Borough Solicitor~~Head of Democratic and Legal Services shall make appropriate arrangements to ensure that contracts are duly notified on a timely basis.

Compliance of contractors with contract procedure rules

~~21.7~~22.7 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~~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.

2223 NOVATION OF CONTRACTS

~~22.1~~23.1 When a request is received from a contractor to novate or otherwise re-assign their contract, the relevant ~~head of service~~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~~Head of Service shall make such enquiries as set out in CPR 11.1 to assess the suitability and standing of the proposed new contractor. The agreement of the ~~S.151 Officer~~Section 151 Officer to the novation shall be sought. The ~~Legal Services Manager~~Borough Solicitor shall be requested to undertake the necessary legal processes to effect the novation.

2324 DISPOSAL OF COUNCIL PROPERTY

Land and buildings

~~23.1~~24.1 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~~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.

~~23.2~~24.2 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.

~~23.3~~24.3 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 ~~S.151 Officer~~Section 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 (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

~~23.4~~24.4 Proposed disposals of other Council-owned assets, including surplus or obsolete furniture or equipment, shall be discussed with the relevant ~~head of service~~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.

~~23.5~~24.5 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~~Head of Service and the ~~S.151 Officer~~Section 151 Officer or Deputy ~~S.151 Officer~~Section 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~~Section 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~~Section 151 Officer ~~or~~.

~~23.6~~24.6 If deemed appropriate by the relevant ~~service head~~Head of Service and the ~~S.151 Officer~~Section 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~~Head of Service and the ~~S.151 Officer~~Section 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.

~~23.7~~24.7 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 5.3.

~~23.8~~24.8 All sealed bids shall be treated as being tenders and their receipt, opening and acceptance shall be in accordance with CPRs 13, 14, 15 and 16.

~~23.9~~24.9 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.

~~23.10~~24.10 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 ~~S.151 Officer~~[Section 151 Officer](#) and shall be undertaken in accordance with the provisions of the Council's Financial Regulations.