

## **Pendle Borough Council**



# **Contract Procedure Rules**

**September 2023**

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## **CONTRACT PROCEDURE RULES**

### **INTERPRETATION**

1. These Contract Procedure Rules are standing orders of the Council (made pursuant to Section 135 of the Local Government Act 1972) with respect to the making of Contracts.
2. In these Rules, each of the expressions in the left-hand column below shall have the meaning stated against that expression in the right-hand column.

CPR	Contract Procedure Rule.
Chief Officer	is the Chief Executive, Director of Resources or Director of Place.
Contract	is any agreement between the Council and one or more Providers for the supply of goods or materials to the Council, for the execution of works for or on behalf of the Council, or for the provision of services to the Council or to others on its behalf (including but not limited to the provision of services, wholly or partly, in return for a concession).
Contractor	is any provider supplying or offering to supply goods, works, or services (including concessions) to the Council and includes any individual, firm, agent, company, partnership, public authority or other organisation.
Executive	means Pendle Borough Council's Executive.
EU Contract	is a Contract covered by the Public Works / Supplies / Services / Utilities Contract Regulations.
Corporate Leadership Team	includes the Chief Officers and the Head of Legal & Democratic Services
Corporate Management Team	includes the members of Corporate Leadership Team and the following; <ul style="list-style-type: none"><li>- Head of Legal and Democratic Services</li><li>- Head of Policy and Commissioning</li><li>- Head of Finance</li><li>- Assistant Director of Operational Services</li><li>- Assistant Director of Planning, Building Control and Regulatory Services</li><li>- Head of Environmental Housing and Health</li><li>- Head of Economic Growth</li></ul>

Manager(s)	All members of Corporate Management Team.
Monitoring Officer	is the officer designated as such under s5 of the Local Government and Housing Act 1989 (currently the Head of Legal and Democratic Services).
Responsible Officer	any permanent or temporary staff member who is properly authorised to carry out any of the Council's contracts functions.
Section 151 Officer	is the officer with responsibility for the proper administration of the financial affairs of the Council in accordance with Section 151 of the Local Government Act 1972 (currently the Director of Resources ) or the Deputy S151 Officer (the Head of Finance).
System Accountant	is the lead procurement officer for the Council

3. References to monetary values in these Contract Procedure Rules **exclude VAT**.
4. References to Contract Value are defined as either;
  - a) where the contract is for a fixed period, by taking the total estimated price to be paid during the whole of the fixed period (but inclusive of any possible period of extension);
  - b) where the contract is for an uncertain or undetermined duration, by multiplying the monthly payment by 48 (or the annual payment multiplied by 4);
  - c) for nominated suppliers and sub contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub contractor.
5. Where reference is made in these Contract Procedure Rules to the Director of Resources, in the absence of that officer the Head of Finance is the authorised substitute. In the absence of the Head of Legal & Democratic Services, the Legal Services Manager will be the authorised substitute.

## **SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES**

### **CPR1 BASIC PRINCIPLES**

- 1.1 All purchasing and disposal procedures must;
  - a) achieve value for money for public money spent;
  - b) be consistent with the highest standards of integrity;
  - c) ensure fairness and equity in allocating public contracts;
  - d) comply with all legal requirements;
  - e) ensure that non commercial considerations do not influence any contracting decision;
  - f) support the Council's corporate and service aims and policies;
  - g) comply with the Council's Procurement Policy and Strategy.
- 1.2 No Officer shall seek to enter into a contract, or purport to enter into a contract, for the supply of works, goods or services unless there is adequate provision in the Council's Revenue Budget and/or Capital Programme.
- 1.3 Under no circumstances should Contracts be broken down in size so as to have the effect of lowering the Contract value or to avoid the requirements for tendering or the need for written quotations.

### **CPR2 SCOPE AND APPLICATION**

- 2.1 These Procedure Rules shall apply to any Contract, with the exceptions listed in CPR 2.2, and also to the nomination of sub-contracts under any such Contract (whether in each case the Council is contracting or nominating on its own behalf or wholly or partly on behalf of others).
- 2.2 These Procedure Rules DO NOT apply to transactions of the following types;
  - a) Purchases or sales by auction or at public fairs or markets;
  - b) Contracts for the engagement of Counsel, or for the engagement of external Solicitors to represent the Council in specified legal proceedings;
  - c) Orders placed under a corporate contract;
  - d) Contracts with statutory undertaking(s) for work which only they can carry out;
  - e) Contracts of employment ;
  - f) Contracts formalising the funding of particular voluntary sector bodies where the purpose of the contract is to establish the general conditions whereby the body may be funded by the Council.

### **CPR3 RESPONSIBLE OFFICERS' DUTIES**

- 3.1 All employees of the Council and firms/advisors employed to act in any capacity to manage or supervise a Contract must comply with these Procedure Rules, the Council's Financial Procedure Rules, the Code of Conduct and with all binding UK legal requirements. Responsible Officers must ensure that any agent, Consultants and contractual partners acting on their behalf also comply.
- 3.2 Responsible Officers shall always;

- a) seek value for money;
- b) show no favour or disfavour to any Provider nor discriminate against Providers;
- c) conduct tendering and price testing in accordance with proper practices and the highest standards of propriety;
- d) do nothing that contravenes domestic law;
- e) ensure that adequate Contract records are kept for all Contracts upon which they are engaged.
- f) have regard to any purchasing guidance that may be available;
- g) check whether a corporate contract exists before seeking to let another contract; where a suitable corporate contract exists, this must be used unless there is an auditable reason not to do so;
- h) take all necessary legal, financial and professional advice.

3.3 When any employee either of the Council or of a Service Provider may be affected by transfer arrangements, Responsible Officers must ensure the Transfer of Undertaking (Protection of Employment)(TUPE) issues are considered and obtain legal advice before proceeding with inviting tenders or quotations.

#### **CPR4 COMPLIANCE WITH CONTRACT PROCEDURE RULES AND LEGISLATION**

- 4.1 Every Contract made by the Council or on its behalf shall comply with the all relevant domestic legislation, these Contract Procedure Rules and Codes of Practice and the Council's Financial Procedure Rules subject to the following provision. Guidance on best practice for procurement for public sector organisations, together with supporting documentation can be found on the Government website; <https://www.gov.uk/government/collections/procurement-policy-notes>
- 4.2 Arrangements made to meet the requirements of any present or future domestic legislation shall take precedence over any provision of these Contract Procedure Rules.

#### **CPR5 EXEMPTIONS FROM CONTRACT PROCEDURE RULES**

- 5.1 Exemptions from the requirements of these Contract Procedure Rules are to be the exception and not the rule. They must not be granted as a matter of administrative convenience and must be supported by documented and evidenced reasons as to the legitimate need for the exemption to be granted.
- 5.2 When an exemption is sought from tendering or the requirement to obtain written quotations, the relevant Manager will need to justify the use of an alternative method of selection so that propriety, value for money and compliance with domestic legislation can be demonstrated. It will also include reasons such as, but not limited to, the following:
- a) that only one Provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive or proprietary rights.
  - b) that time limits required for tendering cannot be met for reasons of extreme urgency and which were unforeseen and unattributable to the Council.
  - c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which are either strictly necessary for the completion of the Contract or, for technical or economic

reasons, cannot be carried out separately without great inconvenience/additional costs.

- d) that goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
- e) That despite seeking the relevant number of quotations, insufficient quotations have been obtained.

5.3 The Manager must complete a Request for an Exemption to Contract Procedure Rules and seek the prior agreement of the Director of Resources. See Appendix A.

5.4 The Director of Resources must then report to the next possible meeting of the Accounts & Audit Committee details of such exemptions.

5.5 Any Exemptions over £100,000 must be agreed by The Executive prior to agreement.

5.6 Exemption (on grounds other than 5.2 (a) to e)) from any of the following provisions of these Procedure Rules may be made only by the direction of the Executive where it is satisfied that the exemption is justified in special circumstances.

- (a) No exemption may be granted which would result in a breach of UK law;
- (b) from CPR 27 (Acceptance of Tenders); unless on grounds of extreme urgency (e.g. during civil emergency) from CPR 29 (Form of Contract); or from CPR 30 (Execution of Contracts).

## **CPR6 JOINT, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS**

6.1 In order to secure value for money, the Council may enter into joint or collaborative procurement arrangements. Prior to any purchases or contracts being made, Responsible Officers should seek advice from the System Accountant on these matters and must consult the Director of Resources where the purchase is to be made using a joint or collaborative procurement arrangement with another local authority, government department, statutory undertaker or public service consortium.

6.2 Collaborative and Partnership Agreements are subject to all UK procurement legislation and must, therefore, follow these Contract Procedure Rules. If in doubt, Responsible Officers must seek advice from the Director of Resources and/or the System Accountant before embarking on a procurement process.

6.3 All purchases made via a bona-fide local authority purchasing and distribution consortium are deemed to comply with these Contract Procedure Rules and no exemption is required. However, purchases above the relevant threshold must be let under the relevant procedure, unless the consortium has satisfied this requirement already by letting their contract in accordance with the procedures on behalf of the Council and other consortium members. The Responsible Officer must be satisfied that the relevant procedures have been applied.

6.4 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the Contract Procedures Rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules and no exemption is required.



- 6.5 The use of e-Procurement technology does not negate the requirement to comply with all elements of these Contract Procedure Rules particularly those relating to competition and value for money unless specific exemptions apply.

## **SECTION 2: COMMON REQUIREMENTS**

### **CPR7 STEPS PRIOR TO PURCHASE**

7.1 Responsible Officers must appraise the purchase, in a manner commensurate with its complexity and value, and taking into account any guidance available from the Accountancy Section, by;

- a) taking into account the requirements of any relevant service/efficiency review;
- b) appraising the need for the expenditure and its priority;
- c) defining the objectives of the purchase;
- d) assessing the risks associated with the purchase and how to manage them;
- e) considering what procurement method is most likely to achieve the purchasing objectives, including;
  - internal and external sourcing;
  - partnering;
  - packaging strategy;
  - collaborative arrangements.
- f) consulting users as appropriate about the proposed procurement method, contract standards and performance user satisfaction monitoring;
- g) drafting the terms and conditions that are to apply to the contract;
- h) having regard to the requirements of the Public Services (Social Value) Act 2012. The Act places a requirement on commissioners to consider the economic, environmental and social benefits of their approaches to procurement before the process starts including whether to consult on these issues.

7.2 There should also be confirmation that;

- a) there is Councillor delegated approval for the expenditure and the purchase accords with the approved policy framework and Scheme of Delegation as set out in the Council's Constitution;
- b) if the purchase is considered to be a Key Decision, all appropriate steps have been taken.

### **CPR8 INTERESTS OF OFFICERS IN CONTRACT MATTERS**

8.1 Managers, Responsible Officers and any other person (whether or not in the employment of the Council) assisting any of them in connection with any part of the procurement process shall comply with all requirements applicable from time to time of the law and of the Council's Code of Conduct for Employees as regards:

- a) the declaration of interests (either generally or in relation to a particular procurement matter), and;
- b) refraining from participation in some or all stages of particular procurement matters.

NB: At the time of adoption of these Rules, the Current provisions are:

- Section 117(1) of the Local Government Act 1972;
- The Council's Code of Conduct for Employees, (issued February 2012).

## **CPR9 PREVENTION OF CORRUPTION**

- 9.1 The Responsible Officer must comply with the Employee Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Responsible Officer to demonstrate that anything received was not received corruptly. High standards of conduct are obligatory.
- 9.2 For the avoidance of doubt, all Gifts and Hospitality shall be recorded in the Council's Gift & Hospitality Register.
- 9.3 The Council also maintains an Anti-Fraud, Bribery and Corruption policy which sets out the Council's policy for dealing with these issues. Every organisation, whether large or small, is at risk from fraud and councils are no exception to this. All councils have a duty to protect the public purse and a major part of this is by limiting exposure to fraud and corruption and reducing risk through effective prevention and detection.

## **CPR10 RECORDS**

Financial records shall normally be retained for a period of 6 years plus the current financial year. Some external funding may require longer periods of retention.

- 10.1 Where the value of the contract is less than £50,000, the following records must be retained by the Responsible Officer;
- a) invitations to quote and quotations
  - b) a record of;
    - o any exemption and the reason for them;
    - o the reason if the lowest price is not accepted.
  - c) records of communications with the successful contractor
- 10.2 Where the value of the contract exceeds £50,000, the Responsible Officer must record;
- a) the method of obtaining the tenders (see Rule 20);
  - b) any contracting decisions and the reasons for it;
  - c) any exemption under Rule 5 together with the reasons for it;
  - d) the award criteria in descending order of importance;
  - e) tender documents sent to and received from candidates (where these are not returned to/retained by Democratic and Legal Services);
  - f) pre-tender market research;
  - g) clarification and post tender negotiation(s) (to include minutes of meetings where applicable);
  - h) the contract documents;
  - i) post contract evaluation and monitoring;
  - j) communications with all candidates and with the successful contractor throughout the period of the contract.

## **CPR11 ADVERTISING**

- 11.1 Responsible Officers shall ensure that, where proposed contracts, irrespective of their value, might be of interest to potential candidates, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders the wider the coverage of the advertisement should be. Examples of where such advertisements might be placed include;
- a) The CHEST
  - b) the Council's website;

- c) portal websites specifically created for contract advertisements including Contracts Finder <https://www.gov.uk/contracts-finder>
- d) national official journals; or

11.2 Responsible Officers are responsible for ensuring that all potential candidates for a contract are suitably assessed. For contracts below the threshold for goods and services, this assessment process can be determined by the Responsible Officer but must, at least, ensure that candidates have sound;

- a) economic and financial standing, and;
- b) technical and professional ability.

11.3 For contracts / procurements above the threshold for goods and services, subject to Rule 5 on Exemptions, the Responsible Officer must have regard to guidance issued by the Cabinet Office in relation to the qualitative selection of economic operators. The exception to this Rule is where potential candidates are identified from an Approved List where these selection requirements have already been addressed.

11.4 In practical terms, this means that pre-qualification questionnaires (PQQs) used as part of a pre-qualification stage are not permitted (for below threshold contracts). However, contracting authorities may ask questions relating to a potential supplier provided that the questions are relevant to the subject matter of the procurement and proportionate. For contracts with a value above the threshold a specimen copy of the standard PQQ issued by the Crown Commercial Service is available on line or via the System Accountant.

## **CPR12 DYNAMIC PURCHASING SYSTEMS**

12.1 Dynamic Purchasing Systems should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. Approved Lists cannot be used where the procedure applies.

12.2 In consultation with the System Accountant, Responsible Officers may draw up;

- a) Approved Lists of contractors ready to perform contracts to supply goods and services of particular types on the basis of agreed contract terms; and
- b) Criteria for shortlisting from the Lists.

12.3 No contractor may be entered on an Approved List until they have been satisfactorily assessed by the Responsible Officer, having regard to the questions that may be asked of the supplier/provider per guidance issued by the Cabinet Office per 11.3 above.

12.4 Approved Lists may be drawn up after an advertisement inviting applications for inclusion on the List. The advertisement must be placed to secure the widest publicity among relevant suppliers throughout all member states of the European Union. Contractors may be entered on a List between the initial advertisement and re-advertisement provided the requirements of Rule 12.3 are met.

12.5 The List and Shortlisting criteria must be reviewed at least annually by the Responsible Officer and re-advertised every three years. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to re-apply. Review means;

- a) completing a new assessment based on questions that are relevant to the subject matter of the procurement and proportionate;
- b) the deletion of those contractors no longer qualified, with a written record kept justifying that decision.

12.6 All Approved Lists shall be maintained in an open, fair and transparent manner and be open to public inspection via The CHEST or Council website.

12.7 A register of pre-qualified contractors and consultants maintained by or on behalf of central government (e.g. Constructionline) shall be deemed to be an Approved List for the purpose of these Contract Procedure Rules and shall not be subject to Rules 12.2 to 12.5 above.

### **CPR13 FRAMEWORK AGREEMENTS**

13.1 Contracts based on Framework Agreements may be awarded by either;

- a) 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
- b) where the terms laid down in the Framework Agreement are not precise enough to complete the particular call-off, by holding a mini competition in accordance with the following procedures;
  - inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders;
  - fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted taking into account factors such as the complexity of the subject of the contract;
  - awarding each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specification of the Framework Agreement.

### **CPR14 STANDARDS AND AWARD CRITERIA**

14.1 The Responsible Officer must ascertain what relevant UK or international standards apply to the subject matter of the contract and ensure that those standards are considered and attained before awarding a contract.

14.2 The Responsible Officer must, before tendering the contract, define the award criteria that are appropriate to the purchase and designed to ensure an outcome giving value for money for the Council. The basic criteria will be;

- 'lowest price' where payment is to be made by the Council;
- 'highest price' where payment is to be received by the Council;
- 'most economically advantageous' where considerations other than price also apply.

14.3 The most economically advantageous tender (MEAT) criterion enables the contracting authority to take account of criteria that reflect qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision.

If this criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales service, technical assistance and any other relevant matter.

14.4 Price should account for at least 50% of the score.

14.5 Award criteria must not include;

- Non-commercial considerations (excluding social value);
- matters which would discriminate against suppliers.

## **CPR15 INVITATION TO TENDER (ITT)/QUOTATIONS – GENERAL RULES**

15.1 Invitations to Tender (ITT) shall state that no tender will be considered unless it is received by the date and time stipulated in the ITT. No tender delivered in contravention of this clause shall be considered unless in the opinion of the Head of Legal and Democratic Services, there is clear evidence that the tender was posted or hand delivered before the date for receipt of tenders in which case the Responsible Officer shall have discretion to admit the tender to opening and consideration. Subject to this exception tenders which are received late shall be retained unopened by the Head of Legal and Democratic Services until after the result of the tendering process has been published to tenderers.

15.2 All ITT shall include, but not be limited to, the following;

- a) a specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers;
- b) a requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such disclosure is made in confidence for a necessary purpose);
- c) a requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non collusion;
- d) notification that tenders are submitted to the Council on the basis that they are compiled at the tenderers expense;
- e) a description of the award procedure and, unless defined in a prior advertisement, a definition of the award criteria in objective terms and if possible in descending order of importance;
- f) notification that no tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender;

- g) a stipulation that tenders submitted by fax or other electronic means will not be considered (unless they have been sought in accordance with an electronic tendering system approved by the Head of Legal and Democratic Services and the Director of Resources e.g. the CHEST).
- h) The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with. In particular, the overall price prevails over the rates in the tender or vice versa.

15.3 All ITT or Quotations must specify the goods, services or works that are required, together with the terms and conditions that will apply.

15.4 The ITT or Quotation must state that the Council is not bound to accept any quotation or tender.

15.5 All potential tenderers invited to submit a tender or quotation must be provided with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis

## **SECTION 3: CONDUCTING PURCHASE AND DISPOSAL**

### **CPR16 ESTIMATES OF CONTRACT VALUE**

16.1 Before seeking quotes or inviting tenders for the execution of any work or for the provision of any goods or services the Responsible Officer shall record an estimate in writing of the likely expense of executing the work, or the provision of goods or services in a suitable manner.

### **CPR17 PRE-TENDER/QUOTATION ENQUIRIES**

17.1 Enquiries of Contractors may be made before tenders or quotations are invited in order to:

- a) establish whether the goods, works or services the Council wishes to purchase are available and within what price range;
- b) prepare tender documents, price estimates and contract documents;
- c) establish whether particular Providers wish to be invited to tender or quote.

17.2 In making enquiries:

- a) no information will be disclosed to one Provider which is not then disclosed to all those of which enquiries are made or which are subsequently invited to tender or quote;
- b) no Provider will be led to believe that the information they offer will necessarily lead to them being invited to tender or quote or be awarded the Contract.

17.3 Responsible Officers must not, however, seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Contractors or distort competition.

### **CPR18 PURCHASING – COMPETITION REQUIREMENTS**

18.1 Note that the Council's constitution states that all contracts over £100,000 shall be designated as Key Decisions and therefore require prior approval of The Executive before contracts are awarded. However, these Contract Procedure Rules apply to all contracts, irrespective of their value and the procedures set out should be followed at all times.

18.2 Where the estimated value of the proposed contract is within the values in the first column below, the award procedure in the second column must be followed;



Contract Value	Award Procedure	Shortlisting
<b>Up to £10,000</b>	<ul style="list-style-type: none"> <li>Minimum of one written quotation should be obtained.</li> <li>The lowest tender should be accepted.</li> <li>The tender price should be within the agreed budget estimate.</li> <li>An official order shall be issued.</li> </ul>	Responsible Officer
<b>£10,001 to £50,000</b>	<ul style="list-style-type: none"> <li>Minimum of three written quotations must</li> </ul>	Manager and Responsible Officer
<b>£50,001 to £100,000</b>		Manager and Responsible Officer
<b>£100,001 to threshold (£177,897)</b>		Requires prior approval of The Executive  Manager and Responsible Officer
<b>Above Threshold (£177,898)</b>	<ul style="list-style-type: none"> <li>Relevant procedure or, where this does not apply, Invitation to Tender by advertisement to at least four potential contractors.</li> </ul>	Requires prior approval of The Executive  Member of Corporate Leadership Team  Manager and Responsible Officer

18.3 For all contracts irrespective of value (unless it is not practical to do so), an official order shall be placed using the Council's approved Order Form using the Civica Financials system.

For contracts of value between £10,000 and £50,000, where the relevant number of quotations has been sought, but fewer quotations have been obtained, the Responsible Officer may seek an exemption from the requirement to obtain the number of quotations specified above with the written agreement of the Director of Resources.

- 18.4 In all cases, except where it is impracticable for reasons of extreme urgency, confirmation of the Contractor's terms of business (usually via a quotation) shall be obtained before an order is placed.
- 18.5 The Responsible Officer shall record the Contractors approached, their responses, details of any quotations provided, the subject matter of the quotation, the name of the Contractor, the time and date of the quotation, details of the price offered and any other trading terms.

### **Engagement of Consultants**

- 18.6 The engagement of consultants shall follow the principles for appointing contractors as set out in these Contract Procedure Rules with the proviso that, in circumstances requiring flexibility or specialised need, and within thresholds, the Manager may seek an Exception with the Director of Resources.
- 18.7 Negotiated fee tenders may be contemplated in exceptional circumstances where;
- there is insufficient time to obtain competitive tenders; or
  - systems or designs may be specific to a particular consultant (e.g. propriety systems); or
  - in the view of the Chief Officer, it would be in the Council's best interest to negotiate a fee with the consultant due to their previous involvement in a project.
- 18.8 It shall be a condition of the engagement of the services of a consultant responsible for the supervision of a contract on behalf of the Council that, in relation to the contract, he/she shall;
- comply with the Council's Financial Procedure Rules and these Contract Procedure Rules as though he/she were a member of the Corporate Management Team;
  - at any time during the discharge of the contract, produce to any relevant officer on request all the records maintained by him/her in relation to the contract; and
  - on completion of the contract, forward all records to the relevant Manager, Responsible Officer or other designated Officer.
- 18.9 Throughout the commission, the relevant Manager, Responsible Officer or other designated Officer shall ensure that appropriate monitoring arrangements are put in place.
- 18.10 Exemption shall be reported to the next Accounts & Audit committee in line with CPR5.

### **CPR19 AWARD OF CONTRACTS – BASIC PRINCIPLES**

- 19.1 No Contract may be awarded unless the proposed expenditure involved has been included in approved revenue or capital estimates or has been otherwise approved by, or on behalf of, the Council. The Responsible Officer shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract file.
- 19.2 Contracts with a quoted value of £100,000 or less may be awarded on behalf of the Council by the relevant member of Corporate Management Team to the Contractor who offers the lowest price or whose offer is considered by the Manager to be the most economically advantageous to the Council, provided in both cases the price quoted is within the budgetary limits approved by the Executive.

- 19.3 Contracts with a quoted value in excess of £100,000 may be awarded on behalf of the Council by the relevant Chief Officer, following a report to the Executive, to the Provider who offers the lowest price or whose offer is considered by the Chief Officer to be the most economically advantageous to the Council provided in both cases the price quoted is within the budgetary limits approved by the Council or Committee appointed for that purpose.
- 19.4 No contract with a quoted value in excess of £100,000 shall be awarded until the Director of Resources has checked the Contractor's financial standing and provided written confirmation that this is satisfactory for the Contract to be undertaken.
- 19.5 The Responsible Officer shall ensure compliance for the publication of Contract Award Notices and provide copies of the Notice(s) to the Director of Resources and the Head of Legal and Democratic Services.
- 19.6 Details of all Contract awards exceeding £50,000 shall be forwarded to the Accountancy Section for inclusion in the Council's Contracts Register as soon as possible after the award and prior to works commencing. Such notification to also include evidence of the authority to enter into the Contract.
- 19.7 In compliance with the Council's promotion of equality, Responsible Officer's should ensure they consider and comply with the Council's legal obligations under the Equality Act 2010 and its associated Public Sector Equality Duty. More information on this is provided at [Appendix B](#).

## **CPR20 COMPETITIVE TENDERING – CONTRACTS OVER £50,000**

- 20.1 No Contract, the estimated value of which exceeds £50,000, shall be made unless:
- a) at least 21 days' public notice has been given in one or more of the local newspapers, in Contracts Finder and in such trade journals as the Responsible Officer shall consider desirable, stating the nature and purpose of the Contract, inviting tenders and stating the last date when tenders will be received; or
  - b) tenders for the Contract (being a Contract for the execution of work) have been invited by the Responsible Officer from amongst the appropriate approved list of Providers compiled under CPR 12; or
  - c) public notice has been given in respect of a particular Contract in the manner described in CPR 12 inviting applications from Providers to be placed on a list to be approved by the Council from which Providers selected by the Responsible Officer will be invited to submit tenders; or
  - d) the proposed Contract, being a Contract for the execution of work, forms part of a serial programme the terms having been settled with the Contractor on the basis of the application of a stated addition or deduction to the rates and prices contained in an initial Contract awarded competitively following an invitation to tender in accordance with the provisions of (a), (b), or (c) above subject to a maximum extension under this Rule not exceeding 100% of the original Contract value or £100,000 whichever is the lower.

**CPR21 TENDER INVITATION**

- 21.1 When tenders are invited following public advertisement Contract documents will be sent within five working days of request provided, if applicable, any specified fee has been paid.
- 21.2 Reasonable requests for further information relating to the Contract documents will be granted provided the request enables the Council to supply the information not less than six days (or four days in cases of emergency) before the date specified for receipt of tenders. Information supplied to one Provider will be shared with all Providers unless in the opinion of the Responsible Officer and following consultation with the Head of Legal and Democratic Services there are appropriate grounds for not doing so.
- 21.3 Every invitation to tender will state that a tender will only be considered if it is;
- a) addressed to the Head of Legal and Democratic Services in a plain sealed envelope or package which shall bear the word "Tender" followed by the subject to which it relates, but shall not bear any name or mark indicating the sender;
  - b) accompanied by an undertaking which shall become a condition of the Contract that the amount of the tender has not been calculated by agreement or arrangement with any person other than the Council and that the amount of the tender has not been communicated to any person other than the Council and will not be communicated to any person until after the closing date for the submission of tenders (except for the purposes of obtaining any bond/surety where this is a requirement of the proposed Contract).
- 21.4 Tenders submitted by facsimile or electronic transmission will not be considered unless they have been sought in accordance with an electronic tendering system approved by the Head of Legal and Democratic Services and the Director of Resources (e.g. the CHEST).

**CPR22 RECEIPT OF TENDERS**

- 22.1 Envelopes and packages received in accordance with the provision of CPR 21 shall immediately on receipt be consecutively numbered and be placed in the custody of the Head of Legal and Democratic Services until the time appointed for the opening.
- 22.2 An Officer receiving tenders shall indicate on the envelope or package the date and time of its receipt by him/her.
- 22.3 Any tender received after the date and time indicated for the receipt of tenders shall not be considered unless in the opinion of the Head of Legal and Democratic Services there is clear evidence that the tender was posted or hand delivered before the date for receipt of tenders in which case the Responsible Officer shall have discretion to admit the tender to opening and consideration. Subject to this exception tenders which are received late shall be retained unopened by the Head of Legal and Democratic Services until after the result of the tendering process has been published to tenderers.

**CPR23 OPENING OF TENDERS**

- 23.1 All tenders with an estimated value in excess of £100,000 will be opened by the relevant member of Corporate Management Team or his/her nominated representative

in the presence of the Head of Legal and Democratic Services or his/her nominated representative.

23.2 All tenders will be opened at the same time and place and shall be immediately signed and dated by the Officers required to be present in accordance with CPR 23.1 above.

23.3 The Head of Legal and Democratic Services or his/her nominated representative will, at the time the tenders are opened, record;

- a) the nature of the goods or materials to be supplied or the work to be executed;
- b) the name of each Provider by or on whose behalf a tender was submitted together with the consecutive number endorsed on the tender envelope;
- c) the amount of each tender;
- d) the date and time of the opening of the tender;
- e) the names of the persons present at the opening of the tenders.

23.4 The relevant Manager will keep securely all tenders with the envelopes received for a period of at least 12 months after the award of the Contract or such longer period as may be required by domestic or EU legislation.

#### **CPR24 ERRORS OR DISCREPANCIES IN TENDERS ETC.**

24.1 Where examination of tenders reveals arithmetical or copying errors present in the documents submitted at the time of tender these shall be corrected by the Responsible Officer and details shall be recorded and maintained on the appropriate Contract file. If the correction has the effect that the tender is no longer the most competitive tender then the next tender in competitive order is to be examined and dealt with in the same way.

24.2 Where examination of tenders or checking of a priced bill or specification submitted at the Council's request after tenders have been opened reveals errors or discrepancies (other than arithmetical errors in documents submitted at the time of tender as in CPR 24.1 above) which would affect the tender figure(s) in an otherwise successful tender, the Provider is to be given details of such errors and discrepancies but no other information and afforded an opportunity of confirming or withdrawing his tender in writing. If the tenderer confirms his tender all the rates and prices on which it was based shall be adjusted (upwards or downwards) by the same percentage so as to correspond with the tender figure (corrected in accordance with CPR 24.1 above if there was also an error or discrepancy requiring to be dealt with under that CPR).

24.3 If the Provider withdraws, the next tender in competitive order is to be examined and dealt with in the same way. Any exception to the procedure outlined above may be authorised only by the Executive after consideration of a report from the Responsible Officer concerned.

#### **CPR25 SHORTLISTING**

25.1 Any shortlisting must have regard to the financial and technical standards relevant to the contract and the award criteria. Special rules apply in respect of the EU procedure.

25.2 Details of Officers responsible for shortlisting are provided in Rule 18.1.

25.3 Where Approved Lists are used, shortlisting may be done by the Responsible Officer in accordance with the shortlisting criteria drawn up when the Approved List was compiled (see Rule 12.2). However, where the EU procedure applies, Approved Lists may not be used.

## **CPR26 CONTRACT NEGOTIATIONS**

26.1 The Responsible Officer may negotiate the contract in the manner set out in CPR 26.2 below provided the terms of the contract remain substantially unaltered;

- a) where tendering produced no tenders or inappropriate tenders, for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited; or
- b) where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the Contract documents or offer variations on them or the works, supplies or goods fail to meet the tender specification.

26.2 The Responsible Officer shall invite all tenderers to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the specification or bill of quantities) as the Responsible Officer specifies. All negotiations shall be conducted by at least two officers, one of whom should not be otherwise involved in the contract award. The Responsible Officer shall keep a written record of all negotiations, including notes of all meetings and the names of those people present.

## **CPR27 ACCEPTANCE OF TENDERS**

27.1 A tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council, or the tender which in the opinion of the Responsible Officer is the most economically advantageous to the Council (having regard to price, quality and technical considerations) shall not be accepted until the Executive has considered and approved a written report from the Responsible Officer.

27.2 No Contract may be awarded unless the expenditure involved has been included in approved estimates or in capital or revenue accounts or has been otherwise approved by or on behalf of the Council.

27.3 The only exception permitted under this Procedure Rule is where works/supplies/services are ordered on grounds of extreme urgency (e.g. responding to a civil emergency). The Responsible Officer should consult with the Director of Resources and appraise him/her of the position so that as soon as practicable arrangements can be made to report the matter to the Executive.

27.4 No contract with a quoted value in excess of £50,000 shall be awarded until the Director of Resources has checked the Provider's financial standing and provided written confirmation that this is satisfactory for the Contract to be undertaken.

27.5 The Responsible Officer shall ensure compliance for the publication of Contract Award Notices and provide copies of the Notice(s) to the Head of Legal and Democratic Services.

27.6 Details of all Contract awards exceeding £50,000 shall be forwarded to the Accountancy Section for inclusion in the Council's Contracts Register as soon as possible after the award and prior to works commencing. Such notification to also include evidence of the authority to enter into the Contract.

## **CPR28 NOMINATED SUB-CONTRACTORS AND SUPPLIERS**

28.1 Contract Procedure Rules apply to the nomination of a sub-contractor or supplier for carrying out works or services or supplying goods or materials.

28.2 Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier does not exceed £50,000 then unless in the opinion of the Responsible Officer there are grounds for exemption, competitive written quotations shall be sought in accordance with CPR 18.

28.3 Where the estimated amount of the sub-contract or the estimated value of the goods to be supplied by the nominated supplier exceeds £50,000 then unless in the opinion of the responsible Service Manager there are grounds for exemption, tenders shall be invited in accordance with CPR 20.

28.4 Any exemption from these Procedure Rule requirements must comply with CPR 5.

## **SECTION 4: CONTRACTS AND OTHER FORMALITIES**

### **CPR29 FORM OF CONTRACT**

29.1 Every Contract exceeding £100,000 in value and in any other case where the Director of Resources so decides, shall either be documented using an approved Standard Form of Contract or be in writing in a form approved by the Director of Resources and shall specify;

- a) the works or services to be performed and/or the goods or materials to be supplied;
- b) the parties to the contract including any guarantor;
- c) the price to be paid with a statement of discounts or other appropriate adjustments;
- d) the time within which the Contract is to be performed or carried out;
- e) that the Provider will not assign the Contract without the written consent of the Council;
- f) any appropriate restriction on sub-contracting by the Provider;
- g) where appropriate that the Provider will pay liquidated damages or other damages to the Council should the terms of the Contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable;
- h) any performance bond or parent company guarantee required and the Responsible Officer shall consult with the Head of Legal and Democratic Services before including or excluding such a requirement in the tender documents;
- i) that the Provider will adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974;
- j) that the Council may cancel the Contract and recover any loss if the Provider, its employees, agents and sub-providers offer any reward relating to the Contract or commit any offence under the Prevention of Corruption Acts 1889 to 1916 or have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;
- k) that the Provider shall comply with UK Data Protection legislation and indemnify the Council in respect of the use, disclosure or transfer of personal data by the Provider, its employees, agents and sub-Providers.
- l) that services will be delivered to all customers fairly and without unlawful discrimination in support of the Council's obligations under the Public Sector Equality Duty as set out in the Equality Act 2010. The Provider shall not unlawfully discriminate within the meaning of the Race Relations Act 1976 or any comparable statutory provision relating to discrimination in employment, and shall ensure that all employees, agents and sub-contractors do not unlawfully discriminate, and shall comply with all relevant codes of practice issued by the Equalities and Human Rights Commission, or comparable body and, so far as is practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice;
- m) Payment arrangements, including reference to the payment of valid, undisputed invoices by the Council within 30 days. It will be a condition of the contract that the Contractor/Supplier is required to include similar provisions in their contracts, and so on, down the supply chain.

29.2 In every contract, the Contractor shall be required to indemnify the Council against;

- a) any claim which may be made in respect of employers' liability against the Council or the Contractor by any workmen employed by the Contract or any Sub Contractor in the execution of the works or the provision of goods and services;



- b) any claim for bodily injury to or damage to property of third parties;
- c) any claim which be may be made under the Health and Safety at Work etc Act 1974 against the Council or the Contractor unless such claim is substantially due to the neglect of the Council or any of its Officers.

29.3 In respect of 29.2 above, the Contractor shall be required by the Head of Legal and Democratic Services to produce satisfactory evidence that he is insured against any such claims.

29.4 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be in accordance with that Standard.

### **CPR30 EXECUTION OF CONTRACTS**

30.1 Contracts with a value of less than £50,000 may be signed by the relevant member of Corporate Management Team.

30.2 Every Contract which exceeds £50,000 in value shall either be signed or sealed for and on behalf of the Council by the Director or be executed as a deed.

### **CPR31 CONTRACT VARIATION**

31.1 Where by reason of any extra or variation (other than a Contract extension under CPR 20.1(d)) it is apparent that:

- a) the tender sum is to be exceeded by 10 per cent; or
- b) the variation would extend the Contract period by more than three months or 50 per cent of the original Contract period; or
- c) if the works, services or goods to be added or deleted from the Contract are substantially different in scope

31.2 The Responsible Officer shall report the same to the Director of Resources and the Head of Legal and Democratic Services.

31.3 Should further variations as set out in CPR 31.1 above arise after the Responsible Officer's report, these further variations shall also be reported as set out in CPR 31.2 above.

31.4 Details of all variations shall be reported to the Executive on a regular basis as part of the regular monitoring / budgetary control process ensuring compliance with Financial

31.5 Procedure Rules.

### **CPR32 UNSATISFACTORY PROGRESS**

32.1 If the Executive is satisfied following consideration of a report from a Responsible Officer that a Contractor has not completed a contract in a satisfactory manner, such Contractor shall not thereafter for a period of three years be invited to tender, be included on an Approved List or, if the said Contractor submits a tender in response to a public advertisement, that tender shall not be considered.

## **SECTION 5: CONTRACT MANAGEMENT**

### **CPR 33 MANAGING CONTRACTS**

33.1 Members of Corporate Management Team are responsible for allocating contract management responsibilities for all new contracts. All contracts must have a named Contract Manager for the entirety of the contract.

### **CPR34 RISK ASSESSMENT AND CONTINGENCY PLANNING**

34.1 A business case must be prepared for all procurements with a potential value over the EU threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

34.2 For all contracts with a value over £100,000, contract managers must;

- a) maintain a risk register during the contract period;
- b) undertake appropriate risk assessments; and
- c) for identified risks, ensure contingency measures are in place.

### **CPR35 CONTRACT MONITORING, EVALUATION AND REVIEW**

35.1 All contracts which have a value higher than the UK threshold limits or, irrespective of value, which the Executive designates, must be subject to regular formal reviews with the contractor.

35.2 During the life of the Contract, the Responsible Officer must monitor in respect of, but not limited to, the following;

- a) performance;
- b) compliance with specification and contract;
- c) cost;
- d) any value for money requirements;
- e) risk management;
- f) user satisfaction.

## **SECTION 6: CONTRACTS FOR THE SALE OF ASSETS**

### **CPR36 DISPOSAL OF ASSETS**

36.1 Before negotiations on the disposal of an asset reach the stage of provisional agreement for sale or tenders are invited for the disposal of land, the Executive shall have declared the asset surplus to the Council's requirements to be marketed for sale or, if there is unlikely to be any competition, shall have approved negotiations with one party (CPR 42). If appropriate, approval will have been granted for the submission of a planning application for development.

### **CPR37 DISPOSAL OF ASSETS – ESTIMATED VALUE NOT EXCEEDING £10,000**

37.1 Sales of assets (including land) which have a value of less of £10,000 or less, disposal should be by competitive tender or public auction with notification via the Council's website, or as per the procedures below and in accordance with the Officer Scheme of Delegation.

### **CPR38 DISPOSAL OF ASSETS – ESTIMATED VALUE EXCEEDING £10,000**

38.1 Sales of assets (including land) which have a value of less of £10,000 or less, disposal should be by competitive tender or public auction with notification via the Council's website, or as per the procedures below and in accordance with the Officer Scheme of Delegation.

### **CPR39 ADVERTISEMENT**

39.1 Where an asset (land or property) is marketed for sale, sales particulars will be produced and the asset will be advertised widely, including electronically, and by other means most appropriate for the subject asset. Sealed tenders will be invited by a specified closing date and may include the requirement for a binding contract pack together with payment of a 10% deposit to be submitted with the Tender. Any deposit would be refunded to unsuccessful tenderers. The sales particulars will advise interested parties that the Council is **not** obliged to accept any tender.

39.2 Sealed tenders will be opened and recorded in writing by the Head of Legal and Democratic Services or his/her nominated representative.

39.3 The highest offer will be accepted and reported to the Executive (except where delegated powers to officers allow the sale to be completed without reporting back to Executive). All marketing of the asset will cease at this stage.

39.4 In the event of a late tender which is higher than the highest tender received within 15 working days of the notified last date for tenders, all tenderers will be advised of the amount of the late tender and be requested to submit their 'best and final' financial tender in the form of a sealed bid by a set date no more than 15 working days following the receipt of the late tender. Only the first late tender received shall trigger the process by which best and final sealed tenders are invited. The tenders will be opened in accordance with Rule 39.2. The highest tender at that date must be accepted and no further offers shall be considered. Subject to the Executive's approval to accept the higher tender, Legal Services must then be instructed to complete the sale with early exchange of contracts.

39.5 Subject to the agreement of the Director of Resources, an exemption from Rules 39.1 will be granted if;

- a) the assets to be disposed of are so specialised that only a limited number of potential buyers are available but in such cases a reasonable number of those potential buyers shall be invited to submit tenders;
- b) there would be no genuine competition (for whatever reason);
- c) sales are to be by Auction.
- d) Disposal is to be in accordance with CPR40, CPR41 or CPR42.

The reason for the exemption will be included in the report to the Executive recommending that the asset is declared surplus for disposal.

#### **CPR40 DISPOSAL OF LAND AT A DISCOUNT**

40.1 Ordinarily, in accordance with s123 of the Local Government Act 1972, the Council is required to obtain 'best consideration' for the disposal of land. However, the General Disposal Consent (England) 2003 includes provisions to allow disposal of land at less than 'best consideration'.

40.2 In addition to compliance with these Contract Procedure Rules where applicable, any disposal of land at a value less than 'best consideration' must only be undertaken;

- a) in accordance with the General Disposal Consent (England) 2003 which, amongst other things, limits the value of any discount to £2million; and
- b) with the approval of the Executive following a report including;
  - unrestricted value of the land (i.e. the best price reasonably obtainable for the land on terms that are intended to maximise consideration (and assessed in accordance with the General Disposal Consent (England) 2003);
  - the value of discount being given; the reasons for giving the discount;
  - the restricted value.

#### **CPR41 LAND EXCHANGE (OTHERWISE REFERRED TO AS 'LAND SWAPS')**

41.1 In the event that a land exchange is proposed to the Council, the prospective purchaser should express interest in acquiring the land in writing and specify the particular purposes for which the land is required and the equivalent land being exchanged. The Council's land should not be exchanged for speculative purposes. No respective land values should be discussed or agreed at this stage.

41.2 Following a report from the Responsible Officer setting out the benefits and disadvantages of the proposal and any financial and legal implications including respective independent valuations of each area of land, the Executive will consider the proposed land exchange and the reasons why it is being recommended. The Executive will decide (acting on behalf of the Council in its capacity as Vendor) if the proposal is acceptable in principle and whether to agree in the particular circumstances (which will be recorded) that the negotiations should proceed following this procedure.

41.3 Following approval in principle by the Executive, the Responsible Officer will inform the prospective purchaser that;

- a) the Council is following this procedure;
- b) until such time as a legally binding agreement to dispose of the land is entered into, the Council is obliged to consider any other offers for the land which may be received.

41.4 Negotiations must be in writing.

41.5 Subject to the proposed land exchange being considered reasonable, the terms and conditions of the disposal will be reported to the Executive for approval.

41.6 In the event that the land exchange needs to be dealt with urgently, the approval of the Strategic Director in consultation with the Group Leaders will be sought and the terms reported to the next meeting of the Executive. The application of this rule should be by exception and should not be the normal procedure for land exchanges.

41.7 If applicable, exchange of contracts for the land exchange should be conditional upon planning permission being obtained for the use proposed by the purchaser. In the event that planning permission is not granted, the Council will not be liable to the prospective purchaser for any costs relating to the proposed exchange.

#### **CPR42 DISPOSAL BY WAY OF NEGOTIATED TENDER PROCEDURE FOR SALE TO ONE PARTY**

42.1 The prospective purchaser should express interest in acquiring the land in writing and specify the particular purposes for which the land is required. The land should not be required for speculative purposes. No price should be discussed at this stage.

42.2 The Executive will consider the proposed use of the land and the reasons why it is being recommended that negotiations should proceed by way of negotiated tender for disposal to one party.

42.3 The Executive will then decide (acting on behalf of the Council in its capacity as Vendor) if the proposed use is acceptable, whether to declare the land surplus to requirements and whether to agree in the particular circumstances (which will be recorded) that the negotiations should proceed following this procedure. Prior to this, Property Services should establish whether any planning uses other than the one proposed by the purchaser will yield a higher value and inform the Executive if this is the case so that this can be considered as part of the decision to dispose of the asset. Negotiations must be in writing.

42.4 The prospective purchaser should be informed that;

- a) the Council is following this procedure;
- b) until such time as a legally binding agreement to dispose of the land is entered into, the Council is obliged to consider any other offers for the land which may be received.

42.5 The prospective purchaser should be invited to make a 'best and final' financial offer for the land taking into account any terms and conditions of the sale, state and condition of the land.

- 42.6 If the 'best and final' financial offer is considered to be reasonable, the terms and conditions of the disposal will be reported to the Executive for approval.
- 42.7 In the event that the disposal needs to be dealt with urgently, the approval of the Strategic Director in consultation with the Group Leaders will be sought and the terms reported to the next meeting of the Executive. The application of this rule should be by exception and should not be the normal procedure for disposal.
- 42.8 If appropriate the exchange of contracts to dispose of the land to the prospective purchaser may be conditional upon planning permission being obtained for the use proposed by the purchaser. In the event planning permission is not granted, the Council will not be liable to the prospective purchaser for any costs incurred relating to the proposed disposal.

#### **CPR43    CONTRACTS TO BE IN WRITING**

- 43.1 Unless the assets to be disposed of are such that the title passes on delivery, every contract shall be in writing.

## APPENDIX A

**APPLICATION FOR EXEMPTION FROM CONTRACT PROCEDURE RULES**

<b>Contact Officer:</b>	<b>Date of request:</b>
<b>Directorate:</b>	<b>Service:</b>
<b>Name of Contractor:</b>	
<b>Amount of the contract</b> <i>(estimated or actual)</i>	<b>Expenditure Code and Budget Provision</b> <i>(please provide the expenditure code and confirm whether or not the scheme is grant funded)</i>
<b>Nature of Contract:</b> <i>(include contractor details, items/services to be provided commencement date and expected duration)</i>	
<b>Is the Request retrospective?</b> Yes / No	
<b>Are there any Conflicts of Interest with this request?</b> Yes / No	

<b>Please outline the CPR's you wish to exempt</b> <i>(please quote para no.)</i>
---

<b>Please explain why you want an exemption to the above CPR and how you have satisfied yourself that the procurement requirements do not apply? See CPR 5.</b>
---

<b>How was this particular contractor selected and what evidence do you have to demonstrate value for money? Where any alternative arrangements considered?</b>
---

**What is the proposed action to be taken at the end of the exception? (i.e. contract terminates or to be re-commissioned/procured- if the latter please provide further details of how this will be achieved.)**

## **APPROVAL**

The information provided on this form is correct. The proposed expenditure is within Budget and Policy Framework and is in accordance with the requirements of the Contract Procedure Rules with the exception of those for which an exemption is being applied for.

Signature of Director / Head of Service	Date:
---	-------

***Please email completed forms to Phil Hartup, System Accountant, Finance.***

## **FINAL SIGN OFF BY DIRECTOR OF RESOURCES**

TO BE DELETED AS APPROPRIATED

Accepted

I have no objections to the exemption sought and I am satisfied that value for money can be demonstrated.

Signature of Director of Resources	Date:
Date reported to Audit, Governance and Improvement Review Committee:	

Declined

Signature of Director of Resources	Date:
Reasons for declining	



**Appendix B****EQUALITY CONSIDERATIONS IN PROCUREMENT****Background**

When conducting procurement activities, the Council must ensure it meets the legal obligations under the Equality Act 2010 and its associated Public Sector Equality Duty in a way that is consistent with achieving value for money and relevant public procurement law.

**What is the Public Sector Equality Duty?**

The PSED is contained within section 149 of the Equality Act 2010. It requires those public bodies which are subject to the duty, to have due regard to the three aims of the duty:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it.

The PSED should help to ensure that public goods and services are accessible to, and meet the diverse needs of all users to ensure that no one group is disadvantaged in accessing public goods and services.

**Who does the duty apply to?**

The PSED applies to the public bodies listed in Schedule 19 to the Equality Act 2010 (when they are exercising their functions, including procurement) and to other organisations when carrying out a public function<sup>1</sup>. In terms of public procurement, departments should be aware of the following:

- Contracting out a service to which the PSED applies – if a department is contracting out a service to which the PSED applies, the department will need to consider whether the contractor would need to meet certain requirements of the PSED in carrying out that service so that the department can fulfil its duty.
- Contracting out a public function – the successful contractor will be required to fulfil the requirements of the PSED in respect of the public function that it is performing but not beyond that function, e.g. in its wider business/functions. Although this is a statutory duty on the contractor, it would usually be set out in the contract conditions. In addition to the statutory duty on the contractor, the department's PSED itself is non-delegable and so, the public body subject to the PSED remains liable for compliance with its duty and not the contractor.

**'Due regard' and assessing relevance**

The public procurement rules allow for equality-related issues to be taken into account in the procurement process where they are relevant to the subject matter, or relate to the

performance, of the contract. 'Due regard' in the context of public procurement means consciously considering the relevance of the three aims of the duty to the individual procurement and ensuring that where equality issues are incorporated into the procurement process, it is done in a proportionate way (i.e. the actions taken are proportionate to the degree of relevance of the equality issue to the individual procurement), taking into account value for money. It is important that the issues are looked at substantively and with an open mind, it is not enough to just note that there will be no negative impact, as there are parts of the duty which look at whether positive improvements can be made. It is good practice for those subject to the PSED to keep a record of the process of consideration to help demonstrate they have given real consideration to the three aims (whether or not equality is relevant to what is being procured). Departments should also be aware of their obligations to publish certain information under the Equality Act 2010 (Specific Duties Regulations)

The degree of relevance of equality will vary depending on the individual procurement.

For services, the degree of relevance is likely to be greater if:

- The service involves direct contact with the public
- The service combines technical performance with provision directly to the public, for example, transport services and communication services;
- The service will be performed on the public authority's premises, where the contractor's workforce will be in contact with the public authority's employees, for example, facilities management services.

For goods, the degree of relevance of equality is likely to be greater if:

- The goods need to meet specific technical needs of the user, for example, meeting the needs of disabled people to ensure that the goods are fit for purpose.

For works, the degree of relevance of equality is likely to be greater if:

- The works need to ensure accessibility for disabled people, for example, building accessibility for disabled people;
- The works are being performed on the public authority's premises where the contractor's workforce will be in contact with the public authority's employees or members of the public.

The extent to which equality can be reflected in the procurement process varies depending on both the degree of relevance of equality to the individual procurement and on the stage of the procurement process. A case-by-case assessment is needed. If in doubt, departments should seek advice from Legal Services.

Where it is clear from the start of the procurement, having conducted pre-procurement engagement and in identifying the need, that equality is not relevant to what is being procured, no further consideration or actions are required. The PSED is a continuing duty so if equality is a relevant consideration in what is being procured it should be considered at an early stage and throughout the procurement process (both beforehand and at the time a relevant decision is being made). As a matter of good practice, departments may wish to keep some formal record to show that they have considered the duty in conducting a procurement exercise.

**Ensuring transparency**

In keeping with relevant procurement law and the Government's commitment to be more transparent about how public money is spent, where equality requirements are being incorporated into the procurement process, this must be clearly set out in the tender documents and resulting contract documents.

Under the Government's transparency policy, all central government tender documents and contract for procurements over the value of £10,000 must be published on Contracts Finder. Greater transparency of tender documents and contracts will provide some indication as to whether and how equality has been incorporated into a particular procurement. This information will allow potential providers and the public to hold the Council to account where they believe that relevant equality considerations are not adequately addressed in a particular procurement or where they believe that such matters have not been incorporated in a proportionate way.

## **Appendix C**

### **Procurement Policy Note 10/21 – Thresholds and Inclusion of VAT**

<https://www.gov.uk/government/publications/procurement-policy-note-0921-thresholds-and-inclusion-of-vat>

UK Limit £213,477 (including VAT), £177,898 (excluding VAT)

**Appendix D**

<b>Agent</b>	A person or organisations acting on behalf of the Council or on behalf of another person
<b>Approved List</b>	A list drawn up in accordance with Rule CPR 12
<b>Award Criteria</b>	The criteria by which the successful quotation or tender is be selected
<b>Award Procedure</b>	The procedure for awarding a contract as specified in Rules CPR19,20, and 27
<b>Best Value</b>	<p>The duty, which Part 1 of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council.</p> <p>The terminology has now in many cases been superseded by Value for Money.</p>
<b>Bond</b>	An insurance policy: if the contractor does not do what it has promised to do under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of costs arising from the contractor's failure.
<b>Candidate</b>	Any person who asks or is invited to submit a quotation or tender
<b>Chief Officer</b>	The officers defined as such in the Council's Constitution
<b>Code of Conduct (employee)</b>	The code regulating the conduct of Officers
<b>Committee</b>	A committee which has the power to make decision for the Council, for example a joint committee with another local authority, but not a scrutiny committee
<b>Constitution</b>	<p>The constitutional documents approved by the Council which;</p> <ul style="list-style-type: none"> <li>• Allocates powers and responsibilities within the Council and between it and others</li> <li>• Delegates authority to act to the Executive, Committees and Officers</li> <li>• Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols</li> </ul>
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertaken the work
<b>Contracting Decision</b>	<p>Any of the following decisions;</p> <ul style="list-style-type: none"> <li>• Composition of approved lists</li> <li>• Withdrawal of invitation to tender</li> <li>• Whom to invite to submit a quotation or tender</li> <li>• Shortlisting</li> <li>• Award of contract</li> </ul>

	<ul style="list-style-type: none"> <li>Any decision to terminate a contract</li> </ul>
<b>Democratic and Legal Services Manager</b>	As identified in the Council's Constitution.
<b>EU Procedure</b>	The procedure required by the EU where the total value of the contract exceeds the EU threshold
<b>European Economic Area</b>	For details view <a href="http://www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml">http://www.companieshouse.gov.uk/about/miscellaneous/listeeaCountries.shtml</a>
<b>Financial Procedure Rules</b>	The Financial Procedure Rules outlining officer responsibilities for financial matters issued by the Director of Resources in accordance with the Council's Constitution.
<b>Framework Agreement</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, on particular with regard to price, and where appropriate, the quantity envisaged.
<b>Government Procurement Agreement</b>	The successor agreement to the General Agreement on Trade and Tariffs.
<b>Invitation to Tender (ITT)</b>	Invitation to Tender documents in the form required by these Contract Procedure Rules.
<b>Nominated Suppliers and Sub Contractors</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non Commercial Considerations</b>	<ul style="list-style-type: none"> <li>The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters');</li> <li>Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self employed persons of their services only;</li> <li>Any involvement of the business activities or interests of contractors with irrelevant field of government policy;</li> <li>The conduct of contractors or workers in industrial disputes between them or any involvement in the business activities of contractors in industrial disputes between other persons;</li> <li>The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests, of contractors;</li> <li>Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees;</li> <li>Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support;</li> <li>Use or non use by contractors of technical or professional services provided by the authority under the Building Act 1984</li> </ul> <p>Workforce matters and industrial disputes as defined above cease to be non commercial considerations to the extent necessary or expedient to comply with Best Value, or where there is a transfer of staff to which the</p>

	Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.
<b>Parent Company Guarantee</b>	A contract which binds a parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the Council, the Council can require the parent company to do so instead.
<b>Priority Services</b>	Those services required to be tendered as defined in the EU public procurement directives.
<b>Procurement Strategy</b>	The document setting out the Council's approach to procurement and key priorities for the next few years.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
<b>Relevant Contract</b>	Contracts to which these Contract Procedure Rules apply.
<b>Responsible Officer</b>	The officer designated by the Chief Officer to deal with the contract in question. Ordinarily, this will be a member of Corporate Management Team.
<b>Shortlisting</b>	The process of selecting candidates who are to be invited to quote or bid or to proceed to final evaluation.
<b>Tender</b>	A candidate's proposal submitted in response to an Invitation to Tender.
<b>Total Value</b>	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows;</p> <ul style="list-style-type: none"> <li>• Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period;</li> <li>• Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;</li> <li>• Where the contract is for an uncertain duration, by multiplying the monthly payment by 48 months or the annual payment by 4 years;</li> <li>• For feasibility studies, the value of the scheme or contracts which may be awarded as a result;</li> <li>• For nominated suppliers and sub contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated suppliers and sub contractors.</li> </ul>
<b>Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)</b>  <b>SI 2006 No 246</b>	<p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.</p>
<b>Value for Money</b>	Value for money is not the lowest price possible; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.

