

**RHONDDA CYNON TAF  
COUNTY BOROUGH COUNCIL**

**COMMIITTEE SUMMONS**

**C Jones  
Director of Legal and Democratic Services  
Rhondda Cynon Taf County Borough Council  
The Pavilions  
Cambrian Park  
Clydach Vale CF40 2XX**

**J Nicholls (Tel No 01443 424098) (Tel. No. ( ) )**

**YOU ARE SUMMONED to a meeting of RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL to be held at the (County Borough Council Offices, The Pavillions, Cambrian Park, Clydach Vale (Block F)) on THURSDAY, 16TH NOVEMBER, 2017 at 2.30 PM.**

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<b>2. MINUTES FROM MEETING 26TH APRIL 2017</b>	<b>5 - 6</b>
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<b><u>Director, Legal and Democratic Services</u></b>	

**Date Not Specified**

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**RHONDDA CYNON TAF  
COUNTY BOROUGH COUNCIL**

**P J Lucas  
Director of Legal and Democratic Services  
Rhondda Cynon Taf County Borough Council  
The Pavilions  
Cambrian Park  
Clydach Vale CF40 2XX**

**Contact: J Nicholls (Tel.No.01443-424098)**

**YOU ARE SUMMONED** to a meeting of the **CORPORATE GOVERNANCE AND CONSTITUTION COMMITTEE** to be held at the County Borough Council Offices, The Pavilions, Cambrian Park, Clydach Vale (Block F) on **Thursday, 16<sup>th</sup> November, 2017 at 2.30 p.m.**

## **AGENDA**

### **Page No's**

### **DECLARATION OF INTEREST**

1. To receive disclosures of personal interests from Members in accordance with the Code of Conduct
  1. Members are requested to identify the item number and subject that their interest relates to and signify the nature of the personal interest; and
  2. Where Members withdraw from a meeting as a consequence of the disclosure of prejudicial interest they **must** notify the Chairman when they leave.
  
2. **Minutes**  
To approve as a correct record the minutes of the Corporate Governance & Constitution Committee held on the 26<sup>th</sup> April, 2016. **1 - 2**
  
3. To consider the joint report of the Group Director, Corporate & Frontline Services and Director, Legal & Democratic Services – Updated Contract Procedure Rules. **3-40**
  
4. To consider any urgent business as the Chairman deems appropriate.

**To: Members of the Corporate Governance and  
Constitution Committee**

County Borough Councillors M.Tegg (Chair) and S.  
Powderhill (Vice-Chair), D. Grehan, M. Griffiths, G. Stacey  
and M. Webber

**9<sup>th</sup> November 2017**

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL****CORPORATE GOVERNANCE AND CONSTITUTION COMMITTEE**

**Minutes** of the meeting of the Corporate Governance and Constitution Committee held at The Pavilions, Clydach Vale on Tuesday, 26 April 2016 at 4.00 p.m.

**PRESENT**

County Borough Councillor B.Stephens – in the Chair

**County Borough Councillors**

R.Lewis, (Mrs) A.Roberts, M.Webber and C.J.Willis

**Officers in Attendance**

Mr.P.J.Lucas – Director, Legal & Democratic Services

Mr. C.Hanagan – Service Director, Cabinet & Public Relations

**5 APOLOGY FOR ABSENCE**

An apology for absence was received from County Borough Councillor K.Morgan.

**JOINT REPORT OF THE DIRECTOR, LEGAL & DEMOCRATIC SERVICES AND THE SECRETARY TO THE CABINET****6 PART 3 – SECTION 5 – GENERAL SCHEME OF DELEGATION OF EXECUTIVE AND NON-EXECUTIVE FUNCTIONS**

The Committee considered the Joint Report of the Director, Legal & Democratic Services and the Secretary to the Cabinet which outlined proposed amendments to the General Scheme of Delegation to allow for further transparency in the Council's decision making process, as supported by the Cabinet at its meeting on 17<sup>th</sup> March 2016. Appendix B of the Cabinet Report of 17<sup>th</sup> March 2016 was appended to the report and outlined the changes proposed.

The Committee were informed that the implementation of the proposed improvements in respect of the General Scheme of Delegation would allow greater transparency in respect of decision making and sought to ensure a consistent and robust approach to Governance of Executive Functions across the Authority.

The Committee were also informed that any changes to the General Scheme of Delegation would need to be agreed by Full Council, due to changes to both the Executive and Non-Executive Functions to the Scheme.

Following consideration of the proposed changes, it was **RESOLVED** to commend the proposed improvements to the General Scheme of Delegation,

as outlined in Appendix B of the Cabinet Report of 17<sup>th</sup> March 2016 and note that the Joint Report will be presented to the Council's AGM on 25<sup>th</sup> May 2016.

**B.STEPHENS  
CHAIRMAN**

The meeting terminated at 4.15 p.m.

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL****MUNICIPAL YEAR 2017/18****COMMITTEE:****CORPORATE GOVERNANCE &  
CONSTITUTION COMMITTEE****16th NOVEMBER 2017****Item No. 3****UPDATED CONTRACT  
PROCEDURE RULES****JOINT REPORT OF THE GROUP DIRECTOR, CORPORATE & FRONTLINE  
SERVICES & DIRECTOR, LEGAL & DEMOCRATIC SERVICES****Author: Steve Vaughan – Service Manager, e-Procurement & Development****1. PURPOSE OF THE REPORT**

- 1.1 To seek the Committees approval to commend to Council the adoption of the Council's updated Contract Procedures Rules ('CPR's) as appended to the report and that Council make the consequential change to the Council's Constitution.

**2. RECOMMENDATIONS**

It is recommended that the Committee:

- 2.1 Notes the Council's Audit Committee, in accordance with its terms of reference, has reviewed the updated Contract Procedure Rules (CPR's), appended at Appendix A to the report, and determined no additional amendments were necessary;
- 2.2 Considers whether it considers any amendments are required in order to either provide clarity and/or improve the controls within the CPR's; and
- 2.3 In accordance with the Council's Constitution, and subject to paragraph 2.2 above, commends to Council that the revised CPR's be adopted and that the consequential change to the Council's Constitution be made.

**3. CONTRACT PROCEDURES RULES AND WHY WE HAVE THEM**

- 3.1 An organisations CPR's provide the framework to follow when goods and services are required to be procured from external stakeholders. Complying with the prescribed arrangements helps organisations to procure in accordance with Legislation and the Law. In some instances, failure to follow

CPR's leaves an organisation open to legal challenge. Being the subject of a legal challenge can, in some instances, be costly and it can also adversely affect an organisations reputation.

3.2 The Council's CPR's form the procedural rules for buying goods and services for the Council. They do not apply to internal purchases or service provision, but only to external suppliers and providers. They are applicable to the making by the Council of all Contracts, for the provision, supply, hire or disposal of goods, materials or intellectual products, and for the provision of services, the use of consultants and to Contracts for income.

3.3 The aims of the CPR's are:

- To achieve value for money for the Council in the market by ensuring:
  - Provision for securing competition at appropriate levels of expenditure whilst avoiding disproportionate or bureaucratic costs where levels of expenditure are less significant.
  - Accountability at all levels whilst ensuring an adequate audit by requiring the Directors to record who did what, how and when.
  - Officers follow proper and fair procedures for the involvement and selection of Contractors.
  - Compliance with EU Procurement Directives and Public Contract Regulations.
  - That proper specification is made by Officers which reflect the appropriate and realistic quality requirements for any defined need, and that offers may be judged by objective criteria.
  - That levels of monitoring and training exist to ensure proper compliance and that these rules are regularly reviewed to take account of new circumstances

3.4 The Council's CPR's must be kept under continuous review to ensure they reflect changes in the Law and changes required that result from internal reviews on how the Council operates.

#### **4. INTERNAL REVIEW OF PROCURING**

4.1 Following a review undertaken by the Temporary Head of Internal Audit & Procurement Development Programmes in respect of how Officers across the Council procure, it was recommended that all procurement activity with an estimated contract value in excess of £15,000.00 be administered centrally through the Council's Procurement Service. The benefits of the centralised approach were identified as follows:

- Increased control and compliance.
- The Procurement Service will act as 'gatekeepers' who will challenge why a contract is required in the first instance.
- Increased transparency in respect of all procurement activity that takes place.
- All procurement takes place by a dedicated team of Officers that have the skills and knowledge to deliver compliant contracts.



- The Council's ability to develop, maintain and report an accurate Contracts Register will be strengthened.
- Whilst not specifically tangible, Service Area staff will not spend time facilitating the detailed procurement activities.

4.2 The centralised approach was approved by the Council's Chief Executive and Group Director, Corporate & Frontline Services. The arrangement became effective from 1<sup>st</sup> April 2017. This change in the required approach has acted as the main catalyst for reviewing and updating the CPR's.

## **5. UPDATING THE CPR'S – GOVERNANCE REQUIREMENTS**

5.1 The governance arrangements in respect of how the CPR's should be reviewed, updated and approved are as follows:

### **5.2 Audit Committee**

The Terms of Reference of Audit Committee, part M states that a role of the Committee is:

*'To receive reports in relation to proposed changes to the Authority's CPR'S and Financial Procedure Rules and where deemed appropriate, recommend their approval to Council.'*

### **5.3 Corporate Governance and Constitution Committee**

The Terms of Reference of the Corporate Governance & Constitution Committee, part 10.1 states that a role of the Committee is:

*'To review the Council's Constitution, and to recommend to Council and/or the Cabinet any changes in respect of:-*

*(a) drafting improvements to enhance clarity and remove minor anomalies;*

*(b) updating to reflect legislative changes and matters of record; and*

*(c) amendments to the Budget and Policy Framework, Financial and Contracts Procedure Rules (subject to the advice of the Section 151 Officer being sought).'*

### **5.4 Council**

Specific to the Council's CPR's (which are included within the Constitution), the Terms of Reference of the Council, part 1.3 states that it is:

*'To carry out the following functions:-  
Adopting and changing the Constitution.'*

5.5 A report relating to the updated CPR's was presented to the Council's Audit Committee on 16<sup>th</sup> October 2017 as the first stage of review and approval. Following consideration of the updated CPR's Audit Committee determined no additional amendments were necessary and recommended they be placed before this Committee for consideration.

## **6. SUMMARY**

- 6.1 The Council's CPR'S provide the framework to follow when goods and services are required to be procured from external stakeholders. Complying with the CPR's helps to ensure legal compliance.
- 6.2 Following an internal review of how Officers across the Council undertook procurement activities, the Council's Chief Executive and Group Director, Corporate & Frontline Services approved the centralisation of procuring when a contract value is estimated to be in excess of £15,000.00. This centralisation formed the catalyst to updating the CPR's.
- 6.3 Following Audit Committees aforementioned review of the CPR's it is recommended that this Committee considers whether it believes any amendments are required in order to either provide clarity and/or improve the controls within the CPR's and subject to this commend to Council that the revised CPR's be adopted and the consequential change to the Council's Constitution be made.

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**LOCAL GOVERNMENT ACT 1972**

**as amended by**

**THE ACCESS TO INFORMATION ACT 1985**

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**CORPORATE GOVERNANCE & CONSTITUTION COMMITTEE**

**16TH NOVEMBER 2017**

**Joint report of the Group Director, Corporate & Frontline Services & Director,  
Legal & Democratic Services**

Author: Steve Vaughan – Service Manager, e-Procurement & Development  
Tel. No. (01443) 744 554

**Background Papers**

Report of the Group Director, Corporate & Frontline Services -  
Updated Contract Procedure Rules – Audit Committee – 16<sup>th</sup> October 2017

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## **APPENDIX A – UPDATED CONTRACT PROCEDURE RULES**

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# RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

## CONTRACT PROCEDURE RULES

*Date of Review: October 2017*

*Date Approved by Council: XX*

*Date of release: XX 2017*

## **KEY MESSAGES:**

- Before entering into any contract, placing Official Orders or undertaking any competitive procurement process where the estimated value exceeds £15,000.00, Officers must consult with the Corporate Procurement Unit who will advise on the Procurement process to be followed. Upon receipt of a fully completed Contract Initiation Document, the Corporate Procurement Unit will be responsible for leading the procurement process above this value (in consultation with the relevant Service Area) from initiation through to contract award.
- Any Officers with responsibility for the procurement of goods, services (including contracts for consultancy) or works for or on behalf of the Council (in accordance with the Scheme of Delegation) are affected by these Rules.
- All procurement should be conducted in accordance with the principles of EU and Public Procurement Law namely, non-discrimination, transparency and fairness.
- Officers shall make full use of Corporate Contracts including National Procurement Service Contracts, established Framework Agreements or other legally available arrangements before placing Official Orders.
- Details of all Contracts available for use can be obtained from the Corporate Procurement Unit.



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<b>SECTION 1</b>	<b>Introduction</b>
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These Contract Procedure Rules should be read in conjunction with the Council's Financial Procedure Rules and Scheme of Delegation.

A key requirement of these procedure rules is to ensure competitiveness and the primary method of achieving this is through a competitive process. These Rules set a framework for these processes and aim to strike the right balance between price and quality whilst keeping the cost of contracting to a minimum.

### Scope

These Contract Procedure Rules are:

- The Council's procedural rules for buying goods and services for the Council. They do not apply to internal purchases or service provision, but only to external suppliers and providers.
- Applicable to the making by the Council of all Contracts, for the provision, supply, hire or disposal of goods, materials or intellectual products, and for the provision of services, the use of consultants and to Contracts for income.
- Not applicable to Contracts of service (i.e. employment contracts). Please note however that the procurement of Agency Workers and Consultancy Services does fall within the scope of these Rules.

### Functionality

These Contract Procedure Rules:

- Are applicable to the formation of Contracts and to any matters as may arise in the process of managing Contracts, which significantly change, vary or terminate any such Contract during its currency.
- Relate to the extension or renewal of Contracts beyond their initial term.
- Are without prejudice to the need for budget holders to ensure that budgets are not exceeded.
- Are without prejudice to the requirements of UK and EU Legislation governing any Contract in which case those requirements shall be followed (even if they conflict with these rules).

### Aims

These Contract Procedure Rules aim to:

- Achieve value for money for the Council in the market by ensuring provision for securing competition at appropriate levels of expenditure whilst avoiding disproportionate or bureaucratic costs where levels of expenditure are less significant.
- Achieve fullest accountability at all levels whilst ensuring an adequate audit trail by requiring the Directors to record who did what, how and when.
- Ensure that Officers follow proper and fair procedures for the

involvement and selection of Contractors.

- Ensure compliance with EU Procurement Directives and Public Contract Regulations.
- Ensure that proper Specification is made by Officers which reflect the appropriate and realistic quality requirements for any defined need, and that offers may be judged by objective criteria.
- Ensure that levels of monitoring and training exist to ensure proper compliance and that these rules are regularly reviewed to take account of new circumstances.

## Status

These Contract Procedure Rules:

- Are made under Section 135 of the Local Government Act 1972 and all other powers enabling the Council.
- Are applicable to all parts of the Council's activities.
- Are applicable where the Council is acting as agent for another body unless the principal directs otherwise.
- Must be adopted by any external contractors empowered to form Contracts on behalf of the Council and by any person who is not an Officer of the Council engaged to manage a Contract on behalf of the Council.
- Shall apply to the selection of nominated suppliers and nominated sub-contractors for products covered by prime costs and provisional sums in a main contract.
- Shall be interpreted so far as possible to ensure the aims set out in these rules are achieved.
- Are not applicable to expenditure between Service Areas, Groups or the use of the Council's trading organisations.

## Who is affected by these Procedure Rules?

Officers who may, at any point require goods and or services from external providers / suppliers.

## Tendering, Ordering and Advertising

Before entering into any contract, placing Official Orders or undertaking any competitive procurement process where the estimated value exceeds £15,000.00, **Officers must consult with the Corporate Procurement Unit who will advise on the Procurement process to be followed.**

A Contract Initiation Document (CID) must be completed and submitted to the Corporate Procurement Unit before any competitive procurement process takes place. This document enables a robust specification of requirements to be recorded by the Service Area allowing the Corporate Procurement Unit to advise on the most suitable process, regulations to adhere to, timescales and resource requirements. See the Procurement pages on Council's Intranet Site for a copy of the Contract Initiation Document (CID).

Upon receipt of a fully completed Contract Initiation Document, the Corporate

Procurement Unit will be responsible for leading the procurement process above this value (in consultation with the relevant Service Area) from initiation through to contract award.

Officers shall make full use of Corporate Contracts including National Procurement Service Contracts, established Framework Agreements or other legally available arrangements before placing Official Orders.

There are a number of Electronic Procurement Systems that should be utilised as corporate solutions to support the cost efficient procurement of goods and services (streamlining the transaction process and reducing unnecessary administration overheads where possible). Please refer to the [Procurement pages](#) on Council's Intranet Site for further information regarding the use of these systems.

In accordance with the principles of the Welsh Government "Opening Doors, The Charter for SME Friendly Procurement", contracts exceeding £25,000 shall be advertised on the Council's Contract Management System and or the Sell2Wales website, where practical, and providing that it represents best value for the Council.

### **Head of Procurement and Energy Management**

The Corporate Procurement Unit has a clear strategic role in the procurement of all services, supplies and works, and as such, it is vital that this expertise is employed and consulted upon for all contracts where the estimated value exceeds £15,000.00. Furthermore, the Head of Procurement and Energy Management on behalf of the relevant Director shall place all EU notices of advertisement.

### **Legal Requirements**

Formal procedures are required to be made by every Local Authority under Section 135 of the Local Government Act 1972. The Act refers to the supply of 'goods or materials and the execution of works'.

All Public Procurement in the UK is governed by the EU Treaty and the EU Procurement Directives and UK Procurement Regulations that implement the Directives. This legal framework helps to ensure that Public Procurement is conducted in a fair and open manner, both within the UK and across the EU.

### **Focus of these Rules**

Section 135 of the 1972 Local Government Act does not set any particular format for Contract Procedure Rules nor does it prescribe the contents in any detail. In considering any specific set of circumstances however, it is expected that at all times, Officers will have in mind the objective implicit within section 135 of the Act, namely that contracting processes shall include '***provision for securing competition***'.

### **Procurement Planning**

At the commencement of each calendar year, the Corporate Procurement Unit will contact Directors and Service Area stakeholders to request details of any planned procurement activities where the estimated value exceeds £15,000.00 for the forthcoming financial year. The Corporate Procurement Unit will use this information for procurement planning, to identify collaborative opportunities, to allocate appropriate resources and to ensure all relevant

legislative requirements are observed.

### **EU Procurement Directives**

The Council's Contract Procedure Rules require compliance in all cases to the EU Procurement Directives. In this regard all such notices or advertisements are to be placed by the Head of Procurement and Energy Management.

### **Proprietary Products**

The Contract Procedure Rules also recognise that some products and services may be unique and therefore are available from one source only, and that in such circumstances, competitive tendering may not always be appropriate. The procedures within these rules for the procurement of Proprietary Products set out the requirements to be followed in these situations.

### **The Framework of Rules**

At the heart of these Contract Procedure Rules is a system of nominated Officers, which is intended to ensure proper separation of duties, to identify accountabilities and to encourage the best use of skills and knowledge. The framework includes for each contract:

- a Director
- a Contract Manager
- a Contracting Officer.

Due regard must be given to the responsibilities allocated to each under the Council's Scheme of Delegation.

### **Contract Management**

In addition to the processes by which contracts are established, there is a need to ensure that contracts are properly managed during their life. These Contract Procedure Rules therefore cover aspects of Contract Management, which relate to ongoing contract variation, price control or termination of contracts at any time during the contract period.

### **Variation to Contracts**

These Contract Procedure Rules give powers to Directors (in consultation with the Group Director, Corporate & Frontline Services and the Director, Legal and Democratic Services) to agree variations beyond the original contract terms. Other variations regarding the terms of the contract are to be dealt with by the Contract Manager in conjunction with the Corporate Procurement Unit. Please also refer to the requirements of the Financial Procedure Rules concerning variations.

### **Contract Management System**

One significant purpose of these Contract Procedure Rules is to ensure transparency relating to decisions taken around the contracting process. These Contract Procedure Rules require the establishment of a Contract Management System, which shall be the primary place for managing procurement processes and for recording details of all contracts awarded over the value of £15,000.00. It is from this system that the Council is able to

manage and monitor the Council's Contracts Register.

### **Procurement by Consultants**

Where the Council uses consultants as part of a procurement process, it should be ensured that consultants carry out any procurement in accordance with these Contract Procedure Rules. No consultant shall make any decision on whether to award a contract. All decisions must be made in accordance with these procedure rules and the Council's Scheme of Delegation.

### **Sustainable Procurement**

Sustainable procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis, in terms of generating benefits not only to the organisation, but also to society and the economy, while minimising damage to the environment.

The Wales Procurement Policy Statement (WPPS) adopts a definition of procurement that ensures value for money is considered in the very widest sense when contracting in the public sector in Wales. The Community Benefits policy approach is covered under principle 4 of the WPPS and seeks to act upon the wider definition of value for money by delivering the very widest social, economic and environmental benefits in the course of securing goods, services or works.

When planning public procurement in Wales, the Community Benefits policy approach must be an integral consideration and should be applied where such benefits can be realised. Principle 4 of the WPPS has set a threshold for application of Community Benefits at £1m for both application of policy and measurement of outcomes. For all contracts exceeding this value, the Council shall consider a social return on investment through the adoption of a community benefits approach.

Further information and guidance is available via the Welsh Government guidance document: 'Community Benefits: Delivering Maximum Value for the Welsh Pound' or via the [Procurement Route Planner](#) .

### **Equal Opportunities**

Public authorities must ensure that their procurement activities are operated in a way that meets their legal equality obligations. Addressing equality issues in procurement will help the Council provide public services that are tailored to the needs of diverse users and communities.

#### The Equality Act 2010

The Act includes a public sector equality duty (the 'general duty') that aims to ensure that equality considerations are built into the design of policies and the delivery of services. A public authority remains responsible for meeting the general duty even where relevant works or services are contracted out to an external supplier. It is important to build equality considerations into procurement processes.

The general duty applies to anyone who is carrying out a public function. Where an external body is being contracted to provide a

relevant public service (including, in some cases, providing goods or works) it will be necessary to make them aware of the responsibilities that may arise under the public sector equality duty and to assist them appropriately.

The Sustainable Risk Assessment template (SRA) can be used to assess equality considerations. Information on this is available via the [Procurement Route Planner](#) or can be obtained from the Corporate Procurement Unit.

### Welsh Language

The Council must ensure that contractors delivering a public service on its behalf are able to deliver such a service in compliance with the requirements of Welsh Language legislation. In order to deliver effective, quality and equal public services within Wales, there is a requirement to consider language obligations from the outset of a tender process and in preparing contract specifications.

Where a contract relates to a 'public service contract' (as governed by the requirements of the Welsh Language Act 1993), a contractor may be required to demonstrate its ability to comply with the requirements of the Act. This may involve the ability of the contractor to deliver services in Welsh or English to service users on an equal basis and / or to be able to market and promote services bilingually. The contract specification must set out the entire requirements of the contract, including details of the Welsh Language Standards applicable to the delivery of the contract throughout the contract term.

Procurement documentation must also be issued bilingually in accordance with the Welsh Language Standards (Welsh Language Wales Measure 2011), including – but not limited to – an invitation to tender and any procurement guidelines issued as part of a competitive tender process. Standard templates have been developed for this purpose and can be obtained from the Corporate Procurement Unit.

## **Reviewing the Procedure Rules**

It is intended that these rules will be kept under continuous review so that they reflect changes in contracting and best practice. The reviews will be carried out by the Head of Procurement and Energy Management in conjunction with the Group Director, Corporate & Frontline Services and the Director, Legal and Democratic Services.

## **Guidance**

In order to ensure that Officers have access to advice and guidance, a support system, including assistance and advice from the Corporate Procurement Unit is available. Officers who have doubt or difficulties in any given situation relating to contracts should contact the Corporate Procurement Unit.



Corporate Procurement Unit contact details:

Tel: 01443 744550

Email: [Procurement@rctcbc.gov.uk](mailto:Procurement@rctcbc.gov.uk)

<b>SECTION 2</b>	<b>CONTRACT PROCEDURE RULES</b>
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### **Framework Agreements and Collaboration**

- A.1 Where current and valid frameworks are available for use by the Council (as approved by the Head of Procurement and Energy Management), the framework must be used in accordance with the guidance provided by the Head of Procurement and Energy Management.
- A.2 Any joint procurement arrangements with other local authorities and/or public sector bodies including membership or use of any consortia must be approved by the Head of Procurement and Energy Management.
- A.3 Established framework and consortium arrangements endorsed by the Head of Procurement and Energy Management for use by the Council shall be mandatory.
- A.4 Where collaborative or Council frameworks are utilised, the award process must be in accordance with the terms and guidance of the individual framework.

### **Instances where there is no requirement for competition**

- B.1 There is no requirement for competition for work placed with internal trading organisations. However, where the value of the contract is above £75,000.00, and another trading organisation is known to offer comparable services to those required, competition may be sought. In these circumstances, the Contracting Officer must be able to demonstrate that competition is likely to lead to better value for money (taking account not only of price, but of the total cost to the Council of the competitive process, including any loss of revenue with the internal trading organisation).
- B.2 There is no requirement for competition for work placed with other Council departments that are not internal trading organisations.

### **Estimating the Contract Value**

- B.3 The value of a contract means the estimated total monetary value over its full duration (not the annual value), including any extensions or other options. Where the duration of a contract is indeterminate or is longer than four years, this should be taken to be the estimated value of the contract over a period of four years. No procurement may be artificially split to avoid compliance with these Contract Procedure Rules and European Union procurement directives.
- B.4 Where the value is, or may be, equal to or greater than the relevant OJEU threshold, due regard should be given to the valuation rules in regulation 8 (Thresholds) of the Public Contracts Regulations 2015. Guidance should be sought from the Corporate Procurement Unit

where assistance is required in estimating contract values.

### Service Level Agreements

- B.5 A Service Level Agreement (SLA) is an agreement between a service provider and client that governs all aspects of their relationship. An SLA can be used between internal departments within the Council or other Local Authorities. Where the Service Provider is a legal entity external to the client, the relationship will be a formal contract as opposed to an SLA.

It is important to document and agree any Service Level Agreement, including any commercial and exit arrangements of the participating organisations. This should include clear criteria for determining the ongoing viability of the arrangement and supported by agreed and measurable performance indicators with the Service Provider. In support of this, the standard Service Level Agreement Template available via the Council's Procurement intranet site or from the Head of Procurement and Energy Management should be used.

### Bonds or Guarantees

- B.6 A risk assessment should be undertaken to determine whether a performance bond or performance guarantee is required. Guidance relating to Bonds or Guarantees can be obtained from the Corporate Procurement Unit.

### Private Interests

- B.7 No Member, employee or agent of the Council shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council.
- B.8 Members and employees of the Council shall comply with the requirements of Section 117 of the Local Government Act 1972 and the employees Code of Conduct set out in the Constitution about the declaration of private interest in Contracts with the Council. Such interests must be declared to the Director, Legal and Democratic Services acting in his or her capacity as a Monitoring Officer for inclusion in the appropriate registers.

<b>SECTION 3</b>	<b>PROCEDURES</b>
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#### C.1.1 Deciding Which Value Threshold

The Contracting Officer shall determine in accordance with sections B.3 - B.4 the estimated value of the contract and thereby the thresholds to be used, which shall be as follows:

<b>C2</b>	Value below £15,000 (see pg. 17)
<b>C3</b>	Value between £15,000 and £75,000 (see pg. 18)
<b>C4</b>	Value between £75,000 and below the EU Procurement Thresholds for <b>Supplies &amp; Services contracts</b> (see pg. 19)

<b>C5</b>	Value between £75,000 and below the EU Procurement Thresholds for <b>Works contracts</b> (see pg. 20)
<b>C6</b>	Above the EU Procurement Thresholds (see pg. 21)

The **EU Procurement (OJEU) Thresholds** effective from 1<sup>st</sup> January 2016 are:

Works	<b>£4,104,394</b>
Supplies	<b>£164,176</b>
Services	<b>£164,176</b>
Social & Other specific services	<b>£589,148</b>

Note:

- For term contracts, the estimated total value relates to the entire term or four years, whichever is the less.
- The OJEU thresholds are the financial values at which the EU Public Sector Procurement Directive 2014/24/EU and the Public Contracts Regulations 2015 require tenders to be advertised in the Official Journal of the EU (“OJEU”).
- Social and other specific services as specified under Article 74 of the above Directive. Procedures above this value are subject to the light touch regime process.
- These thresholds vary from time to time and can be checked for accuracy on the OJEU website ([www.ojec.com](http://www.ojec.com)).

**CONTRACT PROCEDURES – OVERVIEW:**

	Estimated Contract Value				
	C2 Below £15,000	C3 £15,000 - £75,000	C4 £75,000 to EU Thresholds (Supplies, Social & other Specific Services)	C5 £75,000 to EU Thresholds (Works)	C6 Above EU Thresholds
<b>Key requirement</b>	<p>Utilise Corporate Contracts or other available contracts / frameworks <u>before</u> placing order or undertaking tender process.</p> <p>Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Corporate Procurement Unit.</p> <p>Over £15,000: A Contract Initiation Document (CID) must be completed and submitted to the Corporate Procurement Unit <u>before</u> any competitive procurement process takes place.</p> <p>Competitive process must be undertaken by the Corporate Procurement Unit via the Contract Management System (unless prior approval of the Corporate Procurement has been obtained).</p>				
<b>Process</b>	<p>Due regard for ensuring value for money is achieved (2 quotations recommended).</p>	<ul style="list-style-type: none"> <li>• <b>3 tenders</b> invited (minimum).</li> </ul>	<ul style="list-style-type: none"> <li>• <b>4 tenders</b> invited (minimum).</li> </ul>	<ul style="list-style-type: none"> <li>• <b>3 tenders</b> invited (between £75k and £150k).</li> <li>• <b>4 written tenders</b> (between £150k and EU Threshold).</li> </ul>	<p>Seek advice from Head of Procurement &amp; Energy Management before commencing any tender process.</p> <ul style="list-style-type: none"> <li>• Tender must be published in the OJEU.</li> </ul>
<b>Framework Agreements</b>	Where collaborative or Council frameworks are utilised, the number of tenderers and value of applicable thresholds should be in accordance with the terms of the individual framework.				
<b>Returned to &amp; Opened by:</b>	Any Officer	By the assigned Officer (via the Contract Management System).			
<b>Contract Award</b>	Contract Officer with delegated responsibility under the Council's Scheme of Delegation.				
<b>Completion of Contract</b>	Retain evidence of all contract documentation (quotations etc).	<p>Retain evidence of all contract documentation.</p> <p>Contract details must be recorded on the Council's Contract Management System.</p>			

<b>C2</b>	<b>Purchases below £15,000</b>
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- C.2.1 Before undertaking any competitive tendering process or before placing any Official Orders on behalf of the Council, Officers shall make full use of Corporate Contracts and the Corporate Procurement Unit for other contracts (including National Procurement Service Contracts, established Framework Agreements or other legally available arrangement) and observe the requirements of B.1.
- C.2.2 Details of all Contracts available for use can be obtained from the Council's Procurement Intranet Site or from the Head of Procurement and Energy Management.
- C.2.3 Where Framework Agreements are to be utilised, Contracting Officers must conform to the specific requirements of each Framework Agreement for the selection and letting of contracts.
- C.2.4 Where the requirements of C.2.1 cannot be met or where a Corporate Contract is not available for use, it will be necessary only for the Contracting Officer to seek value for money. It is recommended that a minimum of **2 quotations** are requested to demonstrate value for money prior to the selection of any contractor and documentary evidence of the decision making process retained.
- C.2.5 The Contracting Officer may utilise an Approved Vendors List (AVL), however prior approval of the Head of Procurement and Energy Management must be obtained. Where an AVL is utilised to select potential Tenderers, it is recommended the invited Tenderers are refreshed on each occasion from any previous selection list used.
- C.2.6 The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

<b>C3</b>	<b>Purchases between £15,000 - £75,000</b>
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- C.3.1 Before entering into any contract, placing Official Orders or undertaking any competitive procurement process where the estimated value exceeds £15,000.00, **Officers must consult with the Corporate Procurement Unit who will advise on the Procurement process to be followed.**
- C.3.2 A Contract Initiation Document (CID) must be completed and submitted to the Corporate Procurement Unit before any competitive procurement process takes place. This document enables a robust specification of requirements to be recorded by the Service Area allowing the Corporate Procurement Unit to advise on the most suitable process, regulations to adhere to, timescales and resource requirements. See the [Procurement pages](#) on Council's Intranet Site for a copy of the Contract Initiation Document (CID).
- C.3.3 Upon receipt of a fully completed Contract Initiation Document, the Corporate Procurement Unit will be responsible for leading the procurement process above this value (in consultation with the relevant

Service Area) from initiation through to contract award.

- C.3.4 Before undertaking any competitive tendering process or before placing any Official Orders, the Council shall make full use of Corporate Contracts, including National Procurement Service Contracts, established Framework Agreements or other legally available arrangement and observe the requirements of B.1. Where Framework Agreements are to be utilised, Contracting Officers must conform to the specific requirements of each Framework Agreement for the selection and letting of contracts.
- C.3.5 Where a Corporate Contract is not available for use (C.2.1), a minimum of 3 **tenders** must be invited and due regard must be given for ensuring value for money is achieved. Documentary evidence of the decision making process must be retained.
- C.3.6 A contract may only be awarded if appropriate approval is received from an Officer with delegated authority to do so in accordance with the Council's Scheme of Delegation.
- C.3.7 Following the award, the contract details will be held on the Council's Contract Management System.

<b>C4</b>	<b>SUPPLIES &amp; SERVICES Contracts between £75,000 and below the EU Procurement Thresholds</b>
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- C.4.1 Before entering into any contract, placing Official Orders or undertaking any competitive procurement process where the estimated value exceeds £15,000.00, **Officers must consult with the Corporate Procurement Unit who will advise on the Procurement process to be followed.**
- C.4.2 A Contract Initiation Document (CID) must be completed and submitted to the Corporate Procurement Unit before any competitive procurement process takes place. This document enables a robust specification of requirements to be recorded by the Service Area allowing the Corporate Procurement Unit to advise on the most suitable process, regulations to adhere to, timescales and resource requirements. See the [Procurement pages](#) on Council's Intranet Site for a copy of the Contract Initiation Document (CID).
- C.4.3 Upon receipt of a fully completed Contract Initiation Document, the Corporate Procurement Unit will be responsible for leading the procurement process above this value (in consultation with the relevant Service Area) from initiation through to contract award.
- C.4.4 Where a Corporate Contract is not available for use (C.2.1), the Contracting Officer shall arrange for a Competitive Tender to be undertaken and shall arrange for the following number of tenders to be invited and evidenced (these are minimum requirements and Contracting Officers may deem it appropriate to seek more to ensure a competitive process):
- For contracts between £75,000 and the European Thresholds, at least 4 competitive **tenders** must be invited.

- The Contracting Officer may utilise an Approved Vendors List (AVL) and shall observe the requirements of C.2.4 when doing so.
- Documentary evidence of the decision making process must be retained.

C.4.5 The Contracting Officer must decide and record:

- The form in which Tenderers shall be invited to tender.
- The criteria to be used to select the successful Contractor or Supplier from among those tendering.
- The criteria to determine whether the chosen Contractor performs satisfactorily.

C.4.6 Due regard must be given for ensuring value for money is achieved. In such cases where the minimum amount of tenders cannot be obtained, the Contracting Officer shall refer to C.7.4.

C.4.7 A contract may only be awarded if appropriate approval is received from an Officer with delegated authority to do so in accordance with the Council's Scheme of Delegation.

C.4.8 Following the award, the contract details will be held on the Council's Contract Management System.

<b>C5</b>	<b>WORKS Contracts with a value between £75,000 and below the EU Procurement Thresholds</b>
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C.5.1 Before entering into any contract, placing Official Orders or undertaking any competitive procurement process where the estimated value exceeds £15,000.00, **Officers must consult with the Corporate Procurement Unit who will advise on the Procurement process to be followed.**

C.5.2 A Contract Initiation Document (CID) must be completed and submitted to the Corporate Procurement Unit before any competitive procurement process takes place. This document enables a robust specification of requirements to be recorded by the Service Area allowing the Corporate Procurement Unit to advise on the most suitable process, regulations to adhere to, timescales and resource requirements. See the [Procurement pages](#) on Council's Intranet Site for a copy of the Contract Initiation Document (CID).

C.5.3 Upon receipt of a fully completed Contract Initiation Document, the Corporate Procurement Unit will be responsible for leading the procurement process above this value (in consultation with the relevant Service Area) from initiation through to contract award.

C.5.4 Where a Corporate Contract is not available for use (C.2.1), the Contracting Officer shall arrange for a Competitive Tender to be undertaken and shall arrange for the following number of tenders to be invited and evidenced (these are minimum requirements and Contracting Officers may deem it appropriate to seek more to ensure a competitive process):

- For contracts between £75,000 and £150,000 at least **3 tenders**

invited for Works contracts.

- For contracts between £150,000 and the EU Thresholds at least **4 tenders** invited for Works contracts.
- The Contracting Officer may utilise an Approved Vendors List (AVL) and shall observe the requirements of C.2.4 when doing so.
- Documentary evidence of the decision making process must be retained.

C.4.5 The Contracting Officer must decide and record:

- The form in which Tenderers shall be invited to tender.
- The criteria to be used to select the successful Contractor or Supplier from among those tendering.
- The criteria to determine whether the chosen Contractor performs satisfactorily.

C.4.6 Due regard must be given for ensuring value for money is achieved. In such cases where the minimum amount of tenders cannot be obtained, the Contracting Officer shall refer to C.7.4.

C.4.7 A contract may only be awarded if appropriate approval is received from an Officer with delegated authority to do so in accordance with the Council's Scheme of Delegation.

C.4.8 Following the award, the contract details will be held on the Council's Contract Management System.

<b>C6</b>	<b>Contracts with a total value in excess of the EU Procurement Thresholds</b>
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C.6.1 The Contracting Officer shall follow rules C.2.1 – C.5.7 except where they conflict with EU Procurement Directives.

C.6.2 The Contracting Officer must seek advice from the Head of Procurement and Energy Management before the commencement of any EU process to ensure full compliance with EU Procurement Directives and to determine the procedure to be used.

C.6.3 The Head of Procurement and Energy Management shall place all Contract Notices in accordance with the requirements of the EU Procurement Directives.

C.6.4 The Contracting Officer shall ensure compliance with the procedure set out in the relevant Directives.

C.6.5 The Contracting Officer may only award a contract or enter into contractual arrangements providing that this responsibility has been properly authorised to them in accordance with the Council's Scheme of Delegation.

C.6.6 The Head of Procurement and Energy Management will publish a Contract Award Notice in accordance with the requirements of the EU Directives

### **Single Tenders**



C.7.1 A single tender may only be invited when:

- by reason of regulation or legislation only one supplier of the product or service exists;
- the value of the contract is below EU Thresholds and the costs of complying with a tender procedure outweighs the likely benefits;
- only a Propriety Product (for Goods, Services, Social & Other specific services or Works) is suitable or acceptable to customers or the Product consists of repairs or works to an existing Propriety Product (although some propriety products may be available through existing framework arrangements. Where available, the requirements of A.1 shall be observed);
- in exceptional cases of such extreme emergency that a tender process cannot be undertaken. In these cases, the reason for the urgency shall not be within the control of the Director or Contracting Officer.

C.7.2 In all such cases, the Director and Contracting Officer must document and record the reasons why within the Contract Initiation Document (CID), sign and date and notify the Head of Procurement and Energy Management.

C.7.3 In all such cases above, the Contracting Officer must ensure:

- that the product is specified in writing;
- where only one tenderer is identified, ensure that the best price and conditions are negotiated and that these are recorded;
- that provisions for the adjustment in price, volumes or other variable factors have been agreed and recorded in writing.

**Instances where there are less than the required minimum Tenders invited**

C.7.4 In such cases where the Contracting Officer wishes to proceed with less than the required number of tenders specified in these Contract Procedure Rules, the Director and Contracting Officer must document and record the reasons why within the Contract Initiation Document (CID), sign and date and notify the Head of Procurement and Energy Management.

**D. Terms and Conditions**

D.1 Where available, practical and appropriate to do so, the Council's adopted Standard Terms and Conditions shall be specified as a minimum requirement for entering into contracts for Supplies, Works or Services. Any doubt as to the applicability of these conditions or any clauses contained therein should be referred to the Director of Legal and Democratic Services or Head of Procurement and Energy Management.

**E. Approved Lists**

E.1 Approved Lists cannot be used for the exclusive selection of Tenderers for any Contract above the value thresholds set in European

Procurement Directives as detailed at C.1 of these rules.

- E.2 Contracting Officers shall also observe the requirements of these procedure rules before utilising an Approved Vendors List (AVL).

## **F. Processing of Tenders**

A key function of these Procedure Rules is to set down a framework, which can demonstrate that the requirements of public accountability and transparency are extant. To achieve this, the following shall apply:

### **Electronic Tenders and Electronic Auctions**

- F.1 All Tenders over the £15,000 threshold should be processed using the Council's approved Contract Management System (CMS). This system facilitates a controlled and secure environment for the issue, receipt, opening and evaluation of tenders and also captures a complete audit trail of tender processes conducted. This system should be used in accordance with appropriate guidance, user documentation and procedures.

Further information regarding the use of the Council's Contract Management System may be obtained via the Corporate Procurement Unit or via the Corporate Procurement Unit Intranet site.

- F.2 Contracting Officers shall observe the following requirements when processing tenders via the Contract Management System:

- A responsible officer is assigned to manage the tender.
- Tender timescales are adequate to enable suppliers sufficient time to prepare and submit their tender. These timescales should also consider the complexities of the requirement.
- All relevant tender documentation is made available to tenderers and the information provided is consistent with the details entered directly on the CMS.
- All tender clarifications must be conducted via the CMS.
- Evaluation questions and criteria are entered into the system in the most appropriate format.
- Appropriate uses of tools, such as electronic auctions, are considered.
- Suppliers are registered on the CMS with accurate and complete contact information.

### **Awarding the Contract**

- The tender evaluation outcome must be recorded on the system.
- Notifications must be sent to suppliers via the system.
- Following completion of the tender process, the contract should be created, awarded and registered accordingly on the system.

- F.3 Where an externally hosted extranet is to be used to support the tendering process prior approval of the Head of Procurement and Energy Management must be obtained.

## Amendment to Tenders, Errors and Omissions

- F.4 As a general rule no adjustment or qualification to any tender(s) is permitted. Errors found during the examination of tenders shall be dealt with in one of the following ways:
- If the error is not arithmetical the tenderer shall be given details of the error(s) and shall be given the opportunity of confirming without amendment or withdrawing the tender; or
  - If an arithmetical error is found, the responsible officer shall correct the error(s) provided that, apart from the genuine arithmetic error(s), no other adjustment revision or qualification is permitted.
- F.5 A Contracting Officer may seek clarification of the information provided (or not provided) by a Tenderer only where this is necessary to aid understanding.

## Assessment of Tenders (Tender Evaluation)

- F.6 Tenders should be assessed in accordance with the predetermined evaluation criteria set out in the Tender documentation (and published EU notice, where appropriate) and identify tenders that best meet the criteria, including value for money.
- F.7 In respect of all tenders, where the main tender criterion is the most economically advantageous tender, the evaluation criteria or sub-criteria shall, as a minimum, be listed in the Invitation To Tender (ITT) documentation in order of importance. Any particular scoring or weighting attributable to any criteria or sub criteria must be clearly stated. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure (other than where permitted under EU Procurement Directives).
- F.8 It should be noted that prior disclosure of and adherence to award criteria and weightings is a fundamental requirement of the core principle of transparency. The core procurement principles (transparency, equal treatment, non-discrimination) apply even to sub-OJEU threshold procurements.

## Acceptance of Tenders

The Director:

- F.9 Shall accept the highest Tender where payment is to be received by the Council unless a decision is taken not to proceed with the Contract.
- F.10 Shall accept the lowest or the most economically advantageous tender for all contracts where payment is to be made by the Council unless a decision is taken not to proceed with the Contract. Guidance and approval should be sought from the Head of Procurement and Energy Management where tenders are to be evaluated on a quality or price basis.
- F.11 May accept a Tender not complying with the above only if the Director in consultation with the Group Director, Corporate & Frontline Services and the Head of Procurement and Energy Management certify why it is

in the Council's best interest to do so.

- F.12 Shall, where appropriate, sign the Contract documents or place them before the Director of Legal and Democratic Services for signature or seal, with such explanations as he or she may require.
- F.13 In all such cases above, shall observe the requirements of section C.6.5.

### **Non-concluded Terms and Conditions**

- F.14 Contracting Officers should always ensure (so far as possible) that terms and conditions are fully agreed, by including them in the tender documents and requiring tenderers to accept them as part of the tender. Not doing so exposes the Council to:
- Serious risk of being unable to ensure delivery to required standards;
  - Risk of procurement claims and challenges if terms are negotiated post-tender; and
  - Risk of audit criticism.
- F.15 Where (exceptionally) the terms and conditions of contract are not fully agreed, no contractor shall be allowed to commence delivery of goods, works or services until all terms and conditions have been agreed and signature or written agreement of both parties obtained.
- F.16 Contracts should not be entered into on the basis of the contractors own standard terms and conditions, or terms negotiated which are significantly different to those included or referred to at tender stage, since this carries a high risk of procurement challenges. However, in exceptional circumstances, there may be a requirement to agree or negotiate alternative terms and conditions in which to contract. Where this is the case, prior approval must be sought from the Head of Procurement and Energy Management.

### **G. Completion of Contracts**

- G.1 The Contract Officer should arrange for contracts to be attested either Under Hand by the Director or Under Seal. The Director of Legal and Democratic Services shall be consulted if a Contract is to be attested Under Seal.
- G.2 The Director shall consider (in consultation with the Director of Legal and Democratic Services) whether, having regard to the need for extension of the period of limitations, a Contract should be attested Under Seal.
- G.3 The Common Seal shall be attested by the Director of Legal and Democratic Services or a signatory authorised by him and an entry of every sealing shall be made, consecutively numbered and shall be signed by the person who has attested the seal. The seal shall not be affixed without the authority of Council, Cabinet, Committee or under delegated powers.

- G.4 Following the award of the contract (and where the contract value exceeds £15,000), the contract details will be recorded on the Council's Contract Management System. Where access to this system has been granted, it is the responsibility of the Contract Officer to record details of contracts awarded on the system.

## **H. Contract Management**

- H.1 A Director must appoint a Contract Manager to manage the performance of a contract throughout its term. The duties of the Contract Manager shall begin when the contract is awarded and shall cease when it is completed or terminated.
- H.2 The Contract Manager should ensure that management and monitoring arrangements for the contract have been established and recorded (including the methods for reporting and monitoring performance, costs and service delivery against the agreed Contract Specification and Terms and Conditions).
- H.3 The Contract Manager will also be responsible for:
- The management of the relationship between the Council and the supplier (ensuring effective lines of communication are in existence between client representatives, stakeholders and service providers).
  - The identification, allocation and management of the risks associated with the performance of the contract.

## **I. Termination Procedures**

- I.1 Where consideration is being given to terminating any contract arrangements, reference should be made to the Head of Procurement and Energy Management and or the Director of Legal and Democratic Services.

## **J. Disposal of Land, Buildings or Equipment**

- J.1 Please refer to the requirements of the Financial Procedure Rules concerning the disposal of Land and Buildings (Section 6.6.e) or the disposal of surplus or obsolete materials, stores or equipment (Section 6.6.f).
- J.2 Officers must seek advice from the Corporate Estates Department regarding the disposal of surplus land and buildings.
- J.3 In the event that the method of disposal requires a competitive process, the Corporate Estates Department should also consult with the Corporate Procurement Unit where necessary. The Corporate Procurement Unit will advise on the process to be followed, the terms and conditions required and the evaluation procedures.

## **K. Contract Variations – basic principles**

K.1 Variation refers to a change to the contract terms that the parties had agreed and accepted when the contract was signed. This requires a clear and documented process, with clear references to the relevant clause(s) of the original terms and conditions of contract.

Variations are consensual and most commonly about change in contract scope. Typically these occur as a result of changes to methodology, design, timing, order or sequence of provision.

K.2 Contract variations which change any significant term of the contract (particularly as to price, quality or balance of risk) have the potential to amount to a new contract, and thus can constitute a single tender award without advertisement. Variations should therefore only be considered where:

- The proposed variation is within the scope of the original tender (including any possible extensions or options which were included in the contract notice, advertisement or tender documents);
- The proposed variation does not significantly exceed the value of the original tender (including any possible extensions or options which were included in the contract notice, advertisement or tender documents);
- Variations of the type proposed were contemplated at the time the original procurement exercise was carried out; or
- The variation is permitted under the terms and conditions of the contract (provided that those terms and conditions were known to tenderers at the time of the original tender).

K.3 However, variations which alter the balance of risk in favour of the Council may in certain circumstances be judged not to be anti-competitive and thus may be permissible. Permission of the Head of Procurement and Energy Management must always be sought to any significant variation.

K.4 Any contract subject to potential assignment and novation must be referred to the Head of Procurement and Energy Management at the earliest possible opportunity.

K.5 Please also refer to the requirements of the Financial Procedure Rules concerning variations (Section 7.2.C).

## **L. Extensions**

L.1 Extensions of contracts should be included as a term, where appropriate, in the contract concluded following procurement.

L.2 The decision to extend the contract period (term) may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original contract.

- L.3 The Head of Procurement and Energy Management must take all such decisions to extend framework arrangements in agreement with the relevant Director.
- L.4 Where the terms of the contract and or original procurement exercise do not expressly provide for extension then such contracts may only be extended in exceptional circumstances, where legislation permits and value for money issues have been addressed. Such decisions shall be made by the relevant responsible officer in consultation with their Group Director and Head of Procurement and Energy Management. Detailed records of all decisions taken must be retained.

#### **M. Use of other available Contracts**

- M.1 Where goods, services and works are procured by another public body on behalf of the Council or through collaborative arrangements awarded via the National Procurement Service or by the Council through a contract properly let by another such organisation, then those organisations procurement contract rules will apply subject to compliance with European Union, United Kingdom and Welsh Procurement Law.
- M.2 Under established collaborative arrangements, any subsequent mini-tender must be treated on the terms of the original collaborative arrangement and the rules applied by the lead organisation that undertook the collaborative arrangement.
- M.3 Purchasing arrangements made for the Council by the Head of Procurement and Energy Management do not constitute exceptions as they are made under the full provisions of these rules. Correct use of these arrangements, as advised by the Head of Procurement and Energy Management, will however be sufficient to ensure officers meet their responsibilities for compliance.

Such arrangements include:

- Purchasing Frameworks endorsed for use by the Council;
- Collaborative procurement arrangements undertaken by, or in consultation with the Head of Procurement and Energy Management;
- The Council's Call-off Contracts;
- Electronic systems and catalogues endorsed for use by the Council;
- National Procurement Service for Wales collaborative arrangements;
- Crown Commercial Service collaborative arrangements;
- Any joint purchasing and supply arrangements organised by another local authority, public body or a Central Government supply organisation.

#### **N. Approval to proceed in Special Circumstances**

- N.1 These Contract Procedure Rules are applicable to all parts of the Council's activities and areas of expenditure. This section prescribes a framework for circumstances where approval may be required to proceed with a particular course of action from the normal application of the Contract Procedure Rules.
- N.2 Schools with delegated budgets who have their regulations under the scheme for financing schools are exempt from these Contract Procedure Rules, however it is recommended that schools follow these Rules in all purchasing, tendering and contracting activities.
- N.3 Approval may be required to proceed in special circumstances to enable a particular course of action. This course of action may be applied where the estimated contract value over the life of the contract is above £15k. In exceptional circumstances, approval may also be required to proceed from the normal application of the Contract Procedure Rules where the estimated contract value is **above** the EU Procurement Thresholds.
- N.4 In all circumstances, the contracting officer must submit a completed Special Circumstances Proforma to the Corporate Procurement Unit setting out the circumstances or reasons. This will enable the decision-making process and necessary course of action to be clearly documented and approved by the Head of Procurement and Energy Management. This Proforma is available via the [Procurement pages](#) on Council's Intranet Site.
- N.5 The contracting officer and Head of Procurement and Energy Management will keep detailed records of the decision taken and evidence of the approval to proceed.
- N.6 Where the estimated contract value is above the EU Thresholds, the special circumstances approval will be required to document any contravention of the Council's normal legal obligations and will require the formal approval of the Head of Procurement and Energy Management and supported by evidence of formal approval by the relevant Director.
- N.7 An approval to proceed in special circumstances may also be granted:
- N.7.1 By a Chief Officer with the appropriate delegated authority and the Head of Procurement and Energy Management.
  - N.7.2 In an emergency, threatening injury or damage to persons or property, when a Chief Officer can take any necessary action. This action must then be reported to the Head of Procurement and Energy Management as soon as practicable after the event.
- O. Retention of Documents**
- O.1 Contract documentation should be retained securely, in an appropriate format and in accordance with the Council's Information Management



policies and procedures.

- O.2 Where tender or contract documentation is transferred between Council premises, appropriate records should be maintained recording the date of transfer and the location where the documentation will be available or stored.
- O.3 Where consultancy services are utilised in progressing any procurement, it should be ensured that copies of all documentation are retained on behalf of the Council.
- O.4 Where the Contract Management System has been used to manage the procurement process, all tender and contract documentation must be uploaded to the system.

## **P. Compliance**

- P.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and shall comply with:
- All relevant statutory provisions;
  - Insofar as they apply, the relevant European Procurement Rules (i.e. The EC treaty, the general principles of EC law and the EC public procurement directives as given effect to in England and Wales);
  - The Council's Constitution including:
    - these Contract Procedure Rules;
    - the Council's Financial Procedure Rules;
    - Schemes of Delegation;
    - the Council's Strategic Objectives;
    - Procurement Strategy; and
    - relevant Council Policies.
- P.2 Failure by officers to comply with any of the provisions of these Contract Procedure Rules or associated guidance adopted by the Council may result in disciplinary action.
- P.3 Correct use of the arrangements specified under section M.4, as advised by the Head of Procurement and Energy Management, is sufficient to ensure officers meet their responsibilities for compliance.
- P.4 Any procurement carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority to carry out such tasks (as set out in the Council's Scheme of Delegation contained within the Council's Constitution).

## **Q. Guidance and Support**

In the use of these Procedure Rules:

- Q.1 Should there be any doubt or lack of clarity as to the meaning or application, Officers must seek advice from the Group Director, Corporate & Frontline Services, Director of Legal and Democratic

Services or Head of Procurement and Energy Management. Guidance may also be obtained via the Procurement Intranet site.

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## DEFINITIONS

**“Approved List”** means a list of Tenderers, established in accordance with Sections 17 – 22 of the Local Government Act 1988, who have met the Council’s predetermined criteria and who are willing and able to supply Products of a particular type or description. This includes the use of Constructionline, or a similar organisation, and such lists will need to be administered in accordance with guidance, agreed with the Group Director, Corporate & Frontline Services and approved by the Head of Procurement and Energy Management before being utilised.

**“Common Use”** means any Product purchased by the Council, which are required for use by more than one Service Area or Section of the Council or in schools.

**“Contract Manager”** means a person authorised under the Council’s Scheme of Delegation to manage the performance of a contract throughout its term. The duties of a Contract Manager shall begin when the contract is awarded and shall cease when it is completed or terminated.

**“Contract”** means the agreement between the Council and the Contractor comprising the conditions of contract, Specification and any defined schedules and all matters referred to in the Invitation To Tender and the Contractors response thereto, together with acceptance by the Council.

**“Contracting Officer”** means a person authorised under the Council’s Scheme of Delegation for the purpose of carrying out the appropriate duties set out in these Contract Procedure Rules. A Contracting Officer may be appointed specifically for the purpose of a single contract or for a range of contract requirements but may not also be the Director for any contract for which he or she is the Contracting Officer.

**“Contractor”** means any person contracted to sell or buy a Product. This term applies after a contract is formed.

**“Group Director, Corporate & Frontline Services and Director of Legal and Democratic Services”** include Officers specifically authorised by them.

**“Corporate Contract”** means any contract for Products in Common Use and applies particularly to contracts where exclusive use by the Council is a term of the Contract. Details of these contracts can be obtained directly from the Council’s Procurement Intranet Site or from the Head of Procurement and Energy Management.

**“Council’s Contract Management System”** means the electronic eTenderWales portal in use by the Council for managing its procurement activities, part of which includes an electronic contract register. The system also includes facilities for supplier registration and management as well as E-

tendering.

**“Director”** means the Chief Executive, any Chief Officer as defined in Article 12 of the Council’s Constitution or any officer authorised by them under the Council’s Scheme of Delegation in the same or another Group or Service Area to act for them under these rules. Such authorisation shall be in writing, shall include any limitations to the authorisation and shall be recorded. Officers may not act in the capacity of Contracting Officer and Director for any single contract.

The Head of Procurement and Energy Management (or persons within the Procurement Unit) may be authorised under the Council’s Scheme of Delegation to act as Director, Contract Manager and or Contracting Officer. The Head of Procurement and Energy Management will ensure in these cases the required separation of duties as defined in these rules.

**“Executive”** means the Leader and Cabinet of the Authority.

**“Head of Procurement and Energy Management”** means the Head of Procurement and Energy Management.

**“Partnering Agreement”** means an agreement between the Council and a Contractor, which is intended to govern the way in which both parties work together in the management and delivery of the Contract. The basis of the agreement would normally imply a long-term relationship based on trust and on clear mutually agreed objectives. The Partnering Agreement is not a substitute or addendum to the formal Contract.

**“Product”** includes any goods, equipment, material, works, service or benefit.

**“Proprietary Product”** means a product which has unique characteristics which alone meet the required realistic performance specification and is either sold only at fixed rates or sold by more than one source but may be purchased from the prime source at clearly better terms.

**“Specification”** means a clear statement of the Product in sufficient detail:

- to enable the contractor to submit a competitive price.
- to ensure that a Product supplied will meet the requirement of the Council.
- to define the precise output required.

**“Tender Opening Officer”** means any person authorised under the Council’s Scheme of Delegation to carry out tender opening procedures set out in these Contract Procedure Rules.

**“Tender”** means an offer to sell or buy made by a Tenderer.

**“Tenderer”** means any person offering to sell or buy a Product. This term applies before a contract is formed and includes unsuccessful bidders.

**“To Tender”** means to make an offer to sell or buy.

**“Under Hand”** means under the signatures of authorised Officers.

**“Under Seal”** means under the common seal of the Council attested by the Director of Legal and Democratic Services or officers authorised by him or her. The application of the common seal to a Contract will increase the period of limitations (for legal remedy) from 6 years to 12 years.