

CONTRACT PROCEDURE RULES – Appendix C

1. Introduction

1.1 These Contract Procedure Rules (“CPRs”) set out the key responsibilities and actions that Council staff must follow when undertaking procurements.

1.2 These CPRs constitute standing orders for the purpose of s135 of the Local Government Act 1972.

2. Compliance

2.1 These rules apply to all contracts for Works, Supplies, Services or Social and Other Specific Services but do not apply to:-

- (a) Contracts of employment which make an individual a direct employee of the Council;
- (b) property Contracts regarding the acquisition, disposal, lease or transfer of land (which are covered by the Finance Procedure Rules);
- (c) financial instruments (including, but without limitation, shares, bonds, bills of exchange, future or options Contracts) (which are covered by the Financial Procedure Rules);
- (d) Chief Finance Officer dealing in the money market or obtaining finance for the Council; or
- (e) Contracts entered into in settling litigation or alternative dispute resolution.

2.2 The Financial Procedure Rules under Part 4 of this Constitution and the Executive Procedure Rules shall be applied in conjunction with these Rules.

2.3 Where the Council has awarded a Contract to any person to supervise or otherwise manage a Contract on its behalf such a person shall be required to comply with these Rules as if he were an Officer of the Council.

2.4 The term ‘procurement’ in these CPRs includes any arrangement whereby a new, replacement, amended or extended Contract for the supply of goods, works or services is to be put in place. This includes circumstances where more than one provider is invited to tender and also where goods, works or services are procured through a negotiation with a single provider. This includes the award of concessions. Grant funding arrangements by the Council should be considered carefully to decide whether they are in fact a procurement

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for the purposes of these CPRs¹. A genuine grant funding arrangement is not a procurement. However, officers should consider whether the purpose that the grant is being provided for could be achieved through a procurement.

- 2.5 The following are not procurements for the purposes of these CPRs:
- (a) use of an internet service provider (except where the ISP is invited to submit a tender along with other providers);
 - (b) provided that the Public Contracts Regulations do not apply, a joint or shared services arrangement with another public body;
 - (c) an arrangement with a statutory body (e.g. the police) to provide a service that only the statutory body can legally provide; and
 - (d) a Contract or other arrangement with a company that is controlled by the Council (whether wholly or jointly with another public body).
- 2.6 The decision of the Chief Executive will be final in any matter concerning the interpretation of these CPRs.
- 2.7 Failure to comply with the CPRs may result in disciplinary action.

3. Pre Procurement Activity

3.1 For all procurement activity above £50,000 consideration must be given to assess the need for a market engagement exercise (Soft Market Testing) where the scope of the procurement or solution required is not sufficiently defined for clearly specifying in the tender documents.

3.2 The engagement exercise may be used by the Council to gather information about what the market is capable of offering in order to refine the Councils requirements to ensure adequate competition. Prior to undertaking any market engagement, advice must be sought from the Head of CC&P to determine if appropriate and the method of engagement.

3.3 Where market engagement is undertaken, the Authorised officer must ensure appropriate measures are taken to ensure competition is not distorted by:

3.4 i) Ensuring any organisations involved in the engagement exercise are made aware that the engagement does not form part of a tender process.

¹ Guidance on this matter is available on the National Audit Office website
<http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/>

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- ii) Ensuring the exercise is conducted in an open, transparent and structured manner.
- iii) As many suppliers as possible are given the opportunity to participate
- iv) Any information exchanged that is propriety to the supplying organisation is not used within the tender documents
- v) A record of the question and responses is kept on file by the Authorised Officer

3.5 Where the market engagement is undertaken through the use of an advertisement on YORtender or through the use of a prior information notice (PIN) within OJEU, the details of this advertisement also needs to be recorded on Contracts Finder.

34. Compliance with Legislation and Standards

3.14.1 Every procurement undertaken by or on behalf of the Council and every Contract entered into by the Council will comply with:

- (a) EU Law
- (b) Acts of Parliament
- (c) Statutory Instruments, but without limitation, the Public Contracts Regulations 2015
- (d) These Contract Procedure Rules, the Executive Procedure Rules and the Council's Financial Procedure Rules.

5.4. Responsibilities of DirectorsOfficers

4.45.1 Directors & Heads of Service

5.24.2 For the purposes of these Rules the term Directors includes the Chief Finance Officer and the Solicitor to the Council.

5.34.3 Directors & Heads of Service shall ensure that the Council has the legal power to enter into any Contract and that in respect of all Contracts, regardless of whether they involve the procurement or provision by the Council of Works, Supplies, Services or Social and Other Specific Services, Directors & Heads of Service shall ensure that no Contract shall be entered into which is ultra vires.

5.44.4 Directors & Heads of Service shall ensure that the Council:

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- (i) achieve Best Value for public money spent;
- (ii) show no undue favour to any Contractor, nor discriminate against Contractors from other European Union (EU) states;
- (iii) conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
- (iv) ensure that adequate Contract files are kept for all Contracts upon which they are engaged;
- (v) ensure that before entering into any Contract:
 - (i) there is adequate approved budgetary provision; and
 - (ii) there is the appropriate authority.
- (vi) Ensure the Corporate Contract Register held by the Commissioning Contracts & Procurement Service (CC&PS) is updated ~~Keep a register of all Contracts~~ where the Contract Value is above ~~below~~ £5,000;
- (vii) Ensure that all Contracts where the Contract Value exceeds £50,000 are passed to the Solicitor for the Council for sealing and safekeeping; and
- (viii) Ensure all authorised contract procedure rules waivers are submitted electronically to the (CC&PS) ~~keep a record of all exemptions recorded~~ under rule ~~3~~2.3.

5.5
4.5

Officer Responsibilities

~~The Officers~~ responsible for a purchase, disposal or submission of tenders shall be referred to as authorised officers for the purposes of these CPR's. Authorised Officers must comply with these Contract Procedure Rules, Financial Regulations, Code of Conduct and with all United Kingdom and European Community binding legal requirements. These Rules lay down minimum requirements. A more thorough procedure may be appropriate for a particular Contract.

5.64-6

5.74.7

The ~~lead~~ Authorised Officer is responsible for ensuring that:

- (i) the requisite authority under the Constitution is obtained to enter into a Contract;
- (ii) a specification including any quality and or performance standards that will form the basis of the Contract is prepared;
- (iii) an estimate of the whole life cost of a proposed Contract,

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including maintenance and ongoing costs is prepared;

- (iv) that a risk register is prepared in respect of Contracts with an estimated Total Value greater than £50,000;
- (v) that any proposed Contractor has the technical capability to deliver the project;
- (vi) any proposed Contractor has the financial and resource capacity (taking into account Contract Value and risk) to perform the Contract;
- (vii) these rules, the Financial Procedure Rules and any Codes of Practice are complied with; and
- (viii) any agents, consultants, and Contractual partners acting on the Council's behalf follow a process which provides for equivalent competition to these rules.

5.84-8

The ~~lead~~Authorised Officer shall maintain a Contract file in respect of each procurement exercise for a Contract with a Total Value exceeding £~~45~~,000 which will include:

- (a) the name of Officers undertaking the procurement process;
- (b) a copy of the specification;
- (c) in relation to Contracts with a Total Value exceeding £50,000, the risk register;
- (d) a written record of any exemption from Contract Procedure Rules and the reason for it;
- (e) copies of all tenders or quotations;
- ~~(e)~~(f) Copies of bidder questions and answers plus copies of evaluation questions and answers
- ~~(f)~~(g) a copy of the evaluation process and reasons for the decisions as to acceptance or rejection of every tender or quotation;
- ~~(g)~~(h) a copy of any debrief request and the response thereto;
- ~~(h)~~(i) the award letter;
- ~~(i)~~(j) the signed order form or copy of the final signed Contract; and
- ~~(j)~~(k) a copy of any extension to the Contract in accordance with CPR.

6.5-

Joint Procurement

6.15-1 Any joint procurement for the benefit of the Council together with one or more public bodies will be formally approved by the relevant Director as a Delegated Decision before the procurement commences.

6.25-2 Where the Council conducts the procurement on behalf of itself and one or more other public bodies these CPRs will apply and the **Lead Authorised** Officer must ensure the other public bodies that are to be included in that arrangement are listed in the OJEU advertisement and Contract documents individually or as an identified class. The estimate of Contract usage must include the potential usage of that joint arrangement by those public bodies listed.

6.35-3 Where the Council is going to take part in a procurement that is conducted by another public body the procurement must be carried out in accordance with the procuring body's procurement rules and the Public Contracts Regulations 2015.

7.6- Estimating the Contract Value

7.16-1 The method for estimating the contract value, shall be based on the total amount (excluding VAT) the Council expects to pay or receive as income for the whole contract period or term. (for example Estimated annual value x Contract duration plus any allowance for annual fluctuations in estimated spend profile). ~~Contract Total Values should be calculated by working out the annual price and multiplying it by the Contract length (including any possible Contract extensions)~~ and, in any event, in accordance with the Public Contract Regulations with particular regard to the rules on aggregation. For consistency, these rules should be followed even when the Public Contract Regulations are not applicable.

7.2 In the case of call off contracts from a framework the total value calculation shall not exceed four years when calculating the contract value.

67.32 ~~Lead-Authorised~~ Officers will ensure that Total Values are not split in an attempt to avoid the applicability of these CPRs, the Public Contract Regulations or the Executive and Decision Making Procedure Rules (Part 4 of the Constitution).

78. Form of Contract

8.17-1 Every Contract exceeding £1000 in Value shall be evidenced in writing (by the use of an order form, exchange of correspondence or other written medium).

8.27-2 Every Contract exceeding £1,000 shall be evidenced by the use of a Contract file (as set out in CPR ~~4-75.7~~).

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8.37-3 Every Contract exceeding £25,000 in Value shall be documented by a written form of agreement which must clearly specify the obligations of the Council and the Contractor and shall include:

- (a) the work to be done or the Supplies, Services or Social and Other Specific Services to be provided;
- (b) the standards which will apply to what is provided;
- (c) the price or other consideration payable;
- (d) the time in which the Contract is to be carried out; and
- (e) the remedies which will apply to any breach of Contract.

9.8. **Key Decision and Forward Plan**

9.18-1 Expenditure of £150,000 or more is a Key Decision and can only be taken in accordance with the Executive Procedure Rules.

9.28-2 The proposed award and tenders of £150,000 or more must be placed on the Forward Plan whether the award is made.

9.38-3 Content of Forward Plan

The Forward Plan will include the following information in respect of each key decision:

- (a) the matter in respect of which a decision is to be made;
- (b) the person or body by whom the decision is to be made;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the steps any person might take who wishes to make representations to the decision-taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (e) a list of the documents (which are available to the public) submitted to the decision-taker for consideration in relation to the matter.

9.48-4 Publication of the Forward Plan

The Forward Plan must be published at least 28 clear days before the start of the period covered.

Subject to Rule 5.5 of the Executive Procedure Rules (general

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exception) and Rule 5.6 of the Executive Procedure Rules (special urgency), a key decision may not be taken unless:

- (a) a notice (l the 'Forward Plan') has been published in connection with the matter in question;
- (b) at least 28 clear days have elapsed since the publication of the Forward Plan;
- (c) where the decision is to be taken at a meeting of the Executive or its committees, notice of the meeting has been given in accordance with Rule 6.2 (Notice of Meeting).

10.9- Less than £5,000 – Low Value Procurement

10.19.1 Where the Estimated Value of a Contract is £5,000 or less an ITQ is not mandatory, but at least ~~one-two~~ quotations ~~are~~ required provided the ~~Lead-Authorised~~ Officer believes that it represents Best Value for the Council to make a direct appointment without the need for ~~further~~ competition. They may do so providing that a written record of the decision, along with reasons, is kept.

11.10- Between £5,000 and £50,000 – Intermediate Value Procurement

11.140.1 Competition is required for procurements Valued at over £5,000 but at or below £50,000.

11.240.2 At least **three** written quotations must be invited. These tenders may be invited by publishing either an open or restricted tendering opportunity (restricted meaning that only selected suppliers are invited to tender) on the E-Sourcing system.

11.340.3 The estimated Value of the Contract shall be recorded in writing prior to quotations being sought. Quotations above £25,000 **must** be invited using the E-Sourcing system.

11.440.4 If a Director or Head of Service considers it to be appropriate that any ITQ shall be available to all potential Participants then a notice advertising the opportunity shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the Value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITQ documents may be obtained and the closing day for receipt of quotations by the Council.

11.540.5 All potential Contractors invited to submit quotations shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors or Heads of Service may permit potential Contractors who have been selected to submit quotations

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under Rule 10.2 to also submit variant quotations (i.e. quotations which do not comply with some or all of the requirements of the primary quotation). The same opportunity to submit variant quotations must be given to all potential Contractors.

11.610.6 A written quotation may only be considered if it has been submitted in compliance with clause 26 of these CPR's:

~~(a) it has been received electronically through the E-Sourcing System; or~~

~~(b) it has been received in a sealed envelope marked 'Quotation' and indicating the subject matter of the quotation; and~~

~~(c) it has been opened after the expiry of the deadline for submissions and at the same time as other quotations for the same subject matter in the presence of at least two Officers.~~

11.710.7 Before quotations of a Value in excess of £25,000 are requested it must be recorded in writing whether the lowest price or the most economically advantageous quotation should be accepted. Where both price and quality are to be factors (i.e. where the most economically advantageous quotation applies) the quality criteria must be identified and the weighting between price and quality established and recorded before quotations are requested. The criteria should be stated in the request for quotation sent to suppliers.

11.810.8 Unless the Solicitor to the Council considers a formal Contract document is necessary, orders for procuring goods and/or services the Value of which is no greater than £50,000 shall be on the official form of order (official order) as approved by the Chief Finance Officer.

11.910.9 All official orders must be issued in sufficient detail and refer to the reference where available:

(a) to identify the works, goods and/or services required;

(b) the price to be paid; and

(c) the time within which the Contract is to be performed and show the appropriate expenditure code.

11.1010.10 Competitive prices may be sought and received electronically provided that hard copies of all electronically processed information and correspondence relating to the price are made and retained on the Contract files.

11.1110.11 Officers authorised to sign official orders shall not certify the receipt of any goods or services (unless cross checked by another Officer) for which they have signed the order.

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~~11.12~~~~10.12~~ Any orders which are given orally must be confirmed by an official order on the same day, or as soon as possible thereafter.

~~10.13~~ ~~Where goods and/or services are obtained under agreement from a Contractor throughout a year it shall be sufficient to invite quotations once in that year, however, consideration must be given to establishing a Framework or Measured Term Contract.~~

12 Over £50k – High Value Procurement

~~12.1~~
~~44.~~ Where no appropriate internal provider, exclusive supplier, Council approved framework agreement or approved framework agreement exists, competition is required for procurements Valued over £50k.

~~44.1~~

12.2 Where there are sufficient numbers of providers at least **four** written tenders will be invited. Tenders must be invited by publishing an open opportunity on the E-Sourcing System.

~~12.3~~
~~44.2~~ CPRs ~~124.1~~ and ~~124.2~~ are subject to CPR ~~132.2~~. Where the estimated Contract Value reaches the relevant EU threshold set out in the Public Contracts Regulations, CPR ~~110~~ will also apply.

~~12.4~~
~~44.3~~ Any decision to waive this rule by a Director will be in accordance with CPR ~~324~~. Rule ~~124.3~~ cannot be waived.

12.5 The decision to undertake a procurement of this Value must be taken in accordance with the Council's Constitution particularly Part 3 on specific delegations. At this level of spend it should be considered whether the decision is a Key Decision (as set out in CPR ~~98~~).

~~44.4~~

~~12.6~~~~44.5~~ If an open advert is placed on the E-Sourcing system, the option to publish on contracts finder must be selected.

13. Contracts that are subject to the Public Contract Regulations

13.1 Where the estimated Value of a Contract exceeds the current EU threshold, the Contract will be tendered in accordance with the Public Contracts Regulations and these CPRs.

~~44.6~~

13.2 Where a Director and the Solicitor to the Council agree that the negotiated procedure without publication of a Contract notice applies there is no requirement to obtain a waiver of CPRs ~~124.1~~ and ~~124.2~~.

~~42.~~

~~42.4~~

13.3 All OJEU Contract notices must also be published on Contracts Finder.

13.4 The current thresholds (as at January ~~2016~~2018) are:

~~42.2~~ Goods OR Services - £18164,302476.00
Works - £4,404551,394413-00

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Contracts for Social and other Specified Services -
£615,278,589,148.00 (light touch regime)

13.5~~12.3~~ The thresholds are updated every two years.

13.6~~12.4~~ Officers should note that there are specific rules in the Public Contracts Regulations covering Contracts for Social and other specific services. These include certain health, social, educational and other services. Above ~~the~~ threshold set out in CPR 13~~2~~.4 these services must be procured following the placement of an OJEU Contract notice or prior information notice and using a selection process that follows the principles of transparency and equal treatment and in particular covers the following:

13.7~~12.5~~ 13~~2~~.5.1 – conditions for participation must be clear;
13~~2~~.5.2 – time limits must be clear; and
13~~2~~.5.3 – the award procedure must be clear.

Advice should always be sought from the Solicitor to the Council to ascertain whether the service you are procuring needs to be advertised in accordance with the Public Contracts Regulations and how a procurement for these services should be run.

13.8 Officers conducting above threshold procurements of goods, works and services should note that they must consider dividing Contracts into lots and justify any decision not to do so in either the procurement documents or the evaluation report and that all procurement documents must be published at the time that the OJEU Contract notice is published.

14. Pre-qualification~~Supplier Self Certification~~

14.1 In all procurements with a Value at or above EU thresholds as set out
in para 13.4 of £172,514 or more the Council will only enter into a
14.7 Contract with a Contractor if it is satisfied as to the Contractor's eligibility, financial standing and technical capacity and CPRs 13~~2~~.2 and 14~~3~~.3 need to be followed when making this assessment.

14.2 A process of contractor self certification is used ~~Pre-Qualification Questionnaires are used~~ to assess a tenderer's ability to perform the Contract in question (selection criteria) and must not be used to assess how a Contractor will perform the Contract (award criteria).

14.3~~13.~~ A~~T~~emplate self certification documents are available from CC&P's
Pre-Qualification Questionnaire is available for use to determine the criteria under CPR 12~~4~~.1.

14.4 In all procurement with a Value ~~of~~ less than EU thresholds~~£172,514~~
Authorised~~Lead~~ Officers should consult with CC&P's to ~~need~~ decide if a process of contractor self certification is ~~whether it is~~ necessary to

assess a suppliers's eligibility, financial standing and technical capacity. If the ~~lead-it is decided this is not necessary then, Officer decides that this assessment is necessary, Pre-Qualification Questionnaire are not allowed for 'below threshold' Contracts, instead~~ suitability assessment questions must be included as part of this tender assessment.

13.2

15. Invitation to Tender

15.1

If the estimated Value of the Contract is £50,000 or more, electronic tenders shall be invited in accordance with the provisions of this Rule.

15.2

The ~~lead~~ Authorised Officer will ensure that tenders are invited and Contracts are entered into on the Council's contract terms and conditions. They will be included with each purchase order or invitation to tender. Where this is not possible, because the Council's terms and conditions are not suitable, and other terms and conditions are proposed, those terms and conditions must be formally approved in writing by the ~~relevant Director~~ Solicitor to the Council before they can be accepted.

15.3

The above CPR ~~15~~4.2 will not apply to:

- (a) Construction and/or engineering Contracts where bespoke conditions based on accepted standard form Contracts are used such as JCT or NEC for example; and
- (b) Approved Framework Agreements that have been created by organisations other than the Council.

15.4

Where tenders for works are required for building works, the Lead Authorised Officer will liaise with ~~CC&P's the North Yorkshire Procurement Partnership~~ to determine the most appropriate standard form of building Contract to use.

15.5

If the estimated Value of the Contract exceeds the relevant EU Threshold the additional requirements for OJEU Procurements, set out in Rule ~~13~~2, shall be followed.

16.

ITT – General Requirements

16.1

Before an Officer invites a tender it shall be in writing for all Contracts whether the Contract will be awarded on the basis of price or the most Economically Advantageous Tender (MEAT), a combination of price and quality.

16.2

If a Contract is to be awarded on the basis of the MEAT, the criteria to be used in the assessment of the quality elements of the tenders and the weighting between price and quality shall be established and recorded in writing before tenders are invited. For all Contracts, the tender assessment criteria, sub-criteria and weightings shall be stated

on the ITT.

16.3

If a Contract is to be awarded on a price only basis it shall be recorded whether the award will be made on the basis of the lowest price or any other tendered price. Where a tender involves payment to the Council, the provisions of this Rule shall apply except that the word 'lowest' shall be replaced by the word 'highest'.

16.4

All Participants invited to submit tenders shall be provided with identical instructions and information.

17.

Pre-tender submission clarification

17.1

Prior to the tender submission deadline either the Council or a tenderer may seek to clarify any aspects of the issued tender documentation. Adequate time must be allowed for both the clarification question and the response. Both the clarification question and response must be in writing and recorded in a log. A minimum of 5 days must be allowed between the last clarification question or response issued by the Council and the tender submission date (although note that different timescales apply to procurements that are subject to the Public Contracts Regulations and have required the publication of a Contract notice). Except for a very limited set of circumstances both the question (anonymised) and the response should be issued to everyone who has been invited to tender. Legal Services can advise any officer who requires some assistance in relation to this rule.

18.

Options for Tender

18.1

Tenderers shall be invited on the basis of one of the following options.

18.2

Open Tenders

18.3

If a Contract (including a Contract for Social or Other Specific Services or a Contract for Works) has a Value in excess of £50,000 but below EU threshold then the following procedures shall apply:

- (i) A notice advertising the opportunity shall be published through the E-Sourcing System and Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the Value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITT documents may be obtained and the closing date for receipt of tenders by the Council.
- (ii) The deadline date for the return of tenders shall be at least 28 days after the publication of the first advertisement of the ITT and, where relevant, at least 14 days after the last ITT advertisement is published.

- (iii) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITT's are issued and shall be included in the documents provided to all Participants.
- (iv) The evaluation of the tenders shall be carried out by Officers, nominated by the Director or Head of Service, who are considered appropriate having regards for the subject matter and Value of the Contract.

19.

Restricted Tenders

19.1

Only in the case of Social or Other Specific Service Contracts or Works Contracts in excess EU thresholds if a Director or Head of Service in consultation with the Solicitor to the Council, **considers** it appropriate that any tender ITT shall be restricted to selected participants by following the restricted procurement procedure, issuing a PQQ to all potential Participants followed by an ITT to those Participants selected at the PQQ stage then the following procedures shall apply:

- (i) A notice advertising the opportunity and inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the Value, location and a subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to complete a request to participate for submission and submit a PQQ to the Council in order to be considered to be invited to tender. The notice shall include details as to how requests to participate PQQs are to be submitted and the closing date for their receipt by the Council.
- (ii) The deadline date for the return of request to participate PQQs shall be at least 28 days after the publication of the first advertisement of the opportunity and, where relevant, at least 14 days after the last advertisement is published.
- ~~(iii) The selection criteria which are to be applied in the evaluation of the PQQs request to participate shall be about the bidders capacity and technical ability to deliver the general requirements and not the specific contract. recorded in writing before the PQQs are invited and shall be included in the documents provided to all Participants.~~
- ~~(iv)~~ (iii) The evaluation of the PQQs request to participate shall be carried out by Officers, nominated by the Director or head of Service, who are considered appropriate having regards for the subject matter and Value of the Contract.
- ~~(vi)~~ (iv) After evaluation of the PQQs requests to participate, ITTs shall

be published to at least five Participants or, if less than five potential Participants applied or are considered suitable, such Participants as have been selected by the Director or Head of Service.

~~(vii)~~(v) The deadline date for the receipt of tenders shall be at least 28 days after the date of dispatch of the ITTs.

~~(viii)~~(vi) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITTs are published and shall be included in the documents provided to all Participants.

~~(ix)~~(vii) The evaluation of tenders shall be carried out by Officers, nominated by the Director or Head of Service, who are considered appropriate having regards for the subject matter and Value of the Contract.

20. Framework Agreements

20.1 Where the Value of the proposed Framework Agreement exceeds the EU Threshold, the procedure prescribed by the PCRs shall apply to all aspects of the procurement and to the subsequent operation of the Framework Agreement including, but not limited to:

- (i) the procurement methodology;
- (ii) the placement of orders under the Framework Agreement;
- (iii) further competition between Contractors appointed to the Framework Agreement.

20.2 The duration of a Framework Agreement shall be limited, as prescribed by the PCRs, to a maximum of four years including any extension periods.

21. Approved List of Procedure

21.1 If a Director or Head of Service considers it appropriate to maintain a list of suitable Contractors for particular types of Work and/or Supplies and/or Services and/or Social and Other Specific Services, where the estimated Value of the Work and/or Supplies and/or Services and /or Social and Other Specific Services is below the relevant EU Threshold, the list of suitable Contractors shall be established using the procedures set out below:

- (i) A notice inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional trade journal or website. The form of advertising shall take into account the

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Value, location and subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to apply to the Council to be considered for inclusion on the approved list by the Council. The notice shall include details as to how expressions of interest are to be submitted and the closing date for their receipt by the Council.

- (ii) The deadline date for the return of expressions of interest shall be at least 28 days after the publication of the first advertisement of the expressions of interest and, where relevant, at least 14 days after the last advertisement is published.
- (iii) The selection criteria which are to be applied in the evaluation of the expressions of interest shall be recorded in writing before expressions of interest are invited and shall be included in the documents provided to all Participants.
- (iv) The evaluation of expressions of interest shall be carried out by officers, nominated by the Director or Head of Service, who are considered appropriate having regards for the subject matter and Value of the Contract. The Director or Head of Service shall then maintain a list of such approved Contractors categorised by Works/Supplies/Services/Social and Other Specific Services type and Value as may be applicable.
- (v) The Director or Head of service shall review the performance of all Contractors on the approved list at regular intervals, not exceeding 12 months from the date of appointment of the Contractor to the approved list.
- (vi) The Director or Head of Service may remove Contractors from an approved list where the Director or Head of Service and Chief Finance Officer agree that such a removal is appropriate, having regards for the conducts, performance an/or status of the Contractor in relation to those standards identified in the original expressions of interest.
- (vii) The Director or Head of Service may approve an application from a potential Contractor to be added to an existing approved list.
- (viii) ITTs or Invitations to Quote shall be invited in accordance with Rule ~~132~~ or Rule ~~124~~.
- (ix) The Director or Head of Service shall maintain records of the tenders or quotations invited from an approved list such that the names of the Contractors invited to tender, the selection process and Contracts awarded to each Contractor are available for inspection.

- (x) Approved Lists may remain in force for a maximum of five years. Before the expiration of the Approved List a replacement shall be established, if appropriate.

22. Dynamic Purchasing Systems, Competitive Dialogue Procedure, Competitive Procedure with Negotiation and Innovation Partnership Procedure

22.1 Where a Director ~~or Head of Service~~, in consultation with the Solicitor to the Council ~~and Head of CC&P~~, agrees that it is appropriate, a Dynamic Purchasing System, the Competitive Dialogue Procedure, the Competitive Procedure with Negotiation or the Innovation Partnership Procedure may be used for the invitation of tenders in accordance with the requirements of the PCRs.

23. Submission Receipt, Opening and Registration of Tenders

23.1 Invitations to Tender for procurements that have a Value ~~above of below~~ £25,000 are not required to be transmitted electronically using the E-Sourcing system however, the use of the E-Sourcing system is encouraged for all procurements.

23.2 Invitations to Tender for procurements that have a Value of £25,000 or more must be transmitted electronically using the E-Sourcing system; this includes mini competitions under Approved Framework Agreements. The use of the E-Sourcing system is encouraged for all procurements.

23.3 ~~Faxed or E~~mailed tender documents or tender submissions are not acceptable for procurements that have a Value ~~above of~~ £25,000.

23.4 The design of the tender documents must be such that price documentation cannot be changed or substituted following submission of the Tender.

23.5 Procurements through Approved Frameworks need not be advertised unless a mini-competition is required in which case they will be advertised in accordance with the provisions of the framework. ~~Where allowed by the framework rules any mini competition must use However, once complete, details of the Contract must be registered on the E-Sourcing system, by the Lead Officer.~~

23.6 Subject to CPR 254 no tender submissions, ~~or Pre-Qualification Questionnaires~~ received after the specified date and time for their receipt can be considered by the Council unless the delay is caused by a Council error such as temporary failure of the E-Sourcing system in which case the ~~Solicitor to the Council~~ Director may waive this CPR 232.6 if ~~they~~ believes it is reasonable to do so in all the circumstances.

~~All t~~ender submissions for procurements that have a Value ~~of~~ over

£50,000 will be opened by the ~~at least two~~three officers, one of which must be a Head of service or above and must be from different service areas. ~~Director and if required at least one other Officer nominated by the Solicitor to the Council.~~ An immediate record will be made of the Tender submissions received including names, addresses, Value and the date and time of opening. ~~All tender envelopes must be retained on file.~~

~~Lead Officers must ensure that appropriate arrangements are in place for the recording and opening of tenders that have a Value of £50,000 or less.~~

24. Tender Evaluation

24.1 Selection and award criteria must be distinguished and highlighted as part of the tender documentation. The evaluation criteria will be predetermined and approved ~~(as an administrative decision)~~ by the relevant ~~Lead~~Authorised Officer in consultation with the CC&P's and disclosed to all tenderers through the Invitation to Tender documentation. The evaluation criteria should be disclosed along with weightings. In exceptional circumstances, where this is not possible, the evaluation criteria may be listed in order of importance. Published criteria may not be changed and will apply throughout all stages of a procurement. The evaluation criteria and methodology must be set in accordance with the Public Contracts Regulations (including an assessment of cost effectiveness such as lifecycle costing.)

24.2 All Contracts must be awarded on the basis of the offer which represents the pre-determined evaluation criteria.

25. Errors in Tender Submissions

25.1 Errors in tender submissions must be dealt with either by asking the tenderer to confirm that they will honour their tender submission despite the error or if not withdraw the tender from the procurement process. Where a tenderer has made a genuine error they may be given the opportunity to correct that error prior to tender evaluation. If correction is permitted the tenderer must submit, supplement, clarify or complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make a correction.

25.2 If a tender submission is incomplete or has specific documents missing and correction is permitted the tenderer must submit, supplement, clarify or complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make the correction.

25.3 If a tenderer uploads documents onto the E-Sourcing system which cannot subsequently be opened by the Council at the tender opening

ceremony, the Lead-Authorised Officer should ask the tenderer to re-submit its documents to them via the E-Sourcing system that can be accessed by the Lead-Authorised Officer. ~~This re-submission may be by email but a Lead Officer's email account should not be used for this purpose. All correspondence of this nature should be sent to a regularly monitored project, team or directorate mail box.~~

25.4 Tender documents must state how errors, such as omissions and inaccuracies in tenders submitted to the Council will be dealt with. Whichever process is followed it must be transparent and fair to all tenderers.

25.5 If a Contractor agrees to stand by an error which will cast doubt on its ability to perform the Contract, or to the standard required, or may result in legal dispute, then authority should be granted by the Solicitor to the Council~~relevant Director~~ before a tender is accepted on this basis. A copy of the report and decision must be sent to the CC&P Service~~Director~~ for monitoring purposes.

26. Submission of Tenders

26.1 All ~~tenders above £5,000 shall be submitted via the electronic tendering system. hard copy tenders shall be addressed to the Director (designated Officer).~~

26.2 ~~Subject to paragraph 25.3 w/h~~ here an the electronic tendering system is unavailable or deemed not appropriate for the procurement exercise, authorisation to use alternative electronic means of tender submission is required from~~which meets the satisfaction of~~ the Solicitor to the Council and the Chief Finance Officer, Invitations to Tender may be transmitted by electronic means.

26.3 Tenders may be submitted by electronic means provided that:

- (a) evidence that the transmission was successfully completed is obtained and recorded;
- (b) each tender submitted electronically is deposited in a secure mailbox approved by the designated Officer before the return date; and
- (c) electronic tenders are kept in a separate secure folder until the deadline is passed for receipt of tenders.

26.4 No hard copy tender may be considered unless it is contained in the approved form of envelope endorsed only with the word 'Tender' and the subject to which it relates and addressed and delivered to the designated Officer. The envelope must not bear any mark or name indicating the name of the sender.

26.5 The date and time of receipt of every hard copy tender shall be indicated on the envelope by the designated Officer and must remain in the secure custody of the Solicitor to the Council until the time and date appointed for their opening.

26.6 Any tender received after the opening of tenders has taken place, must be promptly returned to the tenderer. The tender may be opened to ascertain the name of the tenderer but no details of the tender may be disclosed.

26.7 No alteration of any tender shall be allowed after the closing date for the receipt of tenders except as allowed in accordance with post-tender negotiation.

27. Opening and Registration of Tenders

27.1 All tenders for a Contract shall be opened at one time in the presence of ~~at least two~~ three officers, one of which must be a Head of Service or above and not from the same service area. ~~member of the internal audit team and the appropriate Director.~~

27.2 A ~~member of CC&P Director (or his nominees as relevant)~~ shall at the time tenders are opened, record: ~~in a book kept for this purpose~~ the following:

- (a) the nature of the goods or services to be provided;
- (b) the name of each tenderer by or on whose behalf a tender was submitted;
- (c) the date and time of receipt of each tender as recorded on the envelope;
- (d) the amount of each tender
- (e) the date and time of the opening of the tender; and
- (f) the names of all persons present at the opening of the tenders.

27.3 The tenders opened shall be signed and dated by all present ~~by the Director.~~

28. Evaluation of Quotations or Tenders

28.1 Quotations or tenders may be evaluated on the basis of one of the following criteria:

- (a) the most economically advantageous quotation or tender where criteria other than price are important;

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- (b) the highest price (if we are receiving the payment); and
- (c) the lowest price (if we are making the payment).

Contractors or suppliers must be advised in the Invitation to Quote or Tender which will be used:

If using criteria (a) all the criteria to be considered must be included in the Invitation to Quote or Tender. The inclusion of the criteria must be relevant, objectively justified and listed in order of importance e.g.:

- (i) technical excellence;
- (ii) price;
- (iii) quality of services work materials or goods; and
- (iv) a commitment to continuous improvement.

28.2 An evaluation record must be maintained and only Officers who are named on the evaluation record may take part in the evaluation process. At least two Officers must evaluate the tenders.

28.3 The ~~Lead~~Authorised Officer must decide how to evaluate tenders before they are invited and set out the evaluation method in the tender documents. The same standards must be used to evaluate all the tenders.

28.4 If it is necessary to discuss a particular tender with an individual Contractor or supplier to make sure what they are offering is understood, the discussions must not add anything to the tender.

28.5 If there is a simple mistake or arithmetical error in a bid, contact with the relevant Contractor or supplier can be made to obtain the Contractor's or supplier's amendment in writing.

28.6 Any additional information that may be submitted by a tenderer that was not submitted by the tender closing time and date can only be accepted after consultation with the Solicitor to the Council.

28.7 All detailed discussions about important or complicated points must be recorded. The Officers taking part and the Contractor or supplier must sign the record and it must be retained on file.

28.8 An evaluation report for the Director or Head of Service should be prepared advising upon the outcome of the evaluation process and details of the tenders evaluated.

28.9 During the evaluation stages details about the number of tenders received, where those tenders came from or what is in them will remain confidential. However financial, technical or legal advice can be sought to assist with the evaluation.

29. **Bonds and Parent Company Guarantees**

29.1 Directors and Heads of Service must consult the Solicitor to the Council and the Chief Finance Officer:

- (a) about whether a Parent Company Guarantee is required when a Contractor is a subsidiary of a parent company, and:
 - (i) the Total Value of the Contract exceeds £50,000; or
 - (ii) award is based on evaluation of the parent company; or
 - (iii) there is some concern about the stability of the Contractor.
- (b) About whether a bond is needed:
 - (i) where the Total Value of the Contract exceeds ~~£140,000~~£150,000 Directors and Heads of Service in consultation with the Solicitor to the Council must decide whether the circumstances justify the Council requiring the supplier to provide a bond ; or
 - (ii) ~~where it is proposed to make staged or other payments in advance of receiving the whole of the subject matter of the Contract and there is concern about the stability of the Contractor~~All bonds must be in a form approved by the Solicitor to the Council.

30. **Post-Tender Negotiation**

30.1 **Post-tender negotiation may take place where:**

- (a) the tenders received are in excess of the budget provision; or
- (b) the appropriate Director or Head of Service, after consultation with the Solicitor to the Council, considers from an analysis of the tenders received, that additional financial or other benefits may be obtained for the Council through post-tender negotiation; and
- (c) a clause allowing for negotiation after tenders have been opened was included in the Invitation to Tender.

30.2 Any post-tender negotiation may be undertaken with the tenderer submitting the Preferred Bidder exclusively. However, where any such post-tender negotiation is proposed for other than the tenderer submitting the preferred tender then the opportunity for such post-tender negotiation shall be extended to all those who have submitted tenders.

30.3 Where any post-tender negotiations are appropriate a written record shall be kept of all negotiations, including notes of all meetings and the names of the individuals present, and placed on the Contract file.

31. Awarding Contracts

31.1 A Contract will only be awarded subject to the tender evaluation criteria. Where a tender is to be evaluated on price only the Contract must be awarded to the tenderer submitting the lowest price. Where a tender is to be evaluated on quality only the Contract must be awarded to the tenderer submitting the highest scoring tender.

31.2 Where a Contract is to be awarded on the basis of a price/quality evaluation and the difference between the Value of the lowest priced tender and the highest scoring submission is more than 5%, the Lead Authorised Officer must report this fact to the Officer who is taking the decision to award the Contract. This should be done by including a clear statement in the contract award decision report.

31.3 Contracts with a Value up to and including £50k which are based on the Council's standard terms and conditions, or on formally approved submitted terms and conditions, may be awarded and signed by an Officer with the requisite delegated authority to do so within the relevant service.

31.4 The decision to award a Contract will be made in accordance with the sub-delegation schemes that are in place. This report should give details of the reasons why tenders, if any, were disqualified and the reasons for the selection of Contractor(s).

31.5 Letters of Intent will only be used in very exceptional circumstances and following a decision. Where the terms and conditions of Contract are not fully agreed no Contractor will be allowed to commence delivery of goods, works or services until a full risk assessment has been carried out by the Lead Authorised Officer as to the possible implications to the Council of the Contractor being allowed to commence work before the Contract terms and conditions have been finalised. It is recommended that advice is taken from the Solicitor to the Council prior to entering into a Letter of Intent.

31.6 A tender may be accepted by the appropriate Director or Head of Service, provided that:

- (a) the Director or Head of Service notified the award of the Contract as an Officer decision on the forward plan and is published 28 days prior to the date of the decision;
- ~~(a)~~(b) The decision to award the contract is within the Director or Head of Service scheme of delegation as set out in part 3.9 of the constitution

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~~(i) — the Solicitor to the Council; and~~

~~(ii)(i) in the case of a tender which falls above EU Procurement Levels, the Executive.~~

~~(b) — confirmation of receipt of notification has been returned to the Director by the Solicitor to the Council, and where required the Executive in accordance with (a) above;~~

(c) where the Contract Value exceeds EU Procurement Levels the Contract is not awarded until the time period identified in Public Contract Regulations has elapsed (minimum 10 calendar days from midnight after decision); and

(d) the identity of any tenderer other than the tenderer submitting the tender accepted shall not be disclosed to any other tenderer.

31.7 The acceptance of a tender shall be notified in writing to the tenderer submitting the successful tender by the appropriate Director or Head of Service.

31.8 Contract Conditions

31.9 Every Contract for goods and/or services shall state:

- (a) the goods or services to be provided;
- (b) the parties to the Contract, including any guarantor;
- (c) the price and any discounts, or the method by which prices and discounts are to be calculated, and the method and timing of payments;
- (d) the time within which the Contract is to be carried out; and
- (e) such other terms and conditions as may be agreed between the parties;

Unless the Solicitor to the Council considers it unnecessary or impractical the Contract shall also state:

- (a) that the Contractor will not assign the Contract without written consent of the supervising Officer/Contract administrator;
- (b) that the Contractor will pay liquidated damages (where these can be assessed and ascertained) 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;

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- (c) the Contractor must provide evidence of adequate insurance to cover both Public and Employers' liability, appropriate indemnity provisions and any performance bond or parent company guarantee required;
- (d) that the Contractor 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 Commission for Racial Equality or comparable body and, so far as practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice;
- (e) that the Contractor shall adopt safe methods of work and comply with all other requirements of Health and Safety at Work legislation in order to protect the health and safety of its personnel and to the extent applicable the personnel of the Council and all other persons;
- (f) that the Contractor shall comply with Data Protection legislation and indemnify the Council in respect of the use, disclosure or transfer of personal data by the Contractor, its employees, agents and Sub-Contractors;
- (g) that the Council may cancel the Contract and recover any loss if the Contractor, its employees, agents and Sub-Contractors offer any inducement or reward relating to the Contract (even if the Contractor does not know what has been done) or commit any offence under the Prevention from Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972;
- (h) where under any Contract, one or more sums of money are to be received by the Council, the Contractor responsible for the payment of such sum or sums must pay interest at the rate stated in the Contract from the date when payment is due until the date when payment is received;
- (i) whenever, under the Contract any sum of money is recoverable from or payable by the Contractor, this sum may be deducted from any sum due or which at any time may become due to the Contractor under this or any other Contract with the Council;
- (j) the Contractor must not sub-Contract the works or any part of the works, without prior written consent of the appropriate Director, no sub-letting by the Contractor will relieve the Contractor of its liability to the Council for the proper performance of the Contract and the Contractor remains

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responsible to the Council for the proper performance and observance by all sub-Contractors of all the Contractor's obligations; and

- (k) the principles of Best Value required and any other terms and conditions specified by the Solicitor to the Council (who has general powers to set standard and special Contract conditions).

31.10

Any standard terms and conditions of Contract submitted by Contractors shall not be accepted without advice from the Solicitor to the Council.

32.

Waiver of Contract Procedure Rules

32.1

Waiver of Contract Procedure Rules is only permitted where:

- (a) EU Procurement Rules do not prevent the use of an exemption, and
- (b) one of the following applies:

32.2

- (i) the consent in writing to use one of the exemptions referred to under paragraph 32.3 has been obtained; or
- (ii) where the exemption is made by the Executive or a committee which are satisfied that special circumstances justify an exemption (and recorded in the minutes);
- (iii) in a case of urgency, the consent of any Executive Member with delegated powers has been obtained by a formal decision notice.

32.3

Waiver for which the consent in writing of the Solicitor to the Council after consultation with the Chief Finance Officer can be given:

- (i) purchases at public auction;
- (ii) the procurement of proprietary or patented goods or materials or services which in the opinion of the appropriate Director are obtainable only from one Contractor, and where no reasonably satisfactory alternative is available;
- (iii) the purchase of goods or materials, the execution of works or supply of services for which the Director considers that no genuine competition can be obtained;
- (iv) the purchase of a named product required to be compatible with an existing installation;
- (v) the execution of Work or supply of Services of a specialised

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nature which in the opinion of the appropriate Director are carried out by only one Contractor and where no reasonably satisfactory alternative is available.

- (vi) The instruction of, advice from, or service provided by Counsel;
- (vii) The purchase of a work of art or museum specimen;
- (viii) Purchases, works and services required by the appropriate Director so urgently as not to permit compliance with the requirements of competition;
- ~~(ix)~~ Procurements where the number of quotations or tenders received are below that required by these Contract Procedure Rules.

~~(ix)~~—

32.4 An exemption is not required to procure the purchase of goods or materials, the execution of works or supply of services, where a Framework Arrangement or Contracts is let through or on behalf of a public body, consortium, association or similar body provided that tenders or quotations are invited and Contracts placed in accordance with procedures which are equivalent to these Contract Procedure Rules and also comply with any national or EU legislation.

32.5 The Solicitor to the Council, in consultation with the Chief Finance Officer, may only grant an exemption in relation to a Contract with a Value which exceeds £50,000 after consultation with the appropriate Executive Member.

32.6 In each case a note of the action taken and the reasons therefore must be recorded on the Contract file for audit purposes.

33. Signature/Sealing and Form of Contract

33.1 Every written Contract must be signed or sealed in accordance with this Rule:

33.2 Contracts not exceeding £50,000 shall be signed by the relevant Director (or an Officer authorised by him under Part 3 of the Constitution).

33.3 Contracts that exceed £50,000 shall be sealed by the Solicitor to the Council or other Officer authorised to attest to the seal on behalf of the Council.

- (a) Where the Contract Value is no greater than £50,000 the Contract shall be approved and signed in accordance with paragraph ~~33.2~~ unless:

- (i) The Contract is in a standard form previously approved by the Solicitor to the Council; or
- (ii) Is to be dealt with on an official order and signed by the appropriate Director.

34. Contract Extensions and Variations

34.1 Contract extensions are only permitted if they are put in place before the Contract expiry date and where the proposed extension is in accordance with the Contract terms. Prior to seeking approval from the relevant Director to take up a Contract extension the Lead Officer must establish whether the extension will deliver Best Value. This process must be recorded in writing.

34.2 Any Contract extension must be approved by and dealt with by the relevant Director or Head of Service. The decision to extend a Contract will be treated as a new decision that is not a consequence of the initial decision to procure; it may be a Key decision, depending on Value and impact of the decision.

34.3 All extensions to any Council Contracts must be in writing and reported to the Solicitor to the Council and ~~Lead Officer~~Head of CC&Per in order that the E-Sourcing system can be updated.

34.4 Once a Contract has expired it cannot then be extended.

34.5 No extension to a Contract is permitted which would have the effect of taking the Total Value of a Contract which was not let in accordance with EU procurement regulations above EU thresholds.

34.6 If the original Contract was let in accordance with EU procurement regulations the Contract can only be extended within the parameters identified in the original EU Contract notice.

33.7 Subject to paragraphs ~~376.5~~ and ~~376.6~~ a Director or Head of Service may, with the consent of the Solicitor to the Council, extend a Contract subject to the extension being within the scope of the original Contract specification. All such decisions shall be maintained on the Contract file and a copy sent to the Head of CC&P~~Lead Officer~~.

34.8 If the Contract was awarded as a framework Contract, the total Contract period, including any extensions shall not exceed 4 years.

34.9 Variations

34.10 Variations to Contracts will be dealt with in accordance with these Contract Procedure Rules and the Council's Financial Procedure Rules.

34.10 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not allowed.

34.11 All Contract variations must be in writing and signed by both the Council and the provider except where different provisions are made within the Contract documentation. The Value of each variation must be assessed by the ~~Lead-Authorised~~ Officer and a Delegated Decision taken by the relevant Director ~~or Head of Service~~. The Solicitor to the Council should be consulted to the extent that the Director ~~or Head of Service~~ considers necessary and, in particular, if there is any possibility that CPR ~~36~~.15 might apply.

34.12 Where appropriate (taking into account any change in Contract Value, Contract term, range of services provided etc.) Contract variations must be reported to the ~~Head of CC&P~~~~Lead-Officer~~ in order that the E-Sourcing system can be updated.

34.13 A new procurement is required in case of material change where one or more of the following conditions are met:

~~34~~3.13.1 – The variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;

~~34~~3.13.2 – The variation increases the Total Value of the Contract or the framework agreement substantially in favour of the provider in a manner which was not provided for in the initial Contract or framework agreement;

~~34~~3.13.3 – The modification extends the scope of the Contract or framework agreement considerably.

34.14 You must consult the Solicitor to the Council if you are considering varying a Contract that you have procured under CPR 12.

35. Signing and Sealing

35.1 All Contracts presented for signing and sealing shall be accompanied by a statement of the Council's authority to enter into the Contract or seal the document. The statement shall specify the appropriate resolution giving the authority or in the case of an authority delegated to an Officer shall specify the precise delegated authority being exercised.

36. Nominated Sub-Contractors

36.1 These CPRs shall apply where a sub-Contractor or supplier is to be

nominated by a main Contractor.

37. **Post Contract Monitoring and Evaluation**

37.1 During the life of the Contract the Lead-Authorised Officer must monitor in respect of:

- (a) performance
- (b) compliance with specification and Contract;
- (c) cost;
- (d) any Best Value requirements; and
- (e) user satisfaction and risk management.

37.2 A Contract must not be terminated, assigned, varied or novated without first obtaining advice from the Solicitor to the Council and any requisite authorisation.

38. **Definition and Interpretation**

38.1
43.3 In these CPRs the following definitions apply unless the context requires otherwise:

“Authorised Officer” An Officer authorised by a Director or Head of service to act on their behalf within the scheme of delegation.

“CPRs”	Contract Procedure Rules
“Call Off”	Goods, services or works purchased from time to time under a Framework Contract or Arrangement
“Committee”	Any Committee or sub-Committee of the Council
“Chair”	A Chair of a Committee or the Vice-Chair of a Committee of the Chair is absent or unavailable
“Contract”	Any agreement for the supply of goods, materials or services, the execution of works or the awarding of concessions
“Contract File”	A record of all matters relating to

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	a Contract
“Contractor”	A supplier of goods, materials, works, services or concessions
“EU Contract”	A Contract covered by the Public Supply, Works or Services Contracts Regulations
“Executive”	Includes the Leader and individual Executive Members if the Executive delegates the relevant function to them
“Framework Contract”	A general term for agreements with suppliers which sets out terms and conditions under which specific purchases (“call-offs”) can be made throughout the term of the agreement. Such arrangements can create an obligation to make call-offs (a framework agreement) or set out the terms and conditions for subsequent call-offs but place no obligations, in themselves, on the procurers to buy anything (a framework arrangement)
“Measured Term”	Measured Term Contract (MTC) is an arrangement whereby a Contractor undertakes to carry out a series of works orders, over a period of years (defined)
“Goods and/or Services”	Includes services and supplies as defined in Regulation 2 of the PCRs
“Hard Copy Tender”	A tender document provided to the Council in paper form
“Invitation to Quote and/or ITQ”	Invitation to quote documents in the form required by Contract Procedure Rules
Invitation to Tender and/or ITT”	Invitation to tender in the form required by Contract Procedure Rules

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“Key Decision”	Any expenditure or savings of more than £150,000 are classed as a Key Decision
“Nominated Suppliers”	Those persons specified in a main Contract for the discharge of any part of that Contract
“Preferred Bidder”	The tenderer submitting the tender that scored highest under the adopted criteria for evaluating tenders
“PQQ”	Pre-qualification Questionnaire
“Officer”	The Officer designated by a Director or Lead Officer to deal with the Contract in question
“OJEU”	The Official Journal of the European Union
“Parent Company Guarantee”	A Contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a Contract with the Council, they can require the parent company to do so instead.
“Rules”	Means these Contract Procedure Rules
“Tenderer”	Any person who is invited to submit a tender for the supply of goods, materials, works, services or concessions to the Council
“Total Value”	<p>The whole of the Value or estimated Value in money or equivalent Value for a single purchase or disposal, whether or not it comprises several lots or stages</p> <p>The Total Value shall be calculated as follows:</p> <p>(a) where the Contract is for a fixed period, by taking the</p>

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total price to be paid or which might be paid during the whole of the period;

- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the Value of those transactions in the coming 12 months;
- (c) where the Contract is for an uncertain duration, by multiplying the monthly payment by 48;
- (d) for feasibility studies, the Value of the scheme or Contracts which may be awarded as a result;
- (e) 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; and
- (f) where an in-house service provider is involved, by taking into account redundancy and similar/associated costs

“Value” See Total Value

“Year” A year commencing on the 1 April and finishing on the following 31 March

References to **“lowest tender”** or **“lowest tenderer”** means **“highest tender”** or **“highest tenderer”** where payment is to be received by the Council.

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Timescale trackers – Public Contracts Regulations 2006 and 2015

The contract award procedures under both the Public Contracts Regulations 2006 and the Public Contracts Regulations 2015 come with a confusing array of minimum timescales, and possible reductions to those timescales. In addition, for procurements under the 2015 Regulations, non-central government contracting authorities enjoy a certain amount of flexibility around the setting of timescales, subject to agreement with and safeguards for bidders.

Note that the periods given are the minimum timescales permitted by the legislation. Consideration should always be given to the complexity of the procurement, and a reasonable time must be given to allow suppliers to compile their responses. If your procurement is regulated by the Public Contracts Regulations 2015, you must also take into consideration the general rules around setting of time limits that are set out at **Regulation 47.**

The overriding requirement when setting timescales is to allow sufficient time for suppliers to prepare appropriate responses, taking account of the subject of the proposed contract, the contract award procedure to be used and the need, for example, for site visits. The table below sets out the minimum permitted timescales and the maximum permitted reductions.

An appropriate time period will also need to be allocated for other aspects of the procurement process, e.g. evaluation of tender responses.

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Minimum timescales under the Public Contracts Regulations 2006:

<u>Choice of procedure and stage</u>	<u>Standard timescales</u>	<u>Contract notice despatched to OJEU electronically¹</u>	<u>Tender documents made available electronically from date of OJEU notice²</u>	<u>Requirement is urgent and longer time limit is impractical as a result</u>	<u>PIN published no more than 12 months and no less than 52 days from despatch of contract notice</u>
<u>OPEN</u>					
<u>Despatch of contract notice to receipt of responses</u>	<u>52 days</u>	<u>7 day reduction</u>	<u>5 day reduction</u>		<u>30 day reduction</u>
<u>Standstill</u>	<u>10 days³</u>				
<u>RESTRICTED</u>					
<u>Despatch of contract notice to receipt of responses</u>	<u>37 days</u>	<u>7 day reduction</u>		<u>Reduction to 15 days (10 where contract notice transmitted by electronic means)⁴</u>	
<u>ITT to receipt of bids</u>	<u>40 days</u>		<u>5 day reduction</u>	<u>Reduction to 10 days⁴</u>	<u>18 day reduction</u>
<u>Standstill</u>	<u>10 days³</u>				
<u>NEGOTIATED WITH NOTICE</u>					
<u>Despatch of contract notice to expression of interest</u>	<u>37 days</u>	<u>7 day reduction</u>		<u>Reduction to 15 days (10 where contract notice transmitted by electronic means)</u>	
<u>ITN to receipt of responses</u>	<u>Sufficient time for those invited to formulate their offers</u>				
<u>Standstill</u>	<u>10 days</u>				
<u>COMPETITIVE DIALOGUE</u>					
<u>Despatch of contract notice to expression of interest</u>	<u>37 days</u>	<u>7 day reduction</u>			
<u>Standstill</u>	<u>10 days³</u>				

¹ Electronic despatch – notices must be despatched electronically in accordance with all relevant EU procedures

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² Documents available electronically – the OJEU notice must specify the internet address from which the documents are made available. Guidance issued by the OGC and Office of the OJEU states that in order to qualify for this reduction, access to the electronic resource (e.g. website) must be totally unrestricted. This will *not* be the case if bidders have to register and / or log-in.

³ Standstill – the final day of the standstill period must be on a working day, and the standstill period may be up to 15 days where the contract award notice is not sent by electronic means.

⁴ Accelerated restricted – an accelerated timetable was potentially available for the restricted procedure for major projects that would be of benefit to industry in the economic climate during 2009/2010/2011. This relaxation of the application of the accelerated timetable ceased to apply from 1 January 2012.

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Minimum timescales under the Public Contracts Regulations 2015:

<u>Choice of procedure and stage</u>	<u>Standard timescales</u>	<u>Contract notice despatched to OJEU electronically¹</u>	<u>Tender documents made available electronically from date of OJEU notice²</u>	<u>Requirement is urgent and longer time limit is impractical as a result</u>	<u>PIN published no more than 12 months and no less than 52 days from despatch of contract notice</u>
<u>OPEN</u>					
<u>Despatch of contract notice to receipt of responses</u>	<u>35 days</u>		<u>5 day reduction</u>	<u>Period reduced to 15 days</u>	<u>Period reduced to 15 days</u>
<u>Standstill</u>	<u>10 days</u>				
<u>RESTRICTED</u>					
<u>Despatch of contract notice to receipt of responses</u>	<u>30 days</u>			<u>Period reduced to 15 days</u>	
<u>ITT to receipt of bids</u>	<u>30 days</u>			<u>Period reduced to 15 days</u>	
<u>Standstill</u>	<u>10 days</u>				
<u>COMPETITIVE WITH NEGOTIATION</u>					
<u>Despatch of contract notice to expression of interest</u>	<u>30 days</u>			<u>Period reduced to 15 days</u>	
<u>ITN to receipt of initial tenders</u>	<u>30 days</u>	<u>May agree time-limit with tenderers – in absence of agreement minimum period is 10 days</u>	<u>5 day reduction</u>	<u>Period reduced to 10 days</u>	<u>Period reduced to 10 days</u>
<u>Standstill</u>	<u>10 days</u>				
<u>COMPETITIVE DIALOGUE</u>					
<u>Despatch of contract notice to expression of interest</u>	<u>30 days</u>	<u>7 day reduction</u>			
<u>Standstill</u>	<u>10 days</u>				
<u>INNOVATION PARTNERSHIP</u>					
<u>Despatch of contract</u>	<u>30 days</u>				

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<u>notice to expressions of interest</u>					
<u>Standstill</u>	<u>10 days</u>				