

PART 4 CONTRACT STANDING ORDERS AND PROCUREMENT RULES ('CPR')

Drafting comments:-

1- Hyperlinks to be added to access the Council documents referred to.

DRAFT WORK IN PROGRESS – SUBJECT TO CHANGE

Draft

PART 4 CONTRACT STANDING ORDERS AND PROCUREMENT RULES (‘CPR’)

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CONTRACT STANDING ORDERS AND PROCEDURE RULES ('CPR')

1. Introduction

- 1.1 These Contract Standing Orders and Procurement Rules (CPR) provide a corporate framework for the procurement of all Goods, Services and Works for the Council, including concession contracts.
- 1.2 Procurement is *“the 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, whilst minimising damage to the environment”*¹.
- 1.3 Procurement includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.
- 1.4 The Council spends in the region of £390 million per annum on the external procurement of Goods, Services and Works. It is therefore important that the Council strategically manages this spend to ensure that it:
 - i. obtains value for money and the required level of quality and performance in all contracts let;
 - ii. conducts its procurement activity openly, transparently and, where practicable, based on standard approaches and use of common systems that appropriately minimise complexity, cost, timescales and requirements for suppliers;
 - iii. complies with all European, UK and Welsh law that governs and/or relates to the procurement of goods, services and works and the letting of concession contracts;
 - iv. meets the principles of the Welsh Government’s Wales Procurement Policy Statement (WPPS);
 - v. considers all relevant guidance issued by Welsh Government including Procurement Advice Notes and the Code of Practice on Ethical Employment in Supply Chains;
 - vi. supports the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015);
 - vii. has procurement procedures which, when followed, should protect members and officers of the Council from any allegation of acting unfairly or unlawfully in connection with any procurement by the Council;
 - viii. subject to compliance with (iii), has considered, assessed and where practicable mitigated any risks associated with a

¹ Wales Procurement Policy Statement 2015

<http://gov.wales/topics/improvingservices/bettervm/publications/procurement-policy-statement/?lang=en>

particular procurement processes and subsequently entering into contracts; and

- ix. achieves the organisational outcomes of the **Council's Procurement Strategy (2017-20)**:

1.5 Contracts, which involve the receipt of income by the Council or the disposal of an asset or an undertaking by the Council, may often require competitive tender. The reason for this, for instance, is because they amount to a "concession", or confer a competitive advantage on the contractor as against its competitors, or the Council needs to be able to demonstrate that it has received an appropriate market value. Therefore, all references to competitive tenders and quotations within these CPRs shall apply (with such changes as are appropriate) equally to circumstances where the contract involves the receipt of income by the Council or the disposal of any asset or undertaking by the Council, as they do to purchases to be made by the Council, unless specifically stated otherwise.

1.6 These rules are not intended as detailed guidance for implementation. Any procurement guidance issued by the Council's Procurement Manager must be taken into account.

1.7 These CPRs govern organisational behaviour in the conduct of procurement. It is a given that such behaviour is undertaken in support and delivery of the wider policies and objectives of the council and in respect of officers, this includes the Employees' Code of Conduct.

1.8 In conducting any procurement, utmost probity must be demonstrated at all times.

2. Definitions and Interpretations

2.1 In these Rules the following definitions apply:

Community Benefits

means the delivery of social, economic and environmental benefit, through effective application of Community Benefits clauses in public contracts. Mandatory on all contracts with a value greater than £1m and optional, but encouraged, on contracts below £1m.

Concession Contracts

means a contract between the Council and Contractor, where the consideration in the contract consists of the Contractor's right to exploit the work or services, that are the subject of the contract, or that right to exploit together with a payment.

Contract

means any form of agreement (including, without limitation, purchase orders produced on the Council's Proactis P2P system or any

replacement of such system) for the supply of Goods, provision of Services or carrying out of Works and or concession contracts.

Contractor means any contractor, supplier or provider with whom the Council enters into a Contract for the carrying out of Works, provision of Services or the supply of Goods.

Contracts register means the register maintained (in such form as determine from time to time) by the Procurement Manager, which lists all contracts (except arrangements in respect of Land) concluded by the Council with a value in excess of £25,000. (See clause 28 of the CPR).

CPRs These Contract Standing Orders and Procurement Rules as may be amended from time to time.

Electronic procurement The procurement of all goods, services and works conducted using the Council's approved electronic procurement system, as specified from time to time by the Procurement Manager.

EU The European Union.

EU Thresholds The thresholds prescribed in section 5 of the Public Contracts Regulations 2015. The current thresholds, net of VAT and as at 1st Jan 2018 are: -

Services	£181,302
Light Touch Regime for Services	£615,278
Supplies	£181,302
Works	£4,551,413
Concession contracts	£4,551,413

The thresholds change every two years and are due to change again on 1st January 2020.

Framework Agreement An agreement with one or more Contractors, the purpose of which is to establish the terms (in particular with regard to price and quantity) governing a contract or contracts to be awarded

during the period for which the framework agreement applies.

Goods	covers all products, goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains.
Grant(s)	a sum of money paid or to be paid by the Council to a third party, and in respect of which the Council does not require the grantee to provide the Council with any Services, or Goods or carry out any Works for the Council's direct benefit. The Grant(s) may be conditional (i.e. obligation to spend the Grant(s) in a particular manner, to account for that spend and repay the Grant(s) if the Grant(s) conditions are breached).
Legal Requirements	means all European, UK and Welsh law that governs and or relates to the procurement of goods, services and works and the letting of concession contracts.
Monitoring Officer	The officer designated by the Council as its Statutory Monitoring Officer as required under Section 5 of the Local Government and Housing Act 1989.
Most economically advantageous tender (MEAT)	A tender evaluated on the basis of qualitative, technical and sustainable aspects of the tender submission as well as price when reaching an award decision.
OJEU	The Official Journal of the European Union.
OJEU threshold	The values that are determined by the European Union every two years (see definition above EU Thresholds).
Prior Information Notice (PIN)	A notice placed by the Council on Sell2Wales and/or OJEU alerting the market of upcoming requirements and allowing suppliers to respond, expressing an interest in bidding for the contract. This supplier feedback can be used to inform the development of the specification as well as the selection process prior to the invitation to tender stage.
Procurement	Means, for the purposes of these rules, the process by which the Council manages the acquisition of all its Goods, Services and Works,

in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the Council, but also to society and the economy, whilst minimising damage to the environment. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.

Procurement Guidance

means the Guidance issued/to be issued from time to time by the Procurement Manager, in consultation with the Council's S151 and Monitoring Officers.

Procurement Manager

means the Operational Manager – Commissioning and Procurement Services or any officers under his/her supervision or management to whom he/she delegates authority to carry out any of the obligations, duties or activities required to be performed by him/her under these Rules or to act in his/her absence.

Procurement Process

means the process, which spans the whole life cycle of the procurement, from identification of needs, options appraisal, supplier selection, award, and contract management through to the end of a contract or the end of the useful life of the asset, or disposal of the asset.

Procurement Routes

Means the procurement procedure to be followed in the Procurement. For example;

- The open procedure.
- The restricted procedure.
- The competitive dialogue procedure.
- The competitive procedure with negotiation.
- An innovation partnership

See Appendix 1 for an overview of the procurement procedures available.

The appropriate procedure to use must be considered on a case-by-case basis, as it will depend on factors that are specific to each procurement.

Purchase order	means an electronic order raised and authorised via the Council's Proactis P2P system, or such other electronic system in force for the time being.
Purchase-to-Pay (P2P)	means the Council's electronic method of processing payments. The Council uses the Systems Applications and Products (SAP) software or any such software.
Quotation	means a quotation of price and any other relevant detail submitted to the Council upon the Council's request, without the formal issue of an invitation to tender.
Regulations	means The Public Contracts Regulations 2015, as amended from time to time.
Rules	means these Contract Standing Orders and Procurement Rules.
Section 151 Officer	means the officer designated by the Council as its Statutory Section 151 Officer as required under Section 151 of the Local Government Act 1972
Senior Officer	means the holder for the time being of any post named in the Scheme of Delegations or, if such is the case, named in a decision of the Cabinet, Council or one of its committees, as having delegated powers and duties in respect of the procurement concerned.
Services	includes all services, which the Council purchases or otherwise obtains including advice, specialist consultancy work, agency staff and all those activities constituting Services for the purposes of the Public Contracts Regulations 2015.
Single Tender and Reduced Number of Tenders	means where these Rules allow (and for good reason and subject to a proper business case), the Council limits the minimum number of Tenderers to be invited to tender to one or a lesser number than would otherwise normally be required by these Rules given the estimated value of the Contract concerned.
Request for Quotation (RFQ)	Means a request to provide a price and any other relevant detail, without the formal issue of an invitation to tender.

Tenderer(s)	individual, individuals, partnerships, companies or other bodies invited to submit quotes/tenders/prices for providing the Council with Services, supplying Goods or carrying out Works.
Value for Money	should be considered as the optimum combination of whole-of-life costs in terms of not only generating efficiency savings and good quality outcomes for the organisation, but also benefit to society, the economy, and the environment, both now and in the future.
Variant Bid	means an offer/bid, which contains variants on the requirements specified by the Council in its procurement documentation.
Variation and Variations	means any alteration to a Contract, including additions, omissions, substitutions, alterations, or changes of any other nature.
Works	includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc.) including all those activities constituting Works for the purposes of the Public Contracts Regulations 2015.

2.2 All values referred to in these Rules are exclusive of VAT.

2.3 Any dispute regarding interpretation of these Rules shall be referred to the Director of Governance and Legal Services for resolution in consultation with the Procurement Manager.

2.4 These Rules shall be read in conjunction with the Council's Constitution as a whole and, in particular, in respect of Contract payments, including compliance with the Council's Financial Procedure Rules.

2.5 The Director of Governance and Legal Services will amend these Rules from time to time, to ensure that they meet all Legal Requirements.

2.6 The Director of Governance and Legal Services and the Procurement Manager shall periodically undertake a formal review of these Rules.

3. Compliance with these Rules

3.1 These Rules must be followed when dealing with any Council Procurement except for those Procurements and other matters referred to in Rule 3.5.

3.2 Every Procurement undertaken by the Council or any other party on its behalf

i. must comply with:

(a) all European, UK and Welsh law that governs and or relates to the procurement of goods, services and works and the letting of concession contracts and to the extent of any conflict between these CPR and any such legal requirements then the provisions of such legal requirements shall prevail;

(b) the Council's Constitution as a whole, and

(c) the Council's strategic objectives and policies including its Procurement Strategy,

and

ii. must meet the other objectives and requirements listed in clause 1.4 of these rules.

3.3 The Procurement Manager may from time to time issue procurement guidance, following consultation with the Council's Section 151 and Monitoring Officer. Senior Officers in each Council Service Area must ensure that employees in their Service Area are aware of such guidance and must require compliance with such guidance.

3.4 Any failure by officers to comply with any of the provisions of these CPR or associated guidance adopted by the Council may result in disciplinary action. 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 and who have the necessary capability and capacity to undertake the particular procurement.

3.5 Exemptions to the Rules

These Rules do not apply to:-

(i) **the acquisition or disposal of land** (see Procedural Rules for the Acquisition or Disposal of Land. Any land contracts which involve development agreements shall be notified to the Director Governance and Legal Services and legal advice sought on the procurement law implications);

(ii) **contracts of employment** which make an individual a direct employee of the Council;

(iii) **use of the Council's in-house services;**

- (iv) **Grants** (Grants are not regulated by public procurement law, as they are not public contracts. Grants are, however, regulated by the rules on state aid and by general public law controls relating to fiduciary duty and proper spending of public money. As appropriate, legal and financial advice should be obtained from the relevant Council officers);
- (v) **individual orders placed under a Framework Agreement or a contract** which provide for orders to be placed against an agreed schedule of rates, or under a measured term contract, provided that such contracts or Framework Agreements have been let by the Council in accordance with these Rules. The Procurement Manager must be consulted before any such order is placed;
- (vi) **an individual care contract.** That is a contract for services entered into in pursuance of powers under The Social Services and Well-being (Wales) Act 2014 for the benefit of an individual, where:-
 - (a) the estimated value is below the Light Touch Regime under the Public Contracts Regulations 2015;
 - (b) the Council does not have any existing framework or umbrella arrangements in place in respect of the relevant service;
 - (c) the individual care contract represents value for money and;
 - (d) where the contract is required to honour the preference of the individual service user; or
 - (e) is required as a matter of emergency in the interest of the welfare of the individual service user.
- (vii) **Instructions and briefs to Counsel** issued by or on behalf of the Director Governance and Legal Services to Counsel. The Director will make arrangements to ensure that appropriate record is kept of all such instructions or briefs together with a record of Counsel's fee; or
- (viii) **Goods, Services and Works procured by another public body** on behalf of, or for the joint benefit of the Council and other parties, and provided that, in such case, the other public body's procurement / contract rules, all EU, UK and Welsh procurement law requirements, and the fundamental principles of the EC Treaty have been complied with (that is, a collaborative procurement arrangement such as contracts awarded via the National Procurement Service, Crown Commercial Services etc. The advice of the Procurement Manager must be sought before placing reliance on any such arrangement).

3.6 When placing reliance on the exemptions stated above the Senior Officer should ensure that the best possible value for money is obtained for the Council.

4. Declaration of interest

- 4.1 No member, employee or agent of the Council shall improperly use his or her position to obtain any personal or private benefit from any contract entered into by the Council.
- 4.2 Members and employees of the Council shall comply with the requirements of section 117 of the Local Government Act 1972 and, as appropriate, the Officers and Members Code of Conduct set out in the Constitution in respect of the declaration of interests in contracts with the Council.
- 4.3 Such interests must be declared to the Monitoring Officer for inclusion in the appropriate registers.

5. Welsh Language Act

- 5.1 Any invitations to tender for a contract must state that tenders may be submitted in Welsh.
- 5.2 Any invitations to tender for a contract must be published in Welsh, where the:
 - i. subject matter of the tender for a contract suggests that it should be produced in Welsh, or
 - ii. anticipated audience, and their expectations, suggests that the document should be produced in Welsh.
- 5.3 Where a tender or quote has been submitted in Welsh, this must be treated no less favourably than a submission in English (including, amongst other matters, in relation to the closing date for receiving submissions, and in relation to time-scale for informing bidders of decisions).
- 5.4 If a tender has been submitted in Welsh, and it is necessary to interview the bidder as part of the assessment process, you must:
 - (a) Offer to provide a translation service from Welsh to English to enable the bidder to use the Welsh language at the interview; and
 - (b) If the bidder wishes to use the Welsh language at interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).
- 5.5 When informing a bidder of the decision in relation to a quotation or tender, you must do so in Welsh if the quotation or tender was submitted in Welsh.

- 5.6 Where relevant to the subject matter of the contract, contracts must contain provision requiring the Contractor to comply with all applicable requirements of:
- i. the Authority's Welsh Language Scheme,
 - ii. the Welsh Language (Wales) Measure 2011, and
 - iii. the Welsh language standards issued to the City of Cardiff Council (Compliance Notice – Section 44 Welsh Language (Wales) Measure).

6. Procurement Planning

6.1 Before commencing any procurement, the Senior Officer responsible for the proposed procurement, must undertake (or ensure that it is undertaken) the appropriate level of preparation and planning, proportionate to the proposed value and nature of the project. Depending upon the value and nature of the procurement proposed this should include; consideration of those matters referred to in clause 6.2 and the timely taking of finance, legal and procurement advice as appropriate.

6.2 The preparation and planning stage of the process is critical. It will influence all future activity on the contract. If this part of the process is done correctly then the rest should flow without difficulty, but the reverse is also true. It is common to underestimate the planning stage or not carry it out at all. The key tasks at the planning stage include:

- engagement with key stakeholders in order to identify and assess needs – what is being procured and why? What is the key driver for the procurement? What are the critical success factors? What outcomes are being sought?
- checking that no existing in-house provision exists for the Goods, Services or Works required (see rule 9)
- carrying out of options appraisal to look at different ways of meeting the identified needs (e.g. buy, lease or rent?)
- determining budget and funding, to define a realistic budget for the contract to achieve the desired results and then securing the funds to finance and manage the contract
- selection of the appropriate Procurement Procedure (see Appendix 1)
- preparing the specification (setting out the requirements)
- where a tender is to be awarded on both price and quality, determining the criteria and evaluation methodology.

6.3 The results of this planning stage must be properly documented by the Senior Officer responsible for the proposed procurement (or his nominated deputy) and, if used recorded in the Council's electronic procurement system. A Procurement Plan is encouraged for all values of procurement.

7. Advice and Risk Assessment

- 7.1 At the outset of a procurement process, the Senior Officer (or his nominated officer) must refer to the Procurement Manager all proposed procurements with an estimated value in excess of £25,000 for goods and services and £75,000 for works. In addition to these Rules, the Senior Officer must follow all guidance issued by the Procurement Manager in respect of the procurement.
- 7.2 The advice of the Director of Governance and Legal Services must be sought on all procurements with an estimated value in excess of £100,000 and for lower value requirements where the complexity of the procurement requires, for example the inclusion of bespoke clauses. If there is any doubt, legal advice should be sought.
- 7.3 For Procurements with an estimated value in excess of £25,000 for goods and services and £75,000 for works, the Senior Officers shall carry out a risk assessment (proportionate to the nature and value of the proposed contract). (See [template Risk Assessment](#)). The risk assessment shall be prepared at the outset and thereafter maintained and updated throughout the Procurement Process. The decision maker must be informed of any risks identified and of the contingency measures in place.
- 7.4 When carrying out any risk assessment in respect of a proposed procurement, regard must be had to the requirements to comply with the whole of these Rules.

7.5 **Personal Data**

In carrying out any Procurement, the Senior Officer responsible for the procurement must take all reasonable steps, including incorporation of appropriate provision into tender documentation and Contracts, to ensure that the personal data of individuals is protected in accordance with all legal requirements (including the General Data Protection Regulation) and Codes of Practice from the Information Commissioner's Office (ICO) and as set out in the Council's Information Governance Policies. The Senior Officer must ensure the Council's obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from the Operational Manager Governance and Risk and Director of Governance and Legal Services (or their nominated officers).

8. Community Benefits

- 8.1 Community benefits clauses within contracts are used to build a range of economic, social or environmental conditions into the delivery of a contract.
- 8.2 All contracts exceeding £1,000,000 in value must include a contractual obligation on the successful bidder to deliver community benefits. Examples of community benefits that can be included in contractual clauses include:

- Targeted Recruitment and Training Initiatives
- Supply Chain Initiatives
- Community Initiatives
- Educational Initiatives
- Environmental Initiatives
- Equality and Diversity Initiatives

8.3 For all contracts below £1,000,000 in value, the inclusion of community benefits as a contractual obligation is optional but shall be considered.

8.4 In all cases where community benefits are being delivered, there must be a contractual requirement for the successful contractor to provide monitoring information on the community benefits as determined by the Procurement Manager. More generally, the named contract manager as part of the normal contract management process should monitor the delivery of community benefits.

8.5 Regard must be had to the Welsh Government guidance on Community Benefits and such other guidance as the Procurement Manager may issue from time to time on the approaches to delivering community benefits through Council contracts.

9 . Use of In-house service

9.1 Before any external procurement is considered, it is important to check that no existing in-house provision exists for the Goods, Services or Works required.

9.2. In-house services must be used unless the Senior Officers of the procuring service area and the in-house service provider agree otherwise, evidenced in writing.

10. Framework Arrangements

10.1 The Council has entered into a number of contracts or framework agreements types of goods, services and works.

10.2 Commissioning and Procurement Services maintain a register of such contracts and framework agreements in the Cardiff [Council Supply Directory](#) and can provide advice on their use and any exceptions granted.

10.3 It is the responsibility of the service area requiring the procurement to ascertain whether there is a framework or other corporate purchasing agreement in place by checking the Council Supply Directory. If such a framework or corporate purchasing arrangement exists then Service areas must use the same or otherwise obtain the prior agreement of the Procurement Manager or his/her nominated deputy.

- 10.4 The use of frameworks not listed in the Council Supply Directory is only permissible once the Procurement Team has approved its use (including checking that the framework agreement concerned may be relied upon by the Council).
- 10.5 When using framework agreements, all guidance issued in relation to the use of the Framework concerned must be considered by the service area and followed. The award criteria, weightings and the terms and conditions of contract specified in the framework agreement must be used. It is the responsibility of the service area requiring the procurement to ensure that all supporting documentation necessary is assembled and completed, before placing reliance on a framework agreement. Whilst Procurement and Legal Services can provide advice and support, it will be expected that this provision will be complied with by the service area before seeking such advice.
- 10.6 Where Goods, Services or Works are regularly required, and arrangements described in Rule 10 are not available, consideration must be given to awarding a framework arrangement and the advice of the Procurement Manager must be obtained.
- 10.7 **Collaborative and Joint working arrangements**
- i. Any consortia procurement arrangements must be approved for use by the Procurement Manager before reliance is placed on the same.
 - ii. Before proceeding with any proposed joint working arrangements, legal advice should be sought from the Director Governance and Legal Services.

11. Estimating the Contract Value

- 11.1 The estimated value of a Contract/procurement exercise shall be the value of the total consideration, net of value added tax, which the Council expects to be payable under the Contract over its full duration (not the annual value).
- 11.2 Where the duration of a contract is indeterminate, the value should be taken to be the estimated value of the contract over a period of four years (the value of the monthly consideration multiplied by 48).
- 11.3 In determining the value of the total consideration, which the Council expects to pay, the Senior Officer shall take account, where relevant, of;
- (i) the term/period of the proposed Contract
 - (ii) any rights to renew the Contract/extend the Contract period
 - (iii) any prize, payment, premium, fees, commission, interest or other form of remuneration payable under the proposed

Contract or in respect of the proposed procurement

- 11.4 If there is uncertainty over calculating the estimated value of the proposed Contract then the advice of Legal and Procurement Services should be sought.
- 11.5 No Works or requirements for Goods or Services may be artificially split to avoid consulting with the Procurement Manager or avoid compliance with EU procurement law or these Rules.
- 11.6 Where the Council has requirements over a period of time for Goods and Services where the contracts have similar characteristics and the Goods and Services are of the same type, and enters into a series of contracts or a contract which is renewable, then the estimated value shall be calculated by the total spend on such matters over the last 12 months or projected estimated spend for next 12 months, whichever is the greater. In estimating this value the advice of the Procurement Manager must be sought.
- 11.7 In considering if the Public Contracts Regulations 2015 apply, the Council must have regard to the 'methods for calculating the estimated value of a procurement' set out in the Public Contracts Regulations 2015 and advice of the Procurement Manager sought.

12. Goods (supplies) and Services

- 12.1 Where possible, Goods and/or Services must be obtained via existing approved arrangements including:
- i. firstly, in-house services provision (see Rule 9), and
 - ii. secondly, Framework Agreements and consortia arrangements approved for use by the Council's Procurement Manager (See Rule 10).

12.2 Goods and Services - Value up to £10,000

For procurements with an estimated value of up to £10,000 (ten thousand pounds):

- i. the minimum requirement is that one written quote is obtained although, where practical, competition is encouraged. It is, however, still necessary for the Service Area to be satisfied and able to demonstrate that it has obtained value for money;
- ii. the Service Area must keep an appropriate file record evidencing matters; and
- iii. this rule 12.2 is subject to the requirements set out in the previous sections of the CPR, including Rule 10 (use of frameworks), rule

11.5 (artificially dividing procurements) and rule 11 (repeat requirements)

12.3 Goods and Services – Value £10,000 to £25,000

For procurements with a value of £10,000 up to £25,000 then:

- i. where practicable the requirement should be openly advertised on the Council's electronic procurement system or on Sell2Wales website, or
- ii. if it is not practicable to comply with Rule 12.3 then:
 1. a minimum of 3 written quotes must be requested from suitable providers using the Council's approved electronic procurement system; or
 2. the prior consent of the Procurement Manager must be obtained to the use of an alternative Procurement Procedure or reliance being placed on Rule 14 ('Exceptions').
- iii. The Council's Quotation Record Form must be used to record the procurement actions taken.

12.4 Goods and Services – Value £25,000 to EU Threshold for Goods (supplies) and Services

For procurements with an estimated value of £25,000 up to the EU thresholds for public supply and public service contracts (Goods and Services), then:

- (a) all requirements must be openly advertised on the Council's electronic procurement system or on Sell2Wales the national procurement website and tenders invited using either the open or restricted procedure, unless the Procurement Manager otherwise directs.
- (b) if the restricted procedure is used the minimum number of tenderers to be invited to tender, subject to meeting the selection criteria, shall be 4 tenderers, and
- (c) the Council's Pre Tender Report Form and Contract Award Form must be used to record the procurement actions taken for goods and services over £25,000.

12.5 Goods and Services covered by the Public Contracts Regulations 2015.

In the case of procurements that fall to be dealt with under the European Union procurement directives and the Public Contracts Regulations 2015 ('The Regulations') that implement them in the UK, then:

- (i) the advice of the Procurement Manager and the Director of Governance and Legal Services must be sought at the outset to determine the Procurement Procedure to be followed and at all subsequent stages of the procurement process;
- (ii) the procurement process will be in accordance with the advice received and where applicable will in any event be in accordance with the requirements of the said Directives and Regulations for the time being in force; and
- (iii) the requirements of such Directives and Regulations will take precedence over any requirements set out in these Rules.

13. Works

13.1 Where possible, works must be obtained via existing approved arrangements including:

- i. Firstly, in-house services provision (see Rule 9) and
- ii. Secondly, Framework Agreements and consortia arrangements approved for use by the Council's Procurement Manager (See Rule 10).

13.2 Works Value up to £10,000

- i. For procurements with an estimated value of up to £10,000 (ten thousand pounds) the minimum requirement is the one written quote is obtained, although where practical competition is encouraged. It is, however, necessary for the service area to be satisfied and able to demonstrate that it has obtained value for money.
- ii. The service area must keep an appropriate file record (Quotation Record Form) evidencing matters, including that relevant competency and capability assessments have been undertaken.
- iii. This rule 13.2 is subject to the requirements set out in the previous sections of the CPR, including Rule 10 (use of frameworks), Rule 11.5 (artificially dividing procurements) and Rule 11.6 (repeat requirements).

13.3 Works Value £10,000 to £75,000

- i. For procurements with a value of £10,000 up to £75,000 then:
 - a. where practicable the requirement should be openly advertised on the Council's e-procurement system or on the national procurement website,
- ii. if it is not practicable to comply with Rule 13.3 then:

- a. a minimum of 3 written quotes must be requested from suitable providers; or
 - b. the prior consent of the Procurement Manager must be obtained to the use of an alternative Procurement Procedure or reliance being placed on Rule 14 ('Exceptions').
- iii. The Council's Quotation Record Form must be used to record the procurement actions taken and recorded on the Council's electronic procurement system.

13.4 Works Value £75,000 to EU Threshold for Works contracts (£4,551,413)

For procurements with a value of £75,000 up to EU Threshold for Works contracts, then:

- i. all requirements must be openly advertised on the Council's e-procurement system or on the national procurement website and tenders invited using either the open or restricted procedure, unless the Procurement Manager otherwise directs.
- ii. if the restricted procedure is used, the minimum number of tenderers to be invited to tender, subject to meeting the selection criteria, shall be 4 tenderers.
- iii. the Council's Pre Tender Report Form and Contract Award Report Form must be used to record the procurement actions taken on all works procurements above £75,000 and recorded on the Council's electronic procurement system.

13.5 Works covered by the Public Contracts Regulations 2015

In the case of procurements that fall to be dealt with under the European Union procurement directives and the Public Contracts Regulations 2015 ('The Regulations') that implement them in the UK:

- i. the advice of the Procurement Manager and the Director of Governance and Legal Services must be sought at the outset to determine the Procurement Procedure to be followed and at all subsequent stages of the procurement process;
- ii. the procurement process will be conducted in accordance with the advice received and where applicable will in any event be in accordance with the requirements of the said Directives and Regulations for the time being in force; and
- iii. the requirements of such Directives and Regulations will take precedence over any requirements set out in these Rules.

14. Exceptions - Single or reduced number of tenders

- 14.1 In exceptional circumstances and subject to the following requirements the rules set out in sections 12.3 to 12.5 and 13.3 to 13.5 shall not apply and reduced number of tenders or a single tender may be invited.
- i. This provision (Exceptions) does not apply to procurements above the EU Thresholds, in which case compliance with the provisions of the Regulations is mandatory.
 - ii. Before proceeding to let any contract the service area must in the Pre Tender Report and Contract Award Report set out the reasons why a single or reduced number of tenders is proposed, why the proposed way forward (reduced number of tenders or single tender) represents value for money and is in the Council's best interest. The Procurement Manager will issue guidance on potential scenarios where a reduced number of tenders or a single tender may be permissible ('exceptions').
 - iii. Before proceeding with a reduced number of tenders or a single tender, the consent of the Procurement Manager must be obtained. The Procurement Manager reserves the right not to sign and approve any request for a single or reduced number of tenderers, which in his reasonable opinion do not warrant approval, in which case the proposed procurement should not proceed. It must be appreciated that the Procurement Manager cannot authorise any exceptions, (and Council Service Areas should not proceed with any proposed procurement) that would be in breach of the requirements of the Regulations or any other Legal Requirement. The Procurement Manager will set out his justification for not approving requests in the Non-Signature Justification section on the Pre Tender Report and Contract Award Form, in which case the procurement will not have approval to proceed.
- 14.2 The Procurement Manager will maintain a register listing all decisions made pursuant to rule 14.1 (referred to as the 'Exceptions Register').
- 14.3 The following situation should not arise and provision is inserted purely for completeness. If the Procurement Manager is presented with any Pre Tender Report or Contract Award Report, which contains proposals that are in breach of the Regulations or any Legal Requirements and following advice the relevant service area does not withdraw the proposal, then the matter shall be reported by the Procurement Manager to the Director with responsibility for the Service area concerned, the Council's Chief Financial Officer (S151 officer) and Monitoring Officer for consideration and determination as to the way forward (including the presentations of any reports required to Cabinet and or Council). It must be appreciated that Statutory Officers cannot be expected to authorise any proposed procurements which would be in breach of the requirements of the Regulations or any other legal requirements.

15. Electronic Tendering

- 15.1 From October 1st 2018 (or such latter date as the Procurement Manager may direct), all procurement with a value of £10,000 or above (including requests for quotations) must be conducted using the Council's approved electronic system. It is the responsibility of the Senior Officer of each service to ensure that their staff comply with this rule.
- 15.2 Any officer required to use the Council's electronic procurement must notify the Council's Sourcing Team (sourcingteam@cardiff.gov.uk) so that they can be registered on the system. Similarly, it is the responsibility of the relevant Senior Officer to notify the Sourcing Team of changes to any officer's eligibility to use the system (e.g. staff leaving or disciplinary measures) at the earliest opportunity so that the user access can be deactivated.
- 15.3 Where rule 15.1 applies, all requests for quotations and invitations to tender, along with all associated procurement documentation, must be issued via the Council's approved electronic procurement system.
- 15.4 Where rule 15.1 applies, all quotes and tender submissions from bidding organisations, including all supporting documentation, must be received via the Council's approved electronic procurement system.
- 15.5 In exceptional circumstances, and only with the prior agreement of the Senior Officer of the service area requiring the procurement and the Procurement Manager, hard copy quotations or tenders may be accepted. In this event the procedures detailed in Rule (19.2) must be followed.

16. Pre-Qualification (Applies to all)

- 16.1 The Council shall only enter into a Contract with a Contractor if it is satisfied as to the Contractor's competencies. The criteria for selecting Tenderers may include, but need not be limited to:
- (a) Technical or professional competence and experience including qualifications;
 - (b) Health and Safety;
 - (c) Quality including certification by official quality control institutes or agencies of recognised competence and or attesting conformity to quality assurance standards and or measures;
 - (d) Financial and economic standing including appropriate insurance provisions;
 - (e) Sustainability, including environmental management measures;
 - (f) Evidence as to whether they are unsuitable on grounds, e.g. of bankruptcy, criminal conviction or failure to pay taxes; and
 - (g) Data Protection and Cloud Impact Assessment implications.

17 The Quotation Process

17.1 Quotes (below £10,000) – Low value procurements, where use of the Council’s e-procurement system is not mandatory

17.1.1 Where these Rules allow for use of Quotes and the estimated value of the procurement is below £10,000 then officers in the Council Service Areas undertaking the procurement concerned must comply with the following requirements:

- (i) Wherever practicable the Council’s Electronic Procurement system must be used and all quotes submitted by electronic arrangements via the Council’s electronic procurement system. If this is not practicable then the following arrangements shall apply.
- (ii) When Quotes are sought these should be requested in writing (including email).
- (iii) Where only one quote is requested, the relevant Senior Officer still has the responsibility to ensure (and be able to demonstrate) that value for money has been obtained.
- (iv) There is no prescribed timescale but a reasonable timescale should be given for parties to submit quotes.
- (v) Quotes should only be accepted, in writing (including email) or via the Council’s approved electronic procurement system. If accepted in writing the acceptance should make clear that the Council’s standard terms and conditions referred to in the Council’s purchase order and available **at ***** apply. On acceptance of the quotation (written or electronic), a purchase order must be sent via the Purchase-to-Pay (P2P) system, which contains reference to the Council’s standard terms and conditions.

17.2 Quotes for goods and services with value between £10,000 and £25,000 and works with value between £10,000 and £75,000.

Where these Rules allow for use of Quotes and the estimated value of the procurement is for Goods and/or Services between £10,000 and £25,000 and for Works between £10,000 and £75,000, then officers in the Council Service Area undertaking the procurement concerned must comply with the following:

- 17.2.1 At least three quotations must be requested using the Council's electronic procurement system.
- 17.2.2 In the circumstance where not all suppliers respond to the request for quotation with a submission, it is acceptable to evaluate and award the contract based on whatever submissions have been made, even where there is only one submission, provided Value For Money is achieved.
- 17.2.3 Where there are less than three suppliers (but more than one) of the requested goods, services or works on the Council's electronic procurement system, it is acceptable to request quotations from the number (less than three) of the suppliers registered.
- 17.2.4 Where there is only one supplier of the requested goods, services or works on the Council's electronic procurement system, it is a requirement to follow the exception authorisation procedures set out in CPR 14.
- 17.2.5 Any request for quotation (RFQ) shall include as a minimum a technical specification, pricing schedule and terms and conditions.
- 17.2.6 These CPR do not set out minimum timescales that bidders should be given for submitting a response to a request for quotation. Consideration should be given to the complexity of the quote being requested and sufficient time allowed for tenderers to provide suitable quotes.
- 17.2.7 The quotation must be received electronically using the Council's approved system, and will automatically be endorsed with the time and date of receipt and "locked" by the system until the closing time and date prescribed in the request for quotation has elapsed.
- 17.2.8 All quotations received will be automatically "unlocked" and available for evaluation in the electronic system after the closing time and date prescribed in the request for quotation. The officer in the Service Area running the quotation will open quotations; the electronic procurement system will automatically record all quotation prices. There is no requirement for legal services officers to be present
- 17.2.9 Following evaluation of the submissions and acceptance of the quotation on the electronic system, a purchase order must be sent via the Purchase-to-Pay (P2P) system or the provision of CPR 24 complied with.

18. The Tender Process

18.1 The invitation to tender must include details of the Council's requirements for the particular contract including:

- i. a specification of the Services, Goods or Works being procured and instructions on whether any variants are permissible;
- ii. the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
- iii. the Council's terms and conditions of contract;
- iv. the evaluation criteria including attached weightings;
- v. the Form of Tender;
- vi. pricing mechanism and instructions for completion;
- vii. whether the Council is of the view that TUPE will apply;
- viii. form and content of method statements to be provided;
- ix. rules for submitting of tenders;
- x. any further information, which will inform or assist Tenderer(s) in preparing tenders.

18.2 Every Tenderer submitting a tender will be required to sign a declaration to the effect that:

- i. they have not and will not inform any other person of the amount of their tender;
- ii. they have not fixed the amount of any tender in accordance with a price fixing arrangement;
- iii. they accept that the Council is entitled to cancel the contract and to recover from them the amount of any loss resulting from such cancellation if it is discovered that there has been any corrupt or fraudulent act or omission by them which in any way induced the Council to enter into the contract;
- iv. acknowledging that the Council is not bound to accept the lowest or any tender submitted, that the tender exercise may be aborted at any stage during the tender process and that they tender at their own cost and expense.

18.3 In respect of proposed procurements with an estimated value in excess £25,000 for Goods and Services and over £75,000 for Works, the Service Areas must obtain the prior approval of the Procurement

Manager to the invitation to tender documentation, including specification, evaluation criteria and weightings.

- 18.4 Prior disclosure to Tenderers of the award criteria and weightings is a fundamental requirement that must be complied with for all the Council's procurements. In respect of all quotes/tenders, where the main quote/tender criterion is the most economically advantageous tender, the Senior Officer must ensure that evaluation criteria or sub-criteria is listed in the Request for Quote or Invitation to Tender documentation, in order of importance. Any particular scoring or weighting attributable to any criteria or sub criteria must be clearly stated.

19. Receipt, Custody and Opening of electronic and Hard Copy Tenders

- 19.1 Where these rules require and even when the rules do not require but it is practicable the Council's electronic procurement system must be used and all tenders submitted by electronic arrangements via the Council's electronic procurement system. After the tender submission deadline has passed tenders submitted electronically must be opened in accordance with guidance issued by the Procurement Manager, and the electronic record kept shall, as a minimum meet the requirements set out in the guidance document issued by the Procurement Manager on the opening and recording of electronic tender submissions.

- 19.2. In exceptional circumstances where the Council's e-procurement system is not being used (with the prior agreement of the Procurement Manager) then the following procedure must be adhered to for the submission of hard copy tenders.

- i. The ITT should provide that Tenders with an estimated value below £100,000 should be submitted by post (or hand delivered) in the official envelope or using the official tender return label provided and should be addressed to a senior officer (who is not the Senior Officer responsible for the procurement of the relevant service). After the tender submission deadline has passed Tenders will be opened consecutively at the same session in the presence of two employees one designated by the Procurement Manager and one by the Senior Officer of the relevant service area. Both employees must be independent to the letting of the Contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated officers present at the time. A copy of such record shall be sent to the Procurement Manager.
- ii. The ITT should provide that Tenders with an estimated value above £100,000 should be submitted by post, addressed to the Director Governance and Legal Services, enclosed in the official envelope or using the official tender return label provided by the Council. The Director Governance and Legal

Services will be responsible for the receipt, custody and opening of such tenders. After the tender submission deadline has passed Tenders for the same procurement will be opened consecutively at the same session in the presence of two employees designated for the purpose. The Director Governance and Legal Services will nominate one employee and the Procurement Manager will nominate the other employee. Both employees must be independent to the letting of the Contract. When opened, all tenders will be recorded in a tender register and the tenders and register will be initialled and dated by designated employees present at the time. The opened tenders will then be sent to the evaluation team.

20. Late Tenders

Tenders received after the date and time for receipt of tenders may only be opened and considered with the agreement of Procurement Manager and Director of Governance and Legal Services (or their nominated officer, who should be at Operational Manager level or above). Any such decisions must demonstrate good reason why it is considered appropriate to accept the late tender and the decision recorded by the Procurement Manager.

21. Tender Evaluation

21.1 Evaluation Team - For each Contract with an estimated value above £25,000 in respect of Goods and or Services and £75,000 in respect of Works, the Senior Officer of the Service Area requiring the procurement shall form an evaluation team ('Evaluation Team') with responsibility for evaluating tenders. Written records of the membership of the evaluation team and evaluation undertaken must be kept.

21.2 Where the Contract estimated value exceeds £100,000, the Director of Governance and Legal Services and the Corporate Director, Resources shall be consulted and, where they consider it appropriate, representatives of those officers shall be included on the Evaluation Team. Consideration should also be given to including service users on the Evaluation Team.

21.3 The Evaluation Team shall examine tenders in accordance with the predetermined evaluation criteria for the quotes/tenders and identify quotes/tenders that best meet the criteria. The evaluation criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure.

21.4 As a general rule, no adjustment or qualification to any quote or tender(s) submitted is permitted. Errors found during the examination of quotes or tenders shall be dealt with in one of the following ways:

- (i) 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 quote or tender; or
- (ii) If an arithmetical error is found, the responsible officer shall correct the error(s) provided that, apart from these genuine arithmetic error(s), no other adjustment revision or qualification is permitted. An appropriate record shall be kept.

22. Post Tender clarification

- 22.1 Where the Procurement is conducted pursuant to the EU Procurement Directives and UK Regulations that implement them, there are restrictions on the use of post tender clarification and legal advice must be sought before determining whether any clarification would be appropriate.
- 22.2 The Senior Officer, following consultation with the Procurement Manager and in accordance with any requirements set by the Procurement Manager (regarding records to be kept) may seek clarification from Tenderers in respect of their tenders provided this does not involve discrimination. A record of all clarifications needs to be maintained on the Council's electronic procurement system including minutes of any clarification interviews.
- 22.3 At all times during any such negotiation or clarification process the Council shall consider and comply with the EU Treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality, principles that shall apply to all the Council's Procurements.

23. Awarding Contracts and Letters of Intent

- 23.1 A decision to award a Contract may only be made by (i) an officer with the requisite delegated authority to award contracts in accordance with the Council's Scheme of Delegations or (ii) otherwise pursuant to a decision of the Council, one of its Committees or Cabinet.
- 23.2 For all Procurements valued at above £25,000 per annum, the decision to award a Contract shall be made using the Council's pro forma Contract Award report unless the decision is to be made by a Corporate Director or the Cabinet, in which case the Council's standard reporting forms for such decisions shall be used. The Senior Officer must ensure, prior to seeking such a decision, that sufficient funds are in place to meet all contract payments and if any funding is being obtained from third parties that any conditions attaching to such funding have been complied with.
- 23.3 A Contract shall only be awarded using the pre-determined tender evaluation criteria and weightings.

When a decision is subject to the Council's 'Call in Procedure' (See the Council's Scrutiny Procedure Rules) the decision must not be acted upon until the call in period has expired and provide always the decision has not been called in.

23.4 A letter of intent is not an appropriate substitute for a formal contract but in exceptional circumstances can be issued as an interim measure until a formal contract has been signed. Letters of intent shall only be used with the prior agreement of, and in a form approved by, the Director Governance and Legal Services.

23.5 Save for exceptional circumstances, no Contractor should be asked to provide any Services, supply any Goods or carry out any Works (including preliminary Works) until the Contract is concluded or the Services, Goods or Works concerned are covered by a letter of intent. Should the Senior Officer for the service area concerned make any decision to the contrary, such decision shall contain a full risk assessment as to the possible implications to the Council of the Contractor being allowed to start before the contract terms and conditions have been finalised or a letter of intent issued.

24. Placing of Orders/Completion of Contracts and retention of contract documentation

24.1 Frameworks

Orders placed under Framework Agreements must be placed using the order form prescribed in the Framework Agreement and on the terms and conditions set out in the Framework Agreement. (See Rule10.5)

24.2 For all other contracts with a value of up to £25,000, orders should be placed using the Council's electronic Purchase to Pay system (P2P) unless the Procurement Manager otherwise agrees. The P2P system, generates purchase orders outputs in either electronic or paper form, which incorporate by reference the Council's standard terms and conditions of contract.

24.3 For Contracts with a value above £25,000 but below £100,000 Service Areas must use the appropriate standard form of contract issued or approved for use by the Director Governance and Legal Services.

24.4 For Contracts with a value in excess of £100,000 Service Areas must take the advice of the Director Governance and Legal Services on the form of contract to be used, though wherever appropriate industry standard forms will be used.

24.5 It is essential that the Goods, Services or Works are procured on the Council's standard terms and conditions and not those submitted by the Contractor.

24.6 Contract documents, along with all associated related documents, must be retained for a minimum of six years from the contract end date and,

if the contract is concluded under seal, for a period of twelve years from the contract end date. Where the contract was funded, or partly funded, through some form of external grant then further grant specific conditions, as regard to retention of documents may apply and must be adhered to.

24.7 As minimum contracts must set out;

- (i) the work, materials, services or supplies to be carried out or provided and standards required;
- (ii) the price to be paid (or, as appropriate, the sums to be received) with a statement of discounts, or other deductions, and where not known, the basis upon which the final contract sum is to be calculated;
- (iii) the time or times within which the contract is to be performed; and
- (iv) the commencement and termination dates of the contract.

24.8 Execution (completion/signing/sealing) of contracts

24.8.1 Subject to Rule 24.8.1 Contracts with a value in excess of £25,000 may only be signed on behalf of the Council by the Director of Governance and Legal Services or his/her nominated officers.

24.8.2 Rule 24.8.1 does not apply to any contract formed by the placing of an order, following compliance with these Rules, using or under:

- i. the Council's electronic Purchase to Pay system;
- ii. a Framework Agreement approved for use; or
- iii. a Dynamic Purchasing System put in place by the Council.

24.8.3 The Council's seal may only be affixed to a contract in the presence of the Director of Governance and Legal Services or his / her nominated officers.

25. Notification of Results, De-briefing and Standstill Period

25.1 Where the Regulations do not apply, the Senior Officer shall ensure that within 10 days of the date on which the Council receives a request from any supplier who was unsuccessful (at either the selection or tender stage) he/she informs that supplier of the reasons for being unsuccessful and, if the supplier was unsuccessful at the tender stage the responsible officer shall also inform it of the characteristics and relative advantages of the successful tender as well as the name of the bidder awarded the contract.

- 25.2 Where the Regulations apply, Service areas must comply with the requirements of the Regulations (including as to standstill, debrief, contract award notices), and the advice of Procurement and Legal Services must be obtained and followed.
- 25.3 If any additional information is to be disclosed to tenderers, this must be agreed in advance with the Procurement Manager, taking into account the requirements of any legislation relating to the disclosure of information.
- 25.4 If the award of a contract is subject to the Regulations, there must be a standstill period between communicating the award decision to all tenders and conclusion of the contract. This standstill period shall be 10 calendar days if sent electronically or 15 days for notices sent by other methods. Where the last day of the standstill period is not a working day, it shall be extended to midnight at the end of the next working day.

26 . Bonds, Securities, Liquidated and other damages

- 26.1 The Senior Officer (of the service area requiring the procurement) is responsible for ensuring that a risk assessment is undertaken, to determine if a performance bond or performance guarantee is required. If appropriate, the advice of the Council's Finance officers should be sought.
- 26.2 Consideration should also be given to the appropriateness of including in the contract a provision for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed.

27. Parent Company Guarantee

- 27.1 The Senior Officer (of the service area requiring the procurement) is responsible for seeking a Parent Company Guarantee where a contractor is a subsidiary of a parent company and;
- i. the award is based on evaluation of the parent company;
 - ii. the financial status of the contractor (having regard, inter alia, to the proposed contract) warrants the same and or
 - iii. the S151 Officer recommends.

28. Records

- 28.1 To ensure appropriate records are maintained the Council's e procurement system must be used wherever practicable or specifically required by these Rules.
- 28.2 For all Procurements where the Council's electronic procurement system is not used, Service areas must keep appropriate records. As a minimum the records kept must detail:

- (i) which parties were selected to tender;
- (ii) to whom the Contract was awarded and the reasons for so doing (lowest price or offer which represents best value to the Council), so that best value and the integrity of the process can be demonstrated:
- (iii) the value of the contract;
- (iv) the start and expiry date of the contract; and
- (v) details of whether the contract is a one-off or expected to be renewed

28.3 Procurement Services shall maintain a Corporate Contract Register, which will record details of all contracts /contracts (above £25,000) awarded by the Council. Service areas must provide Procurement Services with all required information to facilitate this.

29. Contract Management

29.1 Once the Contract has been awarded, the Senior Officer (of the service area concerned) must identify and nominate an individual (referred to as the 'Contract Manager'), who will manage the day-to-day aspects of the Contract for its term (See rule 34 re Contract End).

29.2 The day-to-day management of the Contract shall be undertaken by the Contract Manager and shall include monitoring and reporting (including making use of the Council's reporting tools on the Council's electronic procurement system) in respect of:-

- i. performance
- ii. compliance with specification and contract terms
- iii. cost
- iv. any value for money/best value requirements
- v. user satisfaction and
- vi. risk management
- vii. delivery of agreed Community Benefits

29.3 For all contracts, it is the responsibility of the Contract Manager to raise any incidents of poor performance immediately with the Contractor and seek rectification. In instances of particularly poor performance, or persistent poor performance, the Contract Manager should consider the appropriate course of action to take under the contract, taking advice as appropriate.

29.4 Where the total value of the Contract exceeds £100,000, the Contract Manager must make a written report to the Senior Officer evaluating the extent to which the Contract is meeting the objectives set. This should

be done normally when the Contract is completed but for term contracts, such report should be prepared annually.

30. Contract Variation – basic principles

30.1 Contract Variations and Extensions

30.2 Depending upon the nature of the variation proposed, the terms of the contract concerned and scope of the original procurement exercise undertaken, contract variations have the potential to amount to a new contract, and thus can constitute a single tender award without advertisement.

30.3 In all cases of contract variation, careful consideration must be made of the impact of the increased value of the contract on the procurement threshold levels, particularly whether the increase in value will move a contract from below EU Threshold to above EU Threshold.

30.4 The advice of the Procurement Manager and Director of Governance and Legal Services should be obtained, if there is any uncertainty as to whether a variation is permissible.

30.5 Contract and framework agreements may be varied without a new procurement procedure where:

- (i) the variations have been provided for in the initial procurement documents in clear, precise and unequivocal terms (i.e. the contract conditions provide for; extension of the contract term, price variation, fluctuation clauses or options, additional works, good and services) and these do not alter the overall nature of the contract;
- (ii) additional goods, services or works which were not included in the original quotation or tender have become necessary, where a change of contractor (a) cannot be made for economic or technical reasons and (b) where it would cause significant inconvenience or substantial duplication of costs, provided that any increase in the price does not exceed 50% of the value of the original contract (advice of the Procurement Manger must be sought before placing reliance on this rule);
- (iii) the circumstances causing the need for variation were unforeseen, the variation does not alter the overall nature of the contract and provided that any increase in the price does not exceed 50 % of the value of the original contract value (advice of the Procurement Manger must be sought before placing reliance on this rule);
- (iv) there is a change in contractor that was provided for in the quotation or tender, or as a result of a merger, acquisition, insolvency or similar of the original contractor, which contractor

fulfils the original criteria for qualitative selection, provided this does not lead to other substantial variations or is aimed at circumventing the Regulations; or

- (v) subject to the above provisions, the variations are not substantial within the meaning of the Regulations (see rule 30.6 and Regulation 72 (8)).

30.6 A variation shall be deemed substantial if one or more of the following conditions is met:

- (i) the cost of the variation would exceed 10% of the original contract value for services and supply contracts and 15% of the initial contract value for works ;
- (ii) it makes the contract or framework materially different in character from the one originally let;
- (iii) the variation introduces new conditions which, had they been part of the initial procurement, may have allowed for; the admission of other candidates than those initially accepted; the acceptance of a tender other than that originally accepted; and/or attracted additional participants in the procurement procedure;
- (iv) it materially changes the economic balance in favour of the contractor, in a manner which was not provided for in the original contract;
- (v) It extends the scope of the contract or framework considerably;
- (vi) The revised total contract value requires a different level of authorisation, or different form of procurement than that used for the original contract award.

30.7 A 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 and contemplated by the original procurement exercise.

30.8 **Variations**

In the circumstances detailed in CPR30.5 above (permitted variations) the decision to authorise or not a proposed contract variation shall be made, as appropriate, by Cabinet or the officers listed below, provided that the variation cost can be met within budget and complies with all Legal Requirements. Decisions to authorise variations shall be recorded in writing and at Operational Manager level and above, and as appropriate, a Cabinet report or ODR must be prepared. All variations shall be entered on the Council's electronic procurement system and the Contracts Register, and an amendment made to the original Purchase Order.

Contract Manager	Variation (or aggregate value of all variations made to the Contract) of up to £30,000 or 10% of the contract price (whichever is deemed lower)
Operational Manager	Variation (or aggregate value of all variations made to the Contract) up to £250,000
Head of Service/ Assistant Director	Variation (or aggregate value of all variations made to the Contract) up to £1,000,000
Director (in discussion with the Council's S151 Officer and liaison with Cabinet Member)	Variation (or aggregate value of all variations made to the Contract) up to £5 million
Cabinet decision	Variation (or aggregate value of all variations made to the Contract) Above £5m

30.9 For variations approved by a Contract Manager, the Senior Officer shall monitor at least monthly the overall level of variations approved to gain assurance that they are correct and appropriate.

30.10 As soon as it becomes known or apparent (whichever is the earlier) to the Contract Manager, that the total cost of a contract, including variations, will or is likely to exceed the contract sum by more than 5%, the Financial Services Group Accountant must be informed for financial monitoring purposes. The Financial Services Group Accountant may inform the Senior Officer and or Contract Manager of any further financial requirements to be complied with. In such circumstances, a report must be prepared, which must address the reasons for increased cost, an analysis of options considered to reduce cost to budget and the funding options considered to meet any budget shortfall, together with an indication of how any additional costs will be paid for. The report shall be submitted to the Senior Officer and the Council's Audit Manager.

30.11 Any variation to the original Contract must be in the best interests of the Council and of continued delivery of services.

31. Assignments and Novations

Any proposals to assign or novate a contract must be referred to the Director of Governance and Legal Services at the earliest possible instance for advice.

32. Termination of Contract

- 32.1 For any Contract exceeding £25,000 in value early termination shall be approved by the appropriate decision maker, provided always that the advice of the Director of Governance and Legal Services and Procurement Manager is first sought. Contracts of a lesser value may be terminated early (prior to the expiry date) by agreement with the Contractor or in accordance with the termination provisions set out in the Contract. Legal advice should be sought as appropriate. The Senior Officer must inform the Procurement Manager when any Contract is terminated and the reasons for the same.
- 32.2 For any Contract exceeding £5,000,000 in value, early termination shall be approved by Cabinet unless the matter relates to a Council function in which case matters shall be reported to Council.

33. Payments on Account and contract payments

- 33.1 Payments on account should only be made upon certification by the person designated under the Contract for that purpose ('the appropriate person'). The appropriate person will keep detailed records of any such payment, which shall be open to inspection by the Corporate Director, Resources.
- 33.2 The Senior Officer of the relevant service area shall make arrangements to retain adequate details relating to all contract payments made to allow for a proper audit of all such payments. All payments made must comply with the process as set out in Financial Procedure Rules.

34. Contract end

- 34.1 For contracts with a duration of more than 12 months, then at an appropriate point but generally at least six months prior to the end of the contract term, the Contract Manager should review the Contractor's performance and consider what, if any, replacement arrangements are required.
- 34.2 Some contracts may require active steps to be taken to end the contract (e.g. serving of notices) and or steps to be taken to decommission the contract arrangements. The Senior Officer of the service area concerned is responsible for ensuring that where appropriate, matters are diarised and appropriate steps taken to bring contracts to an end and sufficient time allowed to put in place any replacement arrangements that may be required.

Appendix 1: Procurement Routes & Procedures

Means the procurement procedure to be followed in the Procurement.

Where the Council carries out a procurement, which is fully regulated by the Public Contracts Regulations 2015 (SI 2015/102) (PCR 2015) then the Council must use one of the following procurement procedures:

- a. The open procedure.
- b. The restricted procedure.

The advice of the Director Governance and Legal Services and the Procurement Manger (or their nominated officers) must be sought prior to commencing the following procurement procedures

- c. The competitive dialogue procedure.
- d. The competitive procedure with negotiation.
- e. An innovation partnership.
- f. The negotiated procedure.

Key features

The open procedure.

Key features - a process where all providers interested in the contract and who have responded to an advertisement may submit tenders. All such tenders must be considered without any prior selection process. The selection and evaluation is carried out after the submission of the tenders.

The restricted procedure.

Key features - a two-stage process where only those providers who have been invited may submit tenders. The selection and shortlisting are usually carried out based on a Pre-Qualification Questionnaire (PQQ).

The advice of the Director Governance and Legal Services and the Procurement Manger (or their nominated officers) must be sought prior to commencing the following procurement procedures:

The competitive dialogue procedure

Key features - The procurement procedure whereby a contracting authority (The Council) enters into a dialogue with bidders about its requirements before inviting them to submit a *final tender*. It is used in complex projects where the Council cannot adequately specify its requirements. It is one of the procedures through which the Council may award a contract under the *Public Contracts Regulations 2015 (SI 2015/102)*

The competitive procedure with negotiation

This procedure has been described as a hybrid procedure because, as with the restricted procedure, it allows the contracting authority to award a contract on the basis of an initial tender. However, like the competitive dialogue procedure, it also enables the authority to negotiate with bidders who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. There is no limit to the number of tender stages. Final tenders are submitted and evaluated and the contract is awarded. Unlike for the competitive dialogue procedure, the PCR 2015 does not provide for any clarification or negotiation of the final tenders or the winning tender

An innovation partnership

This procedure has been described as a hybrid procedure because, as with the restricted procedure, it allows the contracting authority to award a contract on the basis of an initial tender. However, like the competitive dialogue procedure, it also enables the authority to negotiate with bidders who submitted an initial tender, and any subsequent tenders, until it decides to conclude those negotiations. There is no limit to the number of tender stages.

Final tenders are submitted and evaluated and the contract is awarded. Unlike for the competitive dialogue procedure, the PCR 2015 does not provide for any clarification or negotiation of the final tenders or the winning tender

The negotiated procedure

Whereby the Council negotiates the terms of the Contract with one or more third parties selected by it

Appendix 2: Procurement Flowchart

To follow