APPENDIX 2

KIRKLEES COUNCIL

CONTRACT PROCEDURE RULES

MAY~~JUNE~~ 2022~~1~~

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INTRODUCTION

These Contract Procedure Rules (CPRs) aim to promote the highest standard of probity, integrity, and impartialityin making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts.

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly proportionate and relative to the need which the Supply fulfils and should appropriately balance the value of, and risks associated with, any proposed action.

Where the council wishes to obtain the delivery of goods, works, or services, the use of procurement is the usual method. Grants should only be used to assist or support objectives of another organisation. In some instances, CPRs will apply to grants (see Appendix 4~~Appendix 4~~).

Procurement Principles:

The aim of every procurement exercise should be value for money. In pursuit of that aim, procurers shall endeavour to treat market operators equally and without discrimination, and to act in a transparent and proportionate manner. Without detracting from those principles, procurers should take every opportunity to consider how improvements to the economic, social and environmental wellbeing of the district (social value) can be generated and enhanced in contracts and procurement processes, including encouraging the participation of local businesses in Council tenders.

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RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER

1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuringor managing a Supply, must comply with these CPRs.

1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular: -

1.2.1 the legality of the proposed non-compliant process or action; and
1.2.2 the reputational and financial risks associated with the proposed non-compliant processor action.

1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action againstthe officers concerned and may in some cases constitute a criminal offence.

1.4 Each Service Director must ensure:-

1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
1.4.3 a suitably experienced and trained officer is identified to adequately manage the Contract for every contractual relationship the Council enters into.

1.5 When authorising staff to procure Supplies on their behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure the Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations. An officer wishing to commence a procurement exercise and/or commit the council to contractual obligations must ensure that:

1.5.1 they have the Cabinet authority or a written approval of the delegated decision by an authorised officer under the Scheme of Officer Delegation to incur the expenditure and provide details to the Head of Corporate Procurement.
1.5.2 officer executive decisions are recorded accurately and promptly including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options considered.
1.5.3 all significant officer decisions taken relating to the procurement exercise (i.e. decisions which may be of interest to councillors and/or the public) are recorded
1.5.4 where a Supply is a Key Decision), a Key Decision Notice (KDN) has been published in a Notice of Forthcoming Key Decisions.

1.6 The Head of Procurement may:-

1.6.1 authorise officers who are not procurement officers under their managerial responsibility to act on their behalf in respect of any role assigned to the Head of Procurement in these CPRs;
1.6.2 issue waivers in relation to the need to consult them under CPR 1.3;
1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation, as appropriate, with the Service Director, Solicitor to the Council, Chief Finance Officer and Head of Internal Audit.

1.7 The Head of Procurement must record the precise extent of such authorisations and the officer to which roles have been delegated and share these authorisations with the Solicitor to the Council and the Head of Internal Audit.

1.8 A Service Director has authority to commence any Procurement subject to:

1.8.1 compliance with these CPRs and FPRs; and
1.8.2 having appropriate delegated authority; and
1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
1.8.4 seeking Value for Money.

1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.

1.10 The Head of Procurement, the Solicitor to the Council and the Head of Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:

1.10.1 the Head of Procurement – Good Procurement Practice;
1.10.2 Solicitor to the Council – UK Procurement Rules and other laws and Corporate Governance;
1.10.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.

1.11 Any dispute concerning interpretation of these CPRs must be referred to the Head of Internal Audit who, in consultation with the Solicitor to the Council, may provide clarification and determination.

1.12 Subject to Part 3 of the Council's constitution and without prejudice to the role of the Monitoring Officer or the Chief Finance Officer, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Internal Audit, and the Solicitor to the Councilprovided that:-

1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-

- public sector procurement in respect of duties reassigned from the Head of Procurement;
- finance in respect of duties reassigned from the Head of Internal Audit;
- Law and Court procedure in respect of duties reassigned from Solicitor to theCouncil.
- the same degree of separation of officer responsibility for the duties is maintained.

Conflicts of Interest and Integrity[1]

1.13 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators.

[1] Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

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1.14 Any Officer, Member or other person acting on the Council's behalf in procuring a Supply must declare any potential Conflict of Interest as soon as they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.

1.15 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.

1.16 In exercising the decisions delegated to them, the Head of Procurement, Head of Internal Audit and Solicitor to the Council (or any other persons undertaking their responsibilities by application of CPR 1.11 or CPR 1.6) must reach their decisions independently.

RULE 2 – PREPARATION AND PROCESS

2.1. Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000, the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Solicitor to the Council and/or the Head of Internal Audit, and undertake these consultations as necessary.

2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with UK Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service, Find A Tender Service (FTS) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.

2.3. Each Service Director must ensure:

2.3.1. That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPRs or the UK Procurement Rules, unless justified by objective reasons.

2.3.2. Where the cost of the Supply is less than the UK Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the UK Procurement Rules.

2.3.3. The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.

2.3.4. The process can be adequately resourced.

2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

Compliance

~~2.3.5.~~2.3.6. Each Procurement complies with the following:-

a. it is justified by a business case (that includes a risk assessment) approved by a Senior Manager with relevant authority to purchase; and
b. a Whole Life Costing Approach underpins the specification of the Supply;

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and

c. it aligns with the Procurement Strategy; and
d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.14), consortia and other suppliers (Service Directorsshould, for example, consult the Head of Procurement about decisions and options available under CPRs 6.12 & 6.13).

~~1.1.1. The Supply is likely to be within budgetary provision (see CPR 10.1).~~

Estimated Value

~~2.3.6.~~2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.

~~2.3.7.~~2.3.8. An estimate of the full cost of the Supply contract or Framework Agreement which is as accurate as possible is made. Valuations must:

a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
b. assess the gross value of a Framework Agreement to be the reasonably estimated value of all Supply contracts which might be made through it;
c. where the Supply contract includes a fixed duration, cover the entire possibleduration of the contract (i.e. including any options, such as for extension or renewal);
d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
e. include any Grant funding;
f. exclude VAT.

~~2.3.8. Where the cost of the Supply is less than the UK Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the UK Procurement Rules.~~

2.3.9. The Supply is likely to be within budgetary provision (see CPR 10.1~~10.1~~).

~~2.3.9.1.1.1. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.~~

~~2.3.10.1.1.1. The process can be adequately resourced.~~

Bonds

2.3.10. All supply contracts relating to;

a. capital construction works in excess of £300,000
b. any IT contracts that involve pre operational payments in excess of £300,000
c. any contracts with a total consideration in excess of £3m

will be bonded in the sum of 10% of the Tender value, except where the Solicitor to the Council and Head of Internal Audit agree either:-

i. No bond is necessary; or
ii. A different value (or percentage) is appropriate; and or
iii. A parent company guarantee or other form of surety can be accepted instead.

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The Specification

2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Councils wider policy and strategy but subject always to ensuring full compliance with UK procurement legislation. Service Directors must also consider how what is proposed to be procured might improve the economic, social and environmental wellbeing of Kirklees.

2.5. Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.

2.6. The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.10~~2.10~~~~2.1.10~~) and other procurement documentation must be created~~. The documents by must be likely~~ to be understandable by all reasonably well informed people in the relevant industry~~ in the same way~~.

Award Criteria

2.7. Where a competitive process is being carried out, a transparent, unambiguous and clearly set out schedule of Award Criteria, which are objectively verifiable and non- discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 3.5~~3.5~~– 3.9~~3.9~~) and must be proportional to the contract's main objectives.

2.8. The Head of Procurement is consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16~~4.16~~ 4.17~~4.17~~).

Contracting

~~2.8.~~2.9. For contracts up to the UK supplies and services threshold, other than Land Contracts, the Service Director shall wherever possible use appropriate standard contract terms. Otherwise every contract for Supplies or Income Contract must set out:

a. details of the Supply to be made or to be disposed of;
b. the price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
c. the time(s) within which the contract is to be performed;
d. termination provisions and break clauses, if appropriate;
e. appropriate data protection clauses where personal data is involved; and
f. such other matters as the Solicitor to the Council considers to be necessary (the Solicitor to the Council need not be consulted, but guidance must be followed).

~~2.9.~~2.10. For contracts above the UK supplies and services threshold, other than Land Contracts the Service Director must consult with the Solicitor to the Council who will prepare contract documentation appropriate for the contract.

~~2.9.1. Where a competitive process is being carried out, a transparent, unambiguous and clearly~~

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~~set out schedule of Award Criteria, which are objectively verifiable and non- discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 3.5 – 3.9) and must be proportional to the contract's main objectives.~~

~~2.9.2. Consideration of whether it would be appropriate to divide large procurements into contract Lots[2] and must record the decision and reasoning.~~

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~~2.9.3. The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.~~

~~2.9.4.1.1.1. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.~~

~~2.9.5.1.1.1. All supply contracts relating to;~~

~~a. capital construction works in excess of £300,000~~
~~b.a. any IT contracts that involve pre operational payments in excess of £300,000~~
~~c.a. any contracts with a total consideration in excess of £3m~~

~~will be bonded in the sum of 10% of the Tender value, except where the Solicitor to the Council and Head of Internal Audit agree either:~~

~~i. No bond is necessary; or~~
~~ii.i. A different value (or percentage) is appropriate; and or~~
~~iii.i. A parent company guarantee or other form of surety can be accepted instead.~~

~~2.9.6. A risk log is maintained during the Procurement process.~~

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~~2.10. The Head of Procurement is consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16-4.17).~~

~~2.11. Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000, the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Solicitor to the Council and/or the Head of Internal Audit, and undertake these consultations as necessary.~~

~~2.12. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with UK Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service, Find A Tender Service (FTS) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.~~

[2] ~~This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.~~

~~2.13. Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.~~

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Data Processing

~~2.14.~~2.11. All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts.

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~~2.15.~~2.12. Where any Supplier is given possession of, or access to, any personal data, the Service Directormust have regard to the Council's obligations as regards the Data Protection Legislation. The Service Director must follow theCouncil's Information Security Policy, in particular regarding contracting with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

~~2.15.1.~~2.12.1. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
~~2.15.2.~~2.12.2. appropriate guarantees of the security of the personal data are included within a written contract;
~~2.15.3.~~2.12.3. the performance of the contract is appropriately monitored;
~~2.15.4.~~2.12.4. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
~~2.15.5.~~2.12.5. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
~~2.15.6.~~2.12.6. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

~~All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts.~~

Collaboration

~~2.16.~~2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.

~~2.17.~~2.14. When taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organisation and the Crown Commercial Service); any addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

RULE 3 - PROCUREMENT PROCESS

3.1. Subject to complying with the law, the process for procurement must comply with the following:

Value of Supplies	Requirement		
	Procurement Process	**Advertising**	**Min no. of Suppliers**
£0 - £24,999.99	Any Reasonable Means to select are permitted. Reasons to justify the decision taken must be recorded, • Where practicable, suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this.	1. Any reasonable means 2. A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement	3
£25,000 – ~~£180,000~~ Threshold	One of the following:- • Quotations (CPRs 3-4) • Framework Suppliers, Standing Lists, etc. (CPR 5) • Exceptions (CPR 6) • Internal, Consortia & Compulsory(CPR 6) In addition; • Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary	**As the Head of Procurement determines** 1. From a standing list 2. An approved Framework Agreement 3. An approved Dynamic Purchasing System 4. Advertise on eProcurement Portal, ContractsFinder PLUS other reasonable advertising means	Below £100,000 – 3 Above £100,000 – 4
Above ~~£180,000~~ Threshold	One of the following:- • Tenders (CPRs 3 - 4) • Framework Suppliers, Standing Lists, etc. (CPR 5) • Exceptions (CPR 6) • Internal, Consortia & Compulsory(CPR 6) In addition Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary The Legal Service will perform the execution of any contract(s).	Advertise on eProcurement Portal, Contracts Finder, FTS and in other media if appropriate; or Use approved Framework Agreement; or Use approved Dynamic Purchasing System	5

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3.2. These CPRs also apply to the selection of any nominated or named sub-contractor, product or manufacturer whose use by a supplier is a requirement of a contract specification.

3.3. A Service Director must invite at least the number above of suppliers to submit a written Tender, unless:-

3.1.1 an **approved**[3] Framework Agreement or Dynamic Purchasing System is being used (and in which case the rules of the Framework Agreement or the Dynamic Purchasing System must be followed); or

3.1.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council.

3.4. The Suppliers must be reasonably capable of, or have indicated that they are willing to, submit a Tender. If it is not possible to identify the number of suitable and/or willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

Supplier Selection

3.5. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.

3.6. Where the procurement process has an overall value of less than the supplies and services UK threshold, a qualification stage must not be used, although key, proportional, suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish the suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.

3.7. When operating a procurement process with a value above the supplies and services UK threshold, the Service Director must use the Council's standard selection questionnaire to establish suitability and/or to establish a shortlist. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.

3.8. The selection of any potential Supplier to submit a Tender must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Selection Criteria must be transparent and financial ratios to be used as part of the evaluation must be disclosed. When conducting a procurement process which is subject to the UK Procurement Rules, minimum standard and/or pass marks must be published in the relevant FTS contract notice or invitation to confirm interest.

3.9. Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

[3] See CPR 5.17

RULE 4 –TENDER RECEIPT & EVALUATION

4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the eProcurement Portal unless the Head of Procurement agrees otherwise. (If the Head of Procurement approves another means, they will be required to agree and supervise a fair means of tender opening).

4.2 All invitations must state clearly the date and time of return. Electronic Tenders must be returned in accordance with the approved tendering system requirements.

4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.

4.4 At the Tendering opening the Head of Procurement will maintain a written record of the:

4.4.1 Procurement reference and title~~nature of the Supply~~;
4.4.2 name of each supplier submitting a Tender and the ~~date/~~time of submission~~receipt~~;
4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
4.4.4 prices from each supplier;
~~4.4.4~~4.4.5 name of opening officer;
~~4.4.5~~4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal ;
~~4.4.6~~4.4.7 date and time of opening of Tenders;
~~4.4.7 any reason for rejecting any Tender.~~

4.5 Late Tenders must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder which submits the late Tender. Any decision to accept a late Tender will be made by the Head of Procurement following both (a) such verification as they feel appropriate and (b) approval by the Head of Internal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.

4.6 Suppliers must always be required to submit bids which comply with the tender documents. Variant may be permitted providing that the tender documents:

4.6.1 say whether a standard or reference bid is also required;
4.6.2 include the minimum requirements to be met by the variants;
4.6.3 set award criteria which can be applied to the variants.

4.7 Any variants which are submitted must conform to the requirements of the tender documents.

4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.

4.9 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7~~2.1.11~~) and keep a written record of the analysis and outcome.

4.10 The use of or participation in e-auctions to set prices is permitted where:

4.10.1 bids can be ranked automatically; and

4.10.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and
4.10.3 the written agreement of the Head of Internal Audit has been given; and
4.10.4 the process is subject to supervision by the Head of Procurement.

4.11 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.

4.12 The Service Director must ensure that, where required by UK procurement rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Solicitor to the Council that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.

4.13 Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 4.15) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.

4.14 If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Solicitor to the Council must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the Solicitor to the Council advises about confidentiality and Legal Privilege.

Clarifications, Presentations and Interviews

4.15 Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:

4.15.1 set an appropriate time limit for a reply; and
4.15.2 do not request changes or otherwise seek to influence the bidder; and
4.15.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
4.15.4 treat all tenderers equally and fairly and so, for example, the request:-

a. must not occur before all of the bids have been subject to an initial evaluation;
b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.

4.16 Clarity may also be facilitated through planned presentations designed to assist in understanding or verifying submitted bids. Clarification questions may be asked during such presentations and prior scoring may be appropriately moderated. All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.

4.17 Interviews and/or presentations which form part of the bid must be authorised by the Head of Procurement in writing. They must also be:

4.17.1 Comprehensively recorded; and
4.17.2 assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
4.17.3 supervised by the Head of Procurement.

RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS AND FRAMEWORK AGREEMENTS: CREATION AND USAGE

5.1 The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

Standing Lists

5.2 The Head of Procurement will determine for which types of Supply Council-wide Standing Lists must be kept (see CPR 6.12). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.

5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the UK Procurement Rules) of the Supply in question does not exceed the relevant UK Threshold. A Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UK Threshold.

5.4 Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the eProcurement Portal, Contracts Finder and other appropriate media as the Head of Procurement may determine. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.

5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.

5.6 The Head of Procurement (in consultation with the Solicitor to the Council) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.

5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to meet the CPRs Tender requirements potential Suppliers must be sought as if a Standing List is not maintained.

5.8 Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

Council Framework Agreements and Dynamic Purchasing Systems

5.9 Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the UK Procurement Rules, as applicable).

5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the UK Procurement Rules.

5.11 All Framework Agreements will be in the form of a written agreement detailing the method by which the Council will call off Supplies during the duration of the Framework Agreement and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.

5.12 Framework Agreements above the UK Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.

5.13 Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.

5.14 Dynamic Purchasing Systems must:

5.14.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and
5.14.2 remain advertised; and
5.14.3 not limit the number of suppliers admitted to the system (but the system may be split into categories); and
5.14.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system, or on the relevant category on the system, as appropriate; and
5.14.5 be operated wholly electronically; and
5.14.6 be open to new entrants; and
5.14.7 be subject to consistent due diligence assessments of DPS participants

5.15 When using Framework Agreements or Dynamic Purchasing Systems, the Council must follow the procurement rules set out in the Framework Agreement or the Dynamic Purchasing System.

5.16 The Head of Procurement will ensure that the use of Framework Suppliers and Dynamic Purchasing Systems provide value for money, considering all procurement costs and alternative approaches.

5.17 The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems which Service Directors are permitted to use.

Use of Third Party Procurement Facilities

5.18 Supplies may be obtained through third party Frameworks Agreements (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) that:

5.18.1 are created by a public body or a private sector party as agent of a public sector body which is approved by the Head of Procurement (see also CPR 5.1);
5.18.2 have valid mechanisms that exist to enable the Council to use the Framework Agreement (including appropriate transparent referencing in the procurement documents and inclusion in the framework call of conditions);
5.18.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Internal Audit, rules which are broadly comparable;
5.18.4 where the UK procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

RULE 6 – EXCEPTIONS FROM COMPETITION

6.1 Subject to compliance with the UK Procurement Rules the following are exempted from the competitive requirements of these CPRs[4]:

6.1.1 where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
6.1.2 items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Internal Audit);
6.1.3 the selection of a supplier whose usage is a condition of a Grant funding approval;
6.1.4 the selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party;
6.1.5 where CPR 6.12 applies;
6.1.6 counsel or other external legal advice, provided that the Solicitor to the Council takes steps to ensure that value for money is being obtained;
6.1.7 a necessary Supply required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of Internal Audit;
6.1.8 direct award from an approved Framework Agreement (see CPR 5.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the UK Procurement Rules;

6.2 The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exception in respect of a supply valued in excess of £100,000. Value for money must be evidenced and recorded.

6.3 Trial Purchases

6.4 Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000 without competition in order to ascertain if the Supply is of interest to the Council. Where an exception to competition in CPR 6.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply.

6.5 Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £25,000.

6.6 The procuring Service Director and the Head of Procurement may decide that;

6.6.1 An alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason fortheir decision and obtain the approval of the Head of Internal Audit.
6.6.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce theoverall cost, or change other terms of the Supply by negotiation with one or moresuppliers which have submitted Tenders.

[4] When the UK Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

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6.6.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.

6.6.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the council without competition is appropriate (although subject to UK Procurement Rules).

Note in the above, in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by their own Service Director, there must be consultation with the Head of Internal Audit.

Negotiated Contracts

6.7 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.

6.8 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.

6.9 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Internal Audit of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

Legal Issues

6.10 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK threshold (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).

6.11 Before a decision pursuant to CPRs 6.1 to 6.3 is made, the Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, they must consult with the Solicitor to the Council about the possibility of subsidy control before approving the exemption from competition.

Mandatory suppliers, frameworks agreements or dynamic purchasing systems

6.12 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the UK Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.

6.13 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, and set standards to be established in those arrangements.

6.14 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-

6.14.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;

6.14.2 in respect of the outsourcing of an activity having a value below £100,000;

6.14.3 in respect of services provided within schools;

6.14.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

RULE 7 - RECORD KEEPING AND REPORTING

7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation). To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

7.1.1 communications with economic operators and internal deliberations;
7.1.2 preparation of the procurement or sale documents;
7.1.3 the dividing large procurements into contract Lots;
~~7.1.2~~7.1.4 consideration of social value in the commissioning and procurement process
7.1.5 any interviews, other dialogue or negotiation;
~~7.1.3~~7.1.6 A risk log;
~~7.1.4~~7.1.7 supplier vetting; and
~~7.1.5~~7.1.8 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule.

7.2 A full trail of electronic Tenders received must be recorded on the eProcurement Portal or retained in a database approved by the Head of Internal Audit.

7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 2~~Appendix 2~~).

7.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the UK Procurement Rules.

7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 2~~Appendix 2~~.

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7.6 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).

7.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

RULE 8 - INCOME CONTRACTS & CONCESSIONS

8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.

8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-

8.2.1 the disposal of property (other than Land);
8.2.2 the sale of a right to exploit a business opportunity;
8.2.3 the operation of business activity.

8.3 Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Internal Audit must be

consulted and they will decide whether this amounts to a Grant (and so FPR 4 applies instead of CPR 8).

The disposal of an asset

8.4 The procedure for the disposal of assets is:-

8.4.1 assets valued up to £25,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained;

8.4.2 assets valued above £25,000 must be disposed of following public notice either by open Tender process, closed Tender process involving at least 3 prospective purchasers or public auction. The use of the Council web site is permissible for this purpose.

8.5 Leased assets must be disposed of only in accordance with the instruction of the lessor.

The sale of a right to exploit a business opportunity

8.6 The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process asset out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

8.6.1 A business opportunity contract that will not generate income in excess of £25,000 over the duration of the contract may be sourced by any reasonable means and should be arranged and undertaken by the Service Director responsible for the activity.

8.6.2 The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £25,000.

The operation of business activity, beyond that normally undertaken by a local authority.

8.7 If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the Solicitor to the Council.

8.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Solicitor to the Council.

Concession Contracts

8.9 Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

8.10 Concession contracts for works or services above UK thresholds ~~with a value of £4,104,000~~ or more are subject to the Public Concessions Regulations 2016 and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with these Regulations.

Valuation

8.11 The value of a Concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.

8.12 The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.

8.13 When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account:-

8.13.1 the value of any form of option and any extension of the duration of the contract;
8.13.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;
8.13.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;
8.13.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
8.13.5 revenue from sales of any assets which are part of the contract;
8.13.6 the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
8.13.7 any prizes or payments to candidates or tenderers.

RULE 9 - LAND

9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate Property Management must be consulted in respect of all Land transactions of any value except where the Solicitor to the Council authorises other nominated officers to deal with tenancies or licences for specific purposes.

9.2 The Head of Corporate Property Management (and any other Director authorised so to do) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to him by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to him from the Cabinet.

9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Property Management and the Solicitor to the Council, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.

9.4 Where Land is sold at a public auction, the Head of Corporate Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made. If a successful bid is less than the reserve price then the Head of Corporate Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

RULE 10 – EXECUTING CONTRACTS

Supplies

10.1 A contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is likely to be sufficient ongoing funding to meet the contractual cost through the anticipated life of the contract.

10.2 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Framework Agreements up to the UK supplies and services threshold must be in writing and can be made by the Service Director either:

- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
- By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

10.3 If the Service Director and Solicitor to the Council decide that it is appropriate for the contract to be sealed (or if it is required by law), the contract will be executed by the Solicitor to the Council.

10.4 The Head of Procurement must ensure that the Councils electronic procurement systems are setup so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

10.5 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and every Framework Agreement with an estimated value above the UK supplies and services threshold must be in writing and must (subject to CPR 10.6) be either:

- made under the corporate common seal of the Council, attested by one legal officer; or
- signed by two legal officers;

who have been nominated as contract signatories by the Solicitor to the Council under their Scheme of Officer Delegations.

10.6 Not withstanding CPR 10.5, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such contract.

10.7 The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant contracts and suitable record keeping, provide third parties with a power of attorney to sign Council contracts of values below the EU supplies and services threshold.

Land

10.8 The Solicitor to the Council will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies and other deeds and documents associated with Land. The Solicitor to the Council may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by theSolicitor to the Council.

10.9 Any contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed by, or have the corporate common seal affixed in the presence of, the Solicitor to the Council (or by a legal officer nominated by him or her). Additionally, the Solicitor to the Council may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR 9.1.

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General

10.10 The Solicitor to the Council is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 10.5 and provided that this is not subject to any contrary direction from the Council or Cabinet.

RULE 11 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS

11.1 It is recognised that during the term of a Contract, modifications may be proposed, which if adopted would result in additional Works, Goods and/or Services, which were not considered when the original procurement took place, being procured or otherwise would alter the overall nature of the Contract. There are significant limitations upon the Council being able to make such modifications, especially where the Regulations apply. When considering a variation, modification or the termination of an existing Contract, advice must be sought in advance from the Corporate Procurement Service and with the Solicitor to the Council.

11.2 A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.

11.3 A Service Director, in consultation with the Solicitor to the Council, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.

11.4 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.

11.5 The Head of Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the Solicitor to the Council accept such proposed sums.

11.6 Service Directors may vary contracts by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract.

11.7 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR 11.6 must be subject to the approval of the Head of Procurement.

11.8 Any variation to a contract which cannot be fulfilled by following CPR 11.6 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.

~~11.8~~11.9 Subject to approval of the Solicitor to the Council and the Head of Procurement contracts may be novated to another Supplier where permitted by an express provision to novate in the terms and conditions of contract; or in the event of a successor due to the original Supplier carrying out a corporate restructuring, merger, acquisition, takeover or insolvency. The new Supplier must comply with the requirements under the original contract.

RULE 12 - MISCELLANEOUS

12.1 A Special Purpose Vehicle (as a limited liability company or otherwise) to be wholly or partially

owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the Solicitor to the Council and the Chief Finance Officer. This does not apply to any purchase of shares or similar for the purpose of investment.

Approved by Council
Apply from 25th May 2022

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DEFINITIONS

Award Criteria	Relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council'srequirements for the Supply, in particular the Specification.
Chief Executive	The Chief Executive is the head of the Council's paid staff and its principaladviser on policy matters and leads the discharge of Council strategy and responsibilities.
Chief Finance Officer	Means the Service Director – Finance
Commissioning	The relationship between commissioning and procurement is described inthe diagram in Appendix 3.
Concession	Is where a Supplier is remunerated mostly through being permitted to runand exploit the work or service and is exposed to a potential loss on its investment.
Conflict of Interest	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shallat least cover any situation where the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.
Contract	Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).
Contract Procedure Rules (CPRs)	Means these Contract Procedure Rules.
Data Protection Legislation	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.

Dynamic Purchasing System (DPS)	Is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements(as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for all contracts and it should be set up using the restricted procedure.
eProcurement Portal (YORtender)	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts. Currently available at ~~www.yortender.co.uk~~ *https://yortender.eu-supply.com*
Financial Ratio	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
Find A Tender Service (FTS)	"Find a Tender" means the UK e-notification service where notices for new procurements are required to be published;
Financial Procedure Rules (FPRs)	The Financial Procedure Rules.
Framework Agreement	Means an agreement between a Contracting Authority and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Framework Agreements which deal with Supplies that are above, oraggregate above, the UK Threshold are subject to the Public Procurement Rules.They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework' and 'Framework Suppliers' shall be construed accordingly.
Head of Corporate Property Management	Means the officer appointed by the Service Director who is responsible forcorporate property management functions.
Head of Internal Audit	Means the officer appointed by the Chief Executive who is responsible for Internal audit.
Head of Procurement	Means the officer appointed by the Service Director – Legal, Governance &Commissioning who is responsible for Corporate Procurement.
Income Contract	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset[5] and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4~~Appendix 4~~).
Land	"Land" includes any interest in land (including buildings) and any easement or right in or over land
Local Government Transparency Requirements	Means the statutory codes and legislation requiring the Council to publish information, such as[6] the Local Government Transparency Code and certainRegulations within the Public Contracts Regulations 2015.

[5] For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

[6] The words "including", "include", "for example", "e.g.", and "such as" in these CPRs indicate examples and are not intended to be

Official Council Order	A standard form of contract for a Supply for a value of less than the current UK supplies and services threshold approved by the Solicitor to the Council whether attached electronically or by paper to an order for Supplies.
Personal Data	Means data which relate to a living individual who can be identified— (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.
Procurement	The purchase, contract hire, lease, rental[7] or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Framework Agreements and Dynamic Purchasing Systems. 'Procurement' and 'Procured' shall be construed accordingly.
Public Procurement Rules	The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations).
Reasonable Means	Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written Tenders or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.
Senior Manager	Means an officer who reports directly to a Head of Service.
Service	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
Service Director	Means the most senior officer responsible for the day to day functions of each Service.
Social Value	Means The Public Services (Social Value) Act 2012 ('Social Value Act') that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
Solicitor to the Council	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
Special Purpose Vehicle	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with

limiting

[7] Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [**See the FPR**].

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	others to provide specific Supplies to the Council.
Specification	A written document detailing the Council's requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.
Standing List	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
Suitability Criteria	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. 'Suitability' shall be interpreted accordingly.
Supplier	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
Supply / Supplies	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
Tender	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
UK Threshold	The financial threshold from time to time at which the UK Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in Appendix 1~~Appendix 1~~.
Value for Money	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
Whole Life Costing Approach	Is an approach which addresses all the elements of a Supply over its life cycle such as:- • costs relating to acquisition, • costs of use, such as consumption of energy and other resources, • maintenance costs, • end of life costs, such as collection and recycling costs which can be used to produce a spend profile of the Supply over its anticipated lifespan.

Appendix 1

Relevant Thresholds in Public Contract Regulations inclusive of VAT

Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx (publishing.service.gov.uk)

Supply and service contracts	£213,477~~189,330 (£180,000*)~~
Light Touch Regime Contracts (Annex XIV)	~~£663,540 (£615,000*)~~£663,540
Works contracts	£5,336,937 ~~4,733,252 (£4,550,000*)~~
Concession contracts	£5,336,937

- These are current the values for the purposes of these CPRs. The threshold values to be used will be those applicable at the commencement of the procurement process. ~~procurement process.~~ The thresholds are updated every two years with the next update due on the 1 January 2024~~2~~

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Appendix 2

Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING**)**

	Information	When
A.	Details of all contracts awarded for Supplies of £5,000 or above following a competitive process including the name of the Supplier, and amount of the Tender and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	When Requested
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When Requested
C.	Details of all contracts awarded for supplies of £5,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue, including the reason for the exemption.	When Requested
D.	Contracts with a value of £5,000 or more see CPR, with the following information: 1. reference number 2. title of agreement 3. Contract Manager; name of person responsible for managing the contract 4. description of the goods and/or services being provided 5. Supplier name and details 6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract) 7. start, end and review dates, including permitted extensions 8. whether or not the contract was the result of an invitation to quote or a published ~~a published~~ invitation to tender, and 9. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is,provide the relevant registration number 10. whether or not the contract involves processing personal data	In All Cases on Contract Award
E.	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases on ~~Cases on~~ Request
F.	Copies of Regulation 84 reports	All cases where the Public Procurement Rules apply on Contract Award

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Appendix 3

Relationship between Commissioning and Procurement

Appendix 4

How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain **goods** and **works**, and this is the usual preference to obtain **services**.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The table below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular **service**.

1	If you are seeking to obtain **goods** or **works** you should **procure as per CPRs**
2	If you are seeking to obtain a **service** and can answer **YES** to **ANY** of the following, you should **procure as per CPRs** • Is there an intention to specify service standards and outputs required? • Will payment be reduced/altered if service standards are not met, or additional payment be made if there are claims for additional costs incurred? • Are there opportunities for change control? • Is there a contractual obligation on both parties? • Is there an intention to have active management of the provider?
3	If you are seeking to use a supplier that is a commercial ~~i.e.~~ i.e., profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine "not for profit" organization or charity you should discuss further with the Procurement team.
4	If you are seeking a **service** and can answer **YES** to **ANY** of the following, you can consider use of a **Grant as per FPRs** • Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider? • Is the intention to support parts of an existing activity? • Is the intention to provide a subsidy to existing service users • Is the council's only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider? • Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?

Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with council CPRs)