

CHERWELL DISTRICT COUNCIL

CONTRACT PROCEDURE RULES

Made under
Section 135 of the Local Government Act 1972

1 INTRODUCTION

Supplemented by complementary rules in the Council's Constitution, including its Financial Procedure Rules, these Contract Procedure Rules (the Rules), which are made under sections 135 (1) and (2) of the Local Government Act 1972:

- provide the foundation for achieving value for money in pursuit of the Council's strategic aims and objectives
- promote transparency, non-discrimination and equal treatment in pursuit of the Council's procurement objectives
- ensure compliance with the obligations governing the spending of public money contained in the Public Contracts Regulations 2015 and deter fraud
- ensure that small and medium enterprises have better access to Council Contracts by simplifying the procurement process for Contracts below the GPA Procurement Thresholds, increasing transparency, and reducing bidding costs
- govern the way in which the Council buys works, supplies and services, whether to meet a current need identified by the Council directly or in response to an expression of interest received from a relevant body under the community right to challenge
- govern the way in which the Council *sells* the things it owns, and accordingly supplements the Council's statutory duty to obtain the best consideration reasonably obtainable in the disposal of assets belonging to it
- require officers with responsibility for purchasing or disposal to comply.

2 SCOPE OF CONTRACT PROCEDURE RULES

These Rules (and those complementary rules in the Council's Constitution, including its Financial Procedure Rules) apply to all spending on works, supplies and services by the Council. They also apply to the disposal of all Council assets.

The Rules also apply whether the Council is dealing on a commercial basis with entities in the private sector or the public sector.

These Rules must also be followed where the Council decides to accept an expression of interest received from a relevant body under the community right to challenge.

Further, the Rules apply to arrangements which the Council wishes to enter into in consequence of its having received grant funding from an outside body to procure a service, or to receive an income in return for giving another body the right (a concession) to run a service.

The Rules do not apply, however, to:

- contracts of employment
- contracts with Counsel

- grant/funding agreements¹
- contracts awarded by the Council to a distinct legal entity over which it exercises a control that is similar to that which it exercises over its own departments *and* that distinct legal entity carries out more than 80% of its activities for the Council or other local authorities which control it *and* there is no direct private capital participation in that distinct legal entity²
- arrangements concluded by the Council with other public bodies within a framework of genuine cooperation between the participants which is aimed at ensuring the public services they perform are provided with a view to achieving objectives they have in common *and* which is governed solely by considerations and requirements relating to the pursuit of objectives in the public interest *and* less than 20% of the activities concerned by the co-operation are performed on the open market³.

All contract letting must at all times comply with Public Procurement Legislation (defined in section 3 below) irrespective of local needs or objectives.

The Monitoring Officer may amend these Rules where required by statutory change, managerial adjustment or administrative error.

3 DEFINITIONS

Significant terms or phrases used in this document are defined as follows:

Contract means an agreement between the Council and any other organisation, including another public authority, made by formal agreement or by issue of a letter of acceptance or official purchase order for Works, Supplies or Services.

Contracts Finder means a web-based portal provided, under that name, by or on behalf of the Cabinet Office, on which the Council must publish Contract opportunities and Contract awards where it has decided to advertise a contract opportunity with a value below the GPA Procurement Thresholds.

Contracts Register means the Council's corporate Contracts Register providing data to aid the management, administration, scrutiny and audit of all Contracts entered into by the Council with a value exceeding £5,000.

Corporate Contract means an exclusive agreement between the Council and a supplier which facilitates the placing of orders for known quantities of Supplies and Services on standard terms over a predetermined period which, if the total value of all purchases that could be made under the Corporate Contract exceeds the relevant value in the GPA Procurement Thresholds (see section 5 for determining Contract values), must be no more than 4 years. In this context, the agreement and the orders together constitute a single contract (albeit one in which the scope of the Corporate Contract regularly changes as orders are placed and fulfilled). It is this characteristic that distinguishes the arrangement from, but which otherwise shares similarities to, a Framework Agreement

CPR means the contract procedure rules set out in this document and supplemented by complimentary rules in the Council's Constitution, including its Financial procedure Rules.

Executive means the Council's Executive.

¹ A grant is a gift of funds for a specific purpose. The recipient is not obliged to deliver any goods or services to the Council, although the Council may claw back grant which has not been spent or is misapplied.

² Formerly, the *Teckal* exemption, now Regulation 12(1) of the Public Contracts Regulations 2015

³ Formerly, the *Hamburg* exemption, now Regulation 12(7) of the Public Contracts Regulations 2015

FoI means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Code of Recommended Practice for Local Authorities on Data Transparency (September 2011) and any subsequent amendment or legislation relating to information disclosure.

Find a Tender means a web-based portal provided, under that name, by or on behalf of the Cabinet Office, on which the Council must publish Contract opportunities and Contract awards with a value exceeding the GPA Procurement Thresholds.

Framework Agreement means an agreement or other arrangement between the Council (whether acting alone or jointly with other public bodies) and one or more suppliers which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the Council may place one or more orders with the supplier in the period during which the Framework Agreement applies. Until any orders are placed under the Framework Agreement there is no legally enforceable obligation to supply or purchase any Supplies or Services in connection with it. The placing of orders for Works, Supplies or Services through a Framework Agreement (whether established by the Council or by another public body) will satisfy the call for competition provided Value For Money can be demonstrated. In such cases there is no requirement to subject individual orders to competition because a competitive process will already have been undertaken to establish the Framework Agreement under which they are placed. Where it is proposed to establish a Framework Agreement, and the potential value of all orders that could be placed under it may exceed the relevant value in the GPA Procurement Thresholds (see section 5 for determining Contract values) then its term must be limited to 4 years or less pursuant to the Public Contracts Regulations 2015.

Head of Procurement and Contract Management means the officer with responsibility for the Council's procurement function.

ITQ means an invitation to Quote.

ITT means an invitation to Tender (or to negotiate, as the case may be).

Monitoring Officer means the Director: Law and Governance, who is designated as such under Section 5(1) of the Local Government and Housing Act 1989.

Most Economically Advantageous Offer means the offer that is the most economically advantageous from the point of view of the Council taking into account such things as price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, potential Social Value, production processes, running costs, cost effectiveness, life-cycle costs, after sales service, technical assistance, delivery date/delivery period and period of completion.

Partnership means an arrangement involving the Council and one or more organisations from any sector who share the responsibility for agreeing and/or then delivering a set of planned actions and outcomes. The Council may be a major or a minor participant in any such partnership. The Rules do not apply to the creation of any such Partnership but may apply to any activity of the Partnership connected with the letting of Contracts.

Principal Procurement Decision means any key procurement decision affecting any Contract where the total cost of that Contract would, were it to be awarded, exceed the allocated revenue budget by more than 5% or £25,000 (whichever is the greater) and/or the allocated capital budget by more than 5% or £100,000 (whichever is the greater), or which falls to be made for the purpose of responding to an expression of interest received from a Relevant Body exercising its Right to Challenge, or awarding a Contract arising from such expression.

Project Officer means the officer designated by the relevant Assistant Director as having responsibility for the planning and co-ordination of any particular procurement project. For the avoidance of doubt, the Project Officer may also be the relevant Assistant Director for the service. The Project Officer is accountable for the delivery of the project on time, within budget, and in accordance with all relevant internal procurement rules and Public Procurement Legislation. The Project Officer must have no personal or professional connection with any organisation bidding for a Contract and must recuse himself or herself from a procurement exercise immediately the potential conflict of interest arises and nominate a substitute Project Officer able to progress the procurement exercise fairly, transparently and impartially.

PSG means the Procurement Steering Group comprising a Core Group of:

- The Section 151 Officer
- The Monitoring Officer
- The Director of Finance (unless represented as Section 151 Officer)

or their nominees, who shall, in relation to Contracts exceeding £150,000 in value or amount, make appropriate determinations at key stages of the procurement lifecycle in accordance with the PSG Core Group's terms of reference as set out in paragraph 2.1 of Appendix 1, and a Strategy Group comprising:

- The PSG - Core Group and
- Assistant Directors invited from those who have undertaken substantial procurement activity over the period since the last Strategy Group meeting
- The relevant Council Member(s) responsible for procurement (to be invited as appropriate and at least annually) and
- Such other Council Members as any of the Core Group may invite on a case by case basis

or their nominees, who shall provide a strategic and scrutiny role in relation to the Council's procurement function in accordance with the PSG – Strategy Group's terms of reference as set out in paragraph 2.2 of Appendix 1.

Public Contracts Regulations 2015 means the Public Contracts Regulations 2015 as amended by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

Public Procurement Legislation means all relevant external procurement rules and regulations, including the Local Government Act 1988 Part II, the Local Government (Contracts) Act 1997, the Local Government Act 1999, the Local Government Act 2000, the Public Services (Social Value) Act 2012, the Localism Act 2011, the Public Contract Regulations 2015 and Retained Treaties.

Quotation means a priced bid for the provision of Works, Supplies or Services applicable to procurements between £2,500 and £100,000.

Relevant Body means a voluntary or community body, a charitable body, a parish council, two or more employees of the Council or such other persons or bodies as may be specified by regulations made by the Secretary of State.

Relevant Service means a service provided in the exercise of any of the Council's functions, either by the Council using its own workforce, or provided on its behalf under a service contract or some other arrangement.

"Retained Treaties" means anything that is retained European Union law by virtue of section 4 of the EU Withdrawal Act 2018 because of the effect which the Treaty on European Union or TFEU

had immediately before 31 December 2020 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.

Right to Challenge means the right embodied in the Localism Act 2011 for a Relevant Body to express an interest in providing or assisting in providing a Relevant Service on behalf of the Council.

Section 151 Officer means the officer appointed by the Council for the purposes of Section 151 of the Local Government Act 1972 to administer the financial affairs of the Council.

Services means any undertaking that does not constitute Works or a Supply, and includes a Relevant Service.

Social Value means the economic, social and/or environmental well-being to which the Council *must* have regard before commencing an exercise to procure a Contract for the provision of Services, or the provision of Services together with the purchase or hire of Supplies or the carrying out of Works, above the GPA Procurement Thresholds, and which it *should* have regard before commencing an exercise to procure a Contract for the provision of Services, Works or Supplies below the GPA Procurement Thresholds

Supply means the purchase, hire or lease of any goods or materials (including electricity, substances, growing crops and things attached to or forming part of any land) and their siting or installation where this is incidental to the Supply, and Supplies shall be construed accordingly.

Tender means the formal process for obtaining priced bids for Works, Supplies and/or Services and which must be followed for procurements with a value exceeding £100,000.

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014), which preserves the continuity of employment and terms and conditions of employees who are transferred to a new employer in cases where Services are outsourced, insourced or assigned by the Council to a new supplier.

Value For Money means the optimum combination of whole life costs, quality and other benefits.

Works means the construction, repair or maintenance of a physical asset.

4 CONFIDENTIALITY

All information supplied by a bidder invited to submit a Quotation or Tender for a Contract shall be treated in confidence except where references are required to be sought for the purpose of establishing a bidder's credentials, or where disclosure is required to meet an obligation contained in the Public Procurement Legislation (such as supplier debriefing following completion of a competitive tender exercise).

This general duty to maintain confidentiality is, however, subject to the Council's statutory responsibilities under FoI.

FoI does permit non-disclosure of information which is commercially sensitive, and the Project Officer is therefore recommended to instruct any bidder invited to submit a Quotation or Tender to:

- state clearly which, if any, of the information or other material supplied with their Quotation or Tender is commercially sensitive; and

- explain why, in the bidder's own opinion, commercial sensitivity attaches to that information or other material.

However, whilst bidders may specify in their Quotation or Tender that information or other material being supplied to the Council is commercially sensitive and therefore exempt from disclosure, the Project Officer must make bidders aware when inviting Tenders or Quotations that such information shall be regarded by the Council as having indicative value only and that the Council may nevertheless be obliged to disclose such information if an FoI request is received.

Note under FoI that the Council alone is responsible for determining at its absolute discretion whether confidential, commercially sensitive or other information is exempt from disclosure or is to be disclosed in response to a request for information.

5 CALCULATING THE VALUE OF A PROPOSED CONTRACT

When calculating the value of a proposed Contract, the Project Officer should have regard as follows:

- values are total lifetime Contract values, not annual values;
- account must be taken of the potential for exercising any options or any rights of renewal or extension;
- values exclude VAT;
- the estimated value of a Framework Agreement or a Corporate Contract is the total value of all of the purchases which could be made by the Council under that arrangement;
- where a Contract length is unfixed or imprecise, its value shall be assessed on the basis of the amount the Council might spend on it over 48 months;
- where procurement activity is undertaken jointly with another public body, the value of the Contract to each organisation shall be combined for the purpose of determining the applicability of GPA Procurement Thresholds (and the issue of a Contract Notice to Find a Tender or Contracts Finder as appropriate);
- a Contract must not be packaged in such a way that is chiefly intended to evade the point at which any rule in the Rules or the Public Procurement Legislation may apply; but consideration can be given to dividing a proposed Contract into Lots to make them more accessible for small and medium enterprises.

6 GPA PROCUREMENT THRESHOLDS

The Public Contracts Regulations 2015 shall be complied with in respect of all Contracts having a value that exceeds the relevant threshold for the Works, Supplies or Services being procured (see GPA Procurement Thresholds).

The consequences of failing to do so are severe, whether before a Contract is formally awarded or in the aftermath of that decision:

Before the Contract is Signed the Council:

- Must automatically suspend its award upon receiving, and pending the conclusion of, a legal challenge to that decision.
- May be ordered to set aside any unlawful decisions taken during the tender process or to amend any unlawful documentation.
- Could be liable to pay damages to any bidder proving loss arising from the Council's actions.

After the Contract is Signed the Council:

- Could be liable to pay damages to any bidder proving loss arising from the Council's actions.
- May, in any case of serious abuse of The Public Contracts Regulations 2015, be required to cancel its Contract (where a court declares that Contract to be *prospectively ineffective*) and pay a fine.
- May, in any other case, be ordered to shorten the term of its Contract or pay a fine or both.

Given the draconian consequences that may occur for failing to comply with the public procurement regime, the message is clear: "follow the rules".

7 COMMENCING A PROCUREMENT

No procurement shall commence without there being sufficient budget available to cover the estimated cost of the Works, Supplies or Services being procured, or an outside body providing grant for the procurement of Works, Supplies or Services having given a binding commitment to the Council to provide those funds.

Further, for all procurements above £25,000 the Project Officer shall first consider and agree with the Head of Procurement and Contract Management an approach to the procurement that is most likely to achieve the procurement's intended outcomes and objectives, having regard, therefore, to such matters as:

- the likely total cost of the project;
- the amount and source of the money earmarked for it;
- the length of the proposed arrangement;
- the procedure to be adopted for achieving effective competition;
- the proposed procurement timetable;
- whether procurement jointly with another public body would be of benefit;
- how Value for Money and/or Service improvements may be achieved;
- how Social Value might be secured for the Council's area by the procurement;
- details as to whether TUPE is likely to apply (see [section 9](#)); and
- any risk to the Council in undertaking (or not undertaking) the procurement.

Dealing With Expressions Of Interest Received Under The Right To Challenge

The Council has a duty to consider any expression of interest received from a Relevant Body wanting to run a Relevant Service on behalf of the Council. The Council shall fulfil that duty as follows.

Where an expression of interest for a Relevant Service is received by the Council, the Assistant Director responsible for the service to which the Relevant Service relates shall:

- inform the Head of Procurement and Contract Management and the Director: Law and Governance of its receipt without delay; and
- forthwith check that it meets the minimum requirements specified in the Localism Act 2011 and accompanying regulations. Expressions of interest must contain:

1	information about the financial resources of the Relevant Body (and the financial resources of any consortium member or sub-contractor with whom the Relevant Body proposes to deliver the Relevant Service)
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2	evidence of the Relevant Body's capability to provide or assist in providing the Relevant Service (and the capability of any consortium member or sub-contractor with whom the Relevant Body proposes to deliver the Relevant Service)
3	Information about the Relevant Service sufficient to identify it and the geographical area to which it relates
4	information about the outcomes to be achieved, particularly how the provision or assistance will add Social Value to the Council's area and how it will meet users' needs
5	details about how, in any case where the Relevant Body consists of Council employees, those employees will engage with other employees of the Council affected by the Relevant Service

For each and every expression of interest received, the relevant Assistant Director shall issue the necessary notifications required by the Localism Act 2011 and accompanying regulations in consultation with the Head of Procurement and Contract Management and the Director: Law and Governance, including publication as necessary on the Council's website.

The relevant Assistant Director shall report each and every expression of interest to the Executive, and seek recommendation from it to accept, reject or modify that expression as appropriate.

Where recommendation is made to accept the expression of interest the Council shall, following notification of the Council's acceptance to the Relevant Body, proceed to carry out a procurement exercise in respect of the Relevant Service in conformity with the Rules. It shall also specify in such manner as it thinks fit (which must include publication on the Council's website):

- the minimum period that will elapse between:
 - the date of the Council's decision to accept the expression of interest, and
 - the date on which it will begin the procurement exercise for the Relevant Service, and
- the maximum period that will elapse between those dates.

An expression of interest may only be rejected where:

1	it does not comply with any of the requirements specified in the Localism Act 2011 and accompanying regulations
2	the Relevant Body provides information in the expression of interest which in the opinion of the Council, is in a material particular inadequate or inaccurate
3	the Council considers, based on the information in the expression of interest, that the Relevant Body or, where applicable (a) any member of the consortium of which it is a part, or (b) any sub-contractor referred to in the expression of interest is not suitable to provide or assist in providing the Relevant Service
4	it relates to a Relevant Service where a decision, evidenced in writing, has been taken by the Council to stop providing that service
5	the expression of interest relates to a Relevant Service (a) provided, in whole or in part, by or on behalf of the Council to persons who are also in receipt of a service provided or arranged by an NHS body which is integrated with the Relevant Service; and (b) the continued integration of such services is, in the opinion of the relevant authority, critical to the well-being of those persons
6	the Relevant Service is already provided under Contract to the Council or otherwise the subject of a procurement exercise

7	the Council and a third party have entered into negotiations for provision of the Relevant Service, which negotiations are at least in part conducted in writing
8	the Council has published its intention to consider the provision of the Relevant Service by a body that 2 or more specified employees of the Council propose to establish
9	the Council considers that the expression of interest is frivolous or vexatious
10	the Council considers that acceptance of the expression of interest is likely to lead to contravention of an enactment or other rule of law or a breach of statutory duty

Where recommendation is made to reject the expression of interest the relevant Assistant Director shall notify the Relevant Body accordingly, giving reasons for that decision, and shall also arrange publication of the notification in such manner as s/he thinks fit on behalf of the Council, which must include publication on the Council's website.

Recommendation may be made to modify an expression of interest by agreement with the Relevant Body. The relevant Assistant Director shall notify the Relevant Body of any such recommendation, giving details of the modification sought and the reasons for that decision, and shall also arrange publication of the notification in such manner as s/he thinks fit on behalf of the Council, which must include publication on the Council's website.

8 ROLE OF PSG

The PSG – Core Group's terms of reference are set out in paragraph 2.1 of [Appendix 1](#).

The PSG – Strategy Group's terms of reference are set out in paragraph 2.2 of [Appendix 1](#).

9 REQUIREMENTS IN RELATION TO TUPE

TUPE, and the interpretation of it, changes frequently, and only a brief reference to it is therefore contained within these Rules. The Director: HR and / or the Director: Law and Governance can provide further TUPE guidance and advice as necessary or appropriate.

Whenever a new supplier is appointed to take over the provision of an existing Service, employees of the original supplier engaged in the provision of that Service (or the Council, if the Service was provided in-house) may be affected by transferring that Service to another provider. If so, it will be necessary to form a view as to whether TUPE applies, and the advice of the Director: HR *and* the Director: Law and Governance must therefore be obtained by the Project Officer before commencing a procurement project.

If a Contract is likely to involve a transfer of Council staff then it is important that the Project Officer arranges for the Director: HR to begin consultation with the relevant employees that will be affected at an early stage. This is good practice and the Council has a statutory obligation to consult under TUPE.

10 COMPETITIVE PROCESS

(a) Number of Tenders/Quotations to be Invited

This rule 10(a) shall apply unless the call for competition is to be waived in accordance with the procedure prescribed in [section 17](#), or the Council's requirement for Works, Supplies or Services is to be satisfied using an established Framework Agreement or Corporate Contract from which the Council is expressly entitled to benefit.

While a formal competitive tendering exercise may be conducted by the Council in relation to any procurement of any value, such a process must be undertaken by the Council for all Contracts above £100,000 (see table below).

For Contracts below £100,000, Tenders may not be required and a Contract can be awarded on the basis of Quotations received and evaluated in accordance with Value for Money requirements PROVIDED all stages of that exercise are nevertheless recorded in writing sufficient to demonstrate the decisions taken are robust, fair and auditable.

Where there are a sufficient number of organisations suited to bid for a particular Contract, the Council may limit the number of potential bidders from whom it may seek Tenders/Quotations as follows:

Estimated Contract Sum	Minimum Number of Bidders Invited to Tender
Works, Services or Supply Contract exceeding relevant <u>GPA Procurement Thresholds</u>	Determined in consultation with the Director: Law and Governance, having regard to EU tendering requirements ⁴
Works, Services or Supply Contract between £100,000 and relevant <u>GPA Procurement Thresholds</u>	3 Tenders invited
£25,000 to £100,000	3 written Quotations
£2,500 to £25,000	2 Quotations (in writing wherever possible)
Up to £2,500	Procurement Card, petty cash etc. transaction

(b) Advertising a Contract Opportunity

This section applies where Tenders or Quotations are required to be obtained (see section 10(a)) and the use of an established Framework Agreement or Corporate Contract from which the Council is entitled to benefit is not appropriate.

The Project Officer is reminded that, whilst generally the most effective means of achieving Value for Money in any Contract is to advertise it publicly by, e.g., notice on the Council's website or in an appropriate trade journal or the local press, the following forms of Contract advertisement must by law be undertaken in addition to any other means of advertising the Contract opportunity chosen by the Project Officer:

Estimated Contract Sum		Find a Tender / Contracts Finder ⁵
Contracts for Works, Services or Supplies above <u>GPA Procurement Thresholds</u>		The Contract opportunity must be published on Find a Tender
Contracts for Works, Services or Supplies between £25,000 and <u>GPA Procurement Thresholds</u>		The Project Officer must advertise on Contracts Finder where it determines to

⁴ E.g., regulation 65 (3) of the PCR 2015 states that the minimum number of candidates who are invited in a restricted procedure to complete the ITT shall be 5, providing that at least this number have been assessed as sufficiently qualified after completing a SQ or equivalent. This number can be increased if desired, but not decreased.

⁵ The Public Contracts Regulations 2015 require that if a Contract is advertised, the opportunity must be published on Find a Tender instead of, or in addition to, other portals or websites whenever the value of the contract is greater than the GPA Procurement Thresholds. Contract opportunities between £25,000 and the GPA Procurement Thresholds should be published on Contracts Finder.

		advertise that Contract publicly
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(c) Shortlisting Applicants to Tender

Shortlisting for Contracts above the GPA Procurement Thresholds

If, in advertising a Contract opportunity, the Project Officer wishes to assess the suitability, or unsuitability, of applicants to perform a Contract for the purpose of reducing the number of applicants to a smaller number who are to proceed to a later stage of the process (i.e., to shortlist organisations prior to inviting Tenders), and the Contract value is above the GPA Procurement Thresholds, then the Contract advertisement shall state that any person, firm or organisation wishing to express an interest in the Contract must do so by completing and returning to the Council, by a date specified in the advertisement (being not less than 30 days), a Standard Selection Questionnaire in the standard form prescribed by central government or a document or certificate of equivalent effect ('SQ')⁶.

All SQs accordingly received shall be assessed to determine the acceptability, experience, financial standing, capability and capacity of the organisation concerned to deliver the Works, Supplies or Services required.

The Head of Procurement and Contract Management shall have responsibility for co-ordinating such pre-qualification process, including receiving completed SQs, and, from those considered eligible to bid for the Contract, the Head of Procurement and Contract Management and the Project Officer shall together compile a shortlist of persons, firms or organisations from whom Tenders may be invited. That shortlist shall have regard to the minimum number of Tenders required in accordance with the Table in section 10a.

When the selection process has been completed, the Head of Procurement and Contract Management shall inform unsuccessful applicants that they were not selected to tender, together with brief reasons as to why they were not so selected.

Shortlisting for Contracts below the Standard Selection Questionnaire

The Council is prohibited by Public Procurement Legislation from demanding a SQ in relation to any Contract opportunity below the Standard Selection Questionnaire for services or supplies, although it may ask applicants to answer a suitability assessment question provided the question is:

- relevant
- proportionate and
- intended only to elicit information or evidence which the Council requires for the purpose of assessing whether applicants meet minimum standards of suitability, capability, legal status or financial standing.

In complying with this stipulation, the Project Officer shall have regard to any guidance issued by the Minister for the Cabinet Office, which may include guidance on how to establish and assess, without using SQs, whether applicants meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

(d) Getting Tenders and Quotations

⁶ Such as a Single Procurement Document

Where Quotations or Tenders are required, the documentation comprising the ITT or the ITQ shall be based on relevant model documents available from the Head of Procurement and Contract Management.

In either case, the competitive procedure the Project Officer has determined to follow (and which, for openness and transparency, should be recorded in the ITT or ITQ) must be sufficiently structured to ensure the Quotations or Tenders received can be properly compared and evaluated in accordance with Value for Money requirements.

A Tender contest may be conducted by the Project Officer using either the open or restricted procedure. Open tendering means that the opportunity to bid for the Council's Contract shall be open to any supplier who can Tender for the Works, Supplies or Services in accordance with the Council's advertised requirements. In such cases, the Council must consider and evaluate all qualifying bids received. The restricted procedure involves a tender process in which the Council limits the number of prospective tenderers to those who have been shortlisted by it in accordance with the pre-qualification procedure prescribed at section 10(c).

No departure from either the open or restricted tendering procedure in favour of another procurement procedure permitted by Public Procurement Legislation, including the Negotiated Procedure, the Competitive Dialogue Procedure, the Competitive Procedure with Negotiation or the Innovation Partnership Procedure, shall be permitted without the authorisation of PSG – Core Group.

(e) Evaluation Criteria

Any ITT or ITQ must contain details as to the criteria for awarding the Contract to which it relates. Those criteria must be robust, fair, auditable, compliant with any relevant Public Procurement Legislation and, for any ITT, weighted wherever possible.

The award criteria may be based on price alone or on that which represents the Most Economically Advantageous Offer received. In relation to Contracts above the Standard Selection Questionnaire, any award *must* be based on the Most Economically Advantageous Offer.

Lowest Price

Awards based on price alone do not permit Value for Money considerations and so will only ever be suitable for Supply Contracts of very low value where the Supplies required can be specified in significant detail at the outset and no after sales service or other special requirements are needed in connection with that Supply.

Most Economically Advantageous Offer

Where the Council intends to award a Contract on the basis of the proposal which is the Most Economically Advantageous Offer received, the criteria (and any sub-criteria) to be used in the evaluation shall, as a minimum:

- be pre-determined,
- be listed (in the ITQ) in order of importance,
- be weighted (in the ITT) according to their respective importance (unless, on objective grounds, it is not possible to provide any such weightings),
- be strictly observed at all times throughout the competition for the Contract,
- be framed (and weighted) so as to best achieve any Social Value reported under section 8
- reflect the principles of Best Value,

- include price,
- be capable of objective assessment, and
- have regard to environmental impact and sustainability considerations relevant to the Works, Supplies or Services being procured.

Where it is possible to apply a scoring matrix to the proposed evaluation criteria, the Contract must be awarded to the tenderer obtaining the highest overall score (i.e., the Most Economically Advantageous Offer) from the evaluation process.

The evaluation must be carried out by a panel consisting of the Project Officer and at least one other officer of appropriate seniority, supported by the Head of Procurement and Contract Management. No one in the evaluation panel may have any personal or professional connection with any organisation bidding for the Contract and must in the event of any conflict of interest or potential for such conflict recuse themselves from involvement in the evaluation and nominate a substitute officer able to conduct the evaluation fairly, transparently and impartially.

All decisions, scores, judgements and observations of the evaluation panel must be recorded in writing and held by the Head of Procurement and Contract Management for the purpose of demonstrating in the event of challenge or otherwise as required that the decisions taken were robust, fair and auditable⁷.

(f) Award

(Note that if the project budget is not sufficient to meet a preferred supplier's tendered rates and prices ahead of Contract award then the Project Officer must secure additional project funds before accepting the relevant tender. The Project Officer should therefore refer to the Finance Procedure Rules for relevant and appropriate guidance on project budget increases. Further advice can be provided by the Director of Finance).

Value	Authority to Award
Up to £150,000 (unless a Principal Procurement Decision) ⁸	Relevant Assistant Director to approve Project Officer's award recommendation, detailed reasons for such award to be noted in writing on the Project Officer's project file for audit purposes.
Over £150,000 but below £500,000 (unless a Principal Procurement Decision)	Unanimous decision of the PSG – Core Group following the Head of Procurement and Contract Management's submission of a report to it on the outcome of the competition, including the Project Officer's recommendation on Contract award.
Over £500,000 (unless a Principal Procurement Decision)	Unanimous decision of the PSG – Core Group in consultation with the Lead Member/portfolio holder responsible for the procurement following the Head of Procurement and Contract Management's

⁷ Regulation 84(8) of the Public Contract Regulations 2015

⁸ By way of reminder, a Principal Procurement Decision means any key procurement decision affecting any Contract where the total cost of that Contract would, were it to be awarded, exceed the greater of 5% or £25,000 of budgeted revenue expenditure and/or 5% or £100,000 of budgeted capital expenditure, or which falls to be made for the purpose of responding to an expression of interest received from a Relevant Body exercising its Right to Challenge, or awarding a Contract arising from such expression

	submission of a report to it on the outcome of the competition, including the Project Officer's recommendation on Contract award.
Principal Procurement Decision	Cherwell District Council Executive decision unless delegated by Executive to PSG – Core Group.

All unsuccessful bidders submitting Tenders or Quotations for evaluation by the Council must be informed of the outcome of the competition, including the name of the winning bidder and a brief explanation as to why they were unsuccessful on that particular occasion (for further guidance on *Debriefing*, see [section 10\(g\)](#) below).

(g) Standstill ('Alcatel') Period and Award Notices

Acceptance of any tender governed by The Public Contracts Regulations 2015 is subject to a standstill period before any Contract with the preferred tenderer can be concluded. The standstill period (also known as the 'Alcatel' period for the case (Alcatel Austria and Others v Bundesministerium für Wissenschaft und Verkehr (C-81/98)) from which the law emerged) describes the period between communication of the outcome of the tender process to all those who participated in it and the formal conclusion of the Contract and is intended to provide such participants with an opportunity to challenge the award of a Contract (e.g., because the Council has failed to follow the stated/prescribed tender procedure) before the Contract is finally concluded at the end of the standstill. The period is 10 days if the Council's decision is communicated electronically or 15 days from despatch if sent by any other means. In either case the standstill must end on a working day. Project Officers are recommended to send decision notices electronically.

The standstill period is triggered only by sending an award decision notice to all those who bid for the Contract which contains an explanation of:

- the criteria used to make the award
- the reasons for the Council's decision, including the characteristics and relative advantages of the successful tenderer
- the scores of both the successful tenderer and the recipient of the notice
- the reasons why the recipient did not meet any technical specification (where applicable)
- the name of the bidder awarded the Contract and
- the date on which the standstill period is expected to end

The requirement to notify bidders in this way, coupled with the sanctions available to them which may arise from any failure by the Council to follow The Public Contracts Regulations 2015 (see [Section 6](#)), highlights the need for a robust, fair and auditable evaluation process.

11 INSURANCE

At the commencement of any procurement exercise, the Project Officer and the Director of Finance shall together determine the type and level of insurance cover required in relation to a particular procurement. The Project Officer shall ensure the successful bidder has any required insurance cover in place before performance of the Contract begins, and shall further ensure, at appropriate intervals, that such cover is maintained by the supplier throughout the Contract period.

12 PARENT COMPANY GUARANTEES AND PERFORMANCE BONDS

Before commencing any tendering exercise for a Contract exceeding £150,000 in value of amount, the Project Officer and the Director of Finance shall together determine the need for, and value of, any parent company guarantee and/or performance bond necessary in relation to that procurement.

The Director of Finance may also require any Contract below £150,000 to be supported by a parent company guarantee and/or performance bond for such amount as the Director of Finance may consider necessary or appropriate in all the circumstances.

In determining the need for appropriate guarantees, regard should be had to using performance bond and/or a parent company guarantee only in specific and justified circumstances where the contract is judged to be at high risk of supplier or performance failure. Key points include: is the contract with the ultimate parent company; is the balance sheet commensurate with the liabilities in the contract; what proportion of the net assets are represented by the maximum liability under the contract; and to what extent are the assets are tied to the contracting party?

The Project Officer shall ensure the successful tenderer has any required parent company guarantee and/or performance bond in place before the Contract is commenced.

13 TENDER ADMINISTRATION: PROCEDURE FOR ISSUING AND RECEIVING TENDERS

(a) Issuing of tenders

The Project Officer must liaise with the Head of Procurement and Contract Management for the purpose of making all arrangements for the issue of ITTs and the receipt of submissions and proposals in response through the electronic procurement system operated by the Council for this purpose. No other method of Tender administration is permitted without the express consent of, and involvement with, the Head of Procurement and Contract Management.

(b) Submitting tenders

All Tenders must be returned strictly in accordance with the instructions prescribed in the ITT and must not be returned directly to the Project Officer, a Council Member or to any consultant acting on the Council's behalf.

Every ITT shall state that no Tender shall be considered unless it is returned to the Council as prescribed in the ITT by the date and time specified in the ITT.

Tenderers shall be responsible for ensuring their Tender is received by the Council by the specified time and date ~ late Tenders cannot be considered for evaluation or acceptance by the Council in any circumstances, even if the Tenderer asserts their Tender was sent before the return date.

If late tenders are received then the Project Officer must on such receipt advise the tenderer(s) concerned that their Tender was received late to the Council thereby preventing its consideration, and inform them that the Tender shall either be returned to them as they may require or otherwise destroyed by the Council after a period of 14 days.

(c) Abnormally Low Tenders

Where the rates and price(s) submitted by one or more tenderers is prima facie abnormally low or otherwise unrealistic, the Head of Procurement and Contract Management has a legal duty to ask the tenderers concerned in writing to clarify their Tender proposals within the parameters prescribed by Regulation 69 of the Public Contracts Regulations 2015 and shall, with the Project Officer, assess the merits or otherwise of the explanations given before making any recommendation as to approval or rejection of those Tenders as appropriate.

14 NEGOTIATING CHANGES TO BIDS RECEIVED

The following provisions apply to negotiations with bidders for any Council Contract, and the consequential amendments to Tenders and Quotations, otherwise than in accordance with any formalised negotiation process permitted by the Public Procurement Legislation.

All negotiations with any bidder between receipt of formal Tenders/Quotations and the award of a Contract on fundamental aspects of the Contract, variations in which are likely to distort competition or cause discrimination, and in particular on prices is prohibited.

However, certain post Tender/Quotation discussions with bidders are permitted if these are conducted for the purpose of:

- clarifying with a bidder details of any errors of arithmetic discovered in their Tender/Quotation in order that they may either confirm or withdraw the Tender/Quotation or amend it in order to correct those errors; or
- clarifying or supplementing the content of a Tender/Quotation or the requirements of the Council, and providing that this does not involve discrimination or unfairness to any other entity participating, or who participated, in the Tender/Quotation exercise.

Amendments to Tenders and Quotations, once agreed, shall be put in writing and signed by the tenderer.

15 QUALIFIED SUBMISSIONS

Tenders or Quotations must not be qualified or accompanied by statements that might be construed as rendering them equivocal. Any bidder whose submission is found to contain a qualification which would give that organisation an unfair advantage over other participants in the competitive process must be asked either to withdraw the qualification or withdraw the bid. The Monitoring Officer's decision as to whether or not a submission is in an acceptable form will be final.

16 VARIANT BIDS

A variant bid is a modified or alternative Tender or Quotation. A bidder may submit a variant proposal in addition to one that conforms to the requirements of the original specification provided:

- express provision is made for this in the ITT/ITQ documentation and any notice or advertisement relating thereto;
- the variant bid is free of qualifications, states all cost implications, identifies all deviations from the project specification or brief and all risks and contingencies and nevertheless complies with the Council's minimum core requirements; and
- the Project Officer does not commit the Council to considering any such bid received.

If a variant bid is considered, it must be evaluated in accordance with the award criteria specified in the ITT or ITQ, and a tenderer may be awarded a Contract on the basis of a variant bid if this meets the Council's minimum core requirements.

17 WAIVERS

The Council does not have the power to waive the applicability of Public Procurement Legislation.

Subject to Public Procurement Legislation, therefore, and in particular to The Public Contracts Regulations 2015 (see further section 6), the requirement to seek Tenders or Quotations may be waived as follows:

Value	Authority to Waive
Below £10,000	Assistant Director in consultation with Head of Procurement and Contract Management
Above £10,000	Monitoring Officer and Section 151 Officer

Exceptions where the rules can be waived are set out in Appendix 3.

18 ELECTRONIC AVAILABILITY OF CONTRACT DOCUMENTS

Under The Public Contracts Regulations 2015, the Council must, in relation to Contracts above the GPA Procurement Thresholds, offer by electronic means unrestricted, full and direct access free of charge to the procurement documents from the date of publication of the contract opportunity on Find a Tender, including the invitation to tender, specification, project brief, conditions of contract and other supporting documentation intended to describe or determine the various elements of the procurement or the procedure. Further, all such documentation must be drafted and readily available electronically to potential bidders before the relevant contract notice is submitted to Find a Tender.

While electronic availability of contract documents is mandatory in relation to contracts the award of which is governed by The Public Contracts Regulations 2015, the Project Officer should, in liaison with the Head of Procurement and Contract Management, consider applying the benefits of electronic procurement to contract opportunities that fall below the GPA Procurement Thresholds.

19 COUNCIL TERMS OF CONTRACT

Wherever practicable, model forms of Contract developed or approved for use by the Council must be used as the basis for contracting with any entity to whom a Contract is awarded by the Council.

Where Quotations are to be invited (see section 10a) and a model Contract is not readily available, and nor has one been prepared by the Director: Law and Governance specifically for use in connection with the relevant procurement, then any Contract entered into by the Council shall be placed on a Council Purchase Order or otherwise approved by the Director: Law and Governance.

Where Tenders are to be invited (see section 10a) and a model Contract is not readily available, or the Project Officer considers the relevant model is not appropriate given the nature, value and/or complexity of the Works, Supplies or Services wishing to be acquired, then such a Contract shall be in a form prepared and/or approved by the Director: Law and Governance.

Data Protection

Without exception, however, the Project Officer shall ensure that any Contract for which the Project Officer is responsible that involves personal data⁹ supplied by or obtained on behalf of the Council shall clearly specify that the supplier as data controller and/or processor (as appropriate) will comply with the provisions of EU Regulation 2016/679 (the GDPR) and the Data Protection Act 2018 (together the Data Protection Legislation) or any other re-enactment of the Data Protection Legislation.

The aim of the Data Protection Legislation is to protect the privacy of all EU citizens and prevent data breaches by ensuring that personal data is kept secure and is not disclosed to any other party except in accordance with a Contract in which the roles and responsibilities of data processors and data controllers are adequately and sufficiently addressed.

Accordingly, the Project Officer must ensure that any such Contract:

- includes specifications and/or service delivery schedules that reflect the roles and responsibilities assigned by the Data Protection Legislation between data controller and data processor; and
- contains as a minimum the generic standard data protection clauses recommended by government, as published in Annex A of Procurement Policy Note 02/18¹⁰.

Any supplier required to comply with the Data Protection Legislation may incur costs in doing so, especially where new systems or processes are required. However, Project Officers are reminded these costs are attributable to conducting business in the EU, and not supplying the UK public sector, and all suppliers are accordingly expected to manage their own costs in relation to compliance.

Further, the Project Officer should not, without the consent of the Monitoring Officer, Section 151 Officer and Data Protection Officer (where appointed), accept any liability clause in a Contract that seeks to indemnify a supplier, as data processor, against fines under the Data Protection Legislation. The legal penalty regime under the Data Protection Legislation has been extended directly to data processors to ensure better performance and enhanced protection for personal data, and any indemnification of suppliers as data processors for any Data Protection Legislation fines or court claims undermines these principles.

Council Policies

The Project Officer shall have regard to the extent to which Council policies (including, without limitation, those listed in Appendix 4) affect, or are affected by, the procurement project being undertaken, and shall ensure the specification for any Contract relating to that procurement project takes account of such Council policies as may be necessary or appropriate, and that the terms of the Contract require the Contractor to comply with such policies in the performance of the Contractor's duties under the Contract.

20 EXECUTION OF CONTRACTS

Every Contract which exceeds £150,000 in value or amount shall be executed under seal except that during any period of civil emergency the Monitoring Officer may determine in his absolute

⁹ Any information relating to an identified or identifiable natural person

¹⁰ PPN 02/18 enhances and builds on the content of PPN 03/17 so any contract amendments that have been made using PPN 03/17 before 25 May 2018 are valid. However, for new contracts to be let after 25 May 2018, the provisions of PPN 02/18, including the updated standard generic clauses at Annex A should be used.

discretion a higher (or lower) threshold as circumstances may demand in the efficient discharge of the Council's functions.

Every Contract below £150,000 in value or amount (or such other sum as the Monitoring Officer may determine in accordance with this section 20) may be executed under seal or may be signed on behalf of the Council by a signatory authorised to do so by the Council's constitution.

All solicitors and legal managers employed by the Council are hereby authorised to attest the sealing of any contract executed as a deed or the signing of any contract under hand.

21 CONTRACT COMMENCEMENT

As a general rule, the Project Officer shall not authorise performance of any Contract, nor raise any Purchase Order in connection with it, unless and until all of the documents comprising the Contract have been executed by all of the parties to it, unless the Purchase Order itself comprises the Contract (see [section 19](#)).

However, where there are exceptional circumstances requiring a successful tenderer to commence performance of a Contract prior to its execution as a matter of urgency (to avoid delay and increased costs on the Contract), the Project Officer must satisfy the Monitoring Officer and the Section 151 Officer before authorising such commencement that:

- the supplier has confirmed in writing its unequivocal commitment to:
 - perform the Contract in accordance with the established terms, and
 - execute the document comprising those terms when it is available and to indemnify the Council against any breach of such undertakings;
- any performance bond or parent company guarantee required under the terms of the Contract has been received from the supplier's surety or parent company or the surety or parent company has written to the Project Officer confirming the relevant organisation's agreement to be bound by the terms of such performance bond or parent company guarantee from the date of such communication;
- a certificate of insurance has been received from the supplier's insurers to confirm all requisite insurance cover is in place; and
- the Director of Finance has undertaken appropriate financial checks on the supplier to establish its financial capability to undertake the Contract.

22 RECORD RETENTION

All Contracts executed under seal (including the winning Tender and any documentation supplementary thereto) shall be held by the Director: Law and Governance for safe keeping.

All other procurement documentation, including all expressions of interest, selection questionnaires, ITTs, unsuccessful Tenders, Quotations, clarification responses, internal deliberations and recorded decisions shall be kept safe and secure by the relevant Assistant Director for a period of at least 3 years¹¹ from the date of Contract award whereupon such documents shall be destroyed.

Contracts executed under hand shall be held by the relevant Assistant Director for a period of 6 years from the date it is signed.

23 PUBLISHING CONTRACT AWARDS

¹¹ Regulation 84(9) of the Public Contracts Regulations 2015

The Contracts Register comprises a corporate record of all “live” Contracts over £5,000¹² entered into by the Council, whilst Find a Tender and Contracts Finder in combination comprise a record of all Contracts entered into by the Council over £25,000 that it is required by law to publish.

Accordingly, Assistant Directors must ensure that details of all the Contracts in their service area over £5,000 (including those made following a call-off from a Framework Agreement) are entered promptly¹³ and accurately on the Contracts Register and that, similarly, all Contracts in their service area over the GPA Procurement Thresholds are entered on Find a Tender, and those between £25,000 and the GPA Procurement Thresholds are entered on Contracts Finder.

24 CONTRACT ASSIGNMENTS/ NOVATION

There may be occasions when the supplier to whom an award of Contract was originally made gives notice to the Council that it has transferred responsibility for performance of the Contract to another organisation. Alternatively, that other organisation may give notice to the Council that it has taken on the responsibility for the Contract from the original supplier. Or the Council may itself wish to transfer any responsibilities it may have under a Contract to another organisation. In any such circumstances, the Project Officer must seek assurance from the Director: Law and Governance on (i) whether the transfer is compatible with Public Procurement Legislation (ii) is otherwise permitted under the terms of the relevant Contract and, if so, (iii) the binding documentation needed to formalise the proposed arrangement; and must also arrange for the Director of Finance to undertake (in relation to Contracts transferred by an existing supplier) appropriate financial checks on the new supplier to establish its financial capability to undertake the Contract.

25 PARTNERSHIPS AND PARTNERING

Whilst the Rules does not apply to the creation of any Partnership, the Rules will apply to:

- the creation of any other type of collaborative working arrangement which the Council does not define as a Partnership within the meaning set out in the Rules but which may nevertheless embody an ethos of partnership by, for example, the sharing of risk and/or open book accounting; and
- the procurement of any Works, Supplies or Services arising out of or connected with any Partnership with which the Council is involved or such other collaborative working arrangement.

Where the Council is acting jointly with another public body for the procurement of Works, Supplies and/or Services the procurement rules and procedures of the lead organisation effecting that procurement (where that is not the Council) shall apply rather than the Rules. The lead organisation must accordingly confirm that it does have relevant procurement procedure rules that are commensurate with the Rules and that it will ensure these are adhered to. Any such Contract awarded by such lead organisation must however be ratified by the Council in accordance with section 10(f).

26 REFERENCES

¹² The Local Government (Transparency Requirements) (England) Regulations 2015 demand local authorities publish as a minimum the contract information contained in Part 2 of the Local Government Transparency Code, which requires the quarterly publication of contracts and tenders valued over £5000.

¹³ Current government guidance recommends publication on Find a Tender no later than 90 calendar days after the relevant award.

References are important for suppliers, especially for SME suppliers seeking to grow their businesses. Often a successful contract with the public sector is a valuable potential reference for a small firm, and refusing to provide references can act as a barrier to the growth for business, having a negative impact on the marketplace and the overall economy.

Where, therefore, a supplier has or has previously entered into a Contract with the Council for Works, Supplies or Services, any request from that supplier for a reference in relation to that Contract should be accepted by the Project Officer, especially if that supplier has performed well and/or has exceeded the Council's expectations.

There is no legal impediment to providing references but any opinions offered by the Project Officer must be backed by contemporaneous records. For example if commenting on supplier performance, such evidence might include the achievement (or not) of delivery milestones or performance against KPIs. Subjective assessments, for example of customer satisfaction, suppliers' performance, aptitude, helpfulness, cultural fit with the authority, etc. should, however, be avoided by the Project Officer.

27 CONTRACT VARIATIONS

Any variation to a concluded Contract for Works, Supplies or Services (including an extension to the length of any such Contract or a replacement of the original supplier) ('the Variation') is only permissible if the Variation IN PRINCIPLE:

- demonstrably represents Value For Money or is otherwise in the Council's best interest to progress, and
- can be funded from an approved budget, and
- entails no diminution in any Social Value identified at the commencement of the Contract, and
- does not affect a Service in relation to which an expression of interest has been received under the Right to Challenge which either remains to be considered by the Council or which the Relevant Body does not intend to revive

and that Variation IN PRACTICE:

- is (irrespective of its monetary value) evidenced in writing, authorised in accordance with a clear, precise and unequivocal review clause or option that stated in the original contract the nature and scope of possible modifications or options available to the Council and which does not alter the overall nature of the contract, or
- entails the necessary procurement of additional Works, Services or Supplies that were not included in the original procurement but where a change of supplier cannot be made for economic/technical reasons and would cause significant inconvenience or substantial duplication of costs for the Council provided any price increase is not higher than 50% of the price of the original Contract, or
- arises from circumstances which the Council acting diligently could not foresee, does not alter the overall nature or scope of the original requirement, and does not increase the price by more than 50% of the value of the original contract or
- is intended to give effect to a universal or partial succession to the position of the original supplier by a new supplier following corporate restructuring, including takeover, merger, acquisition or insolvency, provided the new supplier fulfils all qualitative selection criteria initially established, the succession does not entail other substantial modifications to the original contract and is not otherwise aimed at circumventing Public Procurement Legislation; or
- does not (irrespective of its monetary value) (i) render the original contract materially different in character nor (ii) introduce conditions which would have allowed for the

admission of other candidates, the acceptance of other tenders or attracted additional participants nor (iii) change the economic balance of the contract in favour of the contractor nor (iv) extend the scope of the contract considerably; or

- has a price value below the GPA Procurement Thresholds and the cost of the change represents no more than 10% of the Contract's initial value for Service and Supply contracts (15% of the Contract's initial value for Works contracts) provided the change does not alter the overall nature of the contract.

Any variation outside these requirements would require the conduct of a new tender process for a new contract unless an exception referred to in Section 17 would apply.

28 CONTRACT MANAGEMENT

Assistant Directors shall be responsible for the management of all Contracts within their service area (and, for the purpose of this and the following paragraphs in section 28, "Contract" shall include all and any collaborative working arrangements of the type described in section 25).

Contract management is the active monitoring and control of all aspects of the relationship between a supplier and the Council, the aim of which is to ensure the effective delivery of the Works, Supplies and/or Services the subject of the Contract to the agreed price and standard and which is consistent with all legal requirements and financial propriety.

For Contracts within their service area exceeding £100,000 in value or amount (including any such Contract let in connection with a Partnership with which the Council is involved, whether or not the Council let that Contract) Assistant Directors shall produce a report to the Head of Procurement and Contract Management at the end of each financial year documenting:

- the quality of any Supplies or Service provided under any such Contract;
- any problems, issues or disputes (whether in relation to non-performance or otherwise) that arose or which have arisen in respect of any such Contract during the previous financial year;
- whether the supplier has performed the Contract on time and within budget, giving reasons for any delays or cost overruns;
- whether any Social Value perceived at the outset of the procurement has been realised;
- any variations and/or changes to the Contract effected during the previous financial year; and
- where appropriate, proposals for managing the end of the Contract.

Such report shall be considered by the Director: Law and Governance and the Corporate Director: Finance who may make appropriate recommendations on the subject matter of or matters arising from such report.

The Project Officer shall have day to day responsibility for the administration of a particular Contract.

A résumé of the roles and responsibilities of Project Officers, Assistant Directors and Executive Directors is set out in Appendix 2.

29 TERMINATION

No dispute shall be settled, and no Contract shall be cancelled, without the advice of the Director: Law and Governance and the Director of Finance having first been sought as to the legality of any such step and the financial implications arising therefrom.

DISPOSAL OF ASSETS

30 PROCEDURE FOR THE DISPOSAL OF COUNCIL ASSETS

Where the estimated value of an asset is £50,000 or more, or where the Executive so determines, disposal of that asset shall, unless a valuer with relevant qualifications has certified that an alternative method of disposal would better achieve the Council's aims and objectives, be conducted in one of the following ways using approved agents if appropriate:-

- Sale by Tender
 - Ad-hoc Tenders - At least 14 days notice to be given in such local newspapers circulating in the Council's area and/or in such national journals as the relevant Assistant Director considers desirable stating the nature of the asset and inviting tenders for its purchase and stating the last date when tenders will be accepted; or
 - Approved List - Public notice to be given in respect of a particular transaction in the same manner as that described in *Ad-hoc Tenders* above inviting applications from interested persons to be placed on a list to be approved by the Executive from which prospective purchasers shall be selected and invited to submit tenders.

- Sale at a Named Figure

An assessment of the value of the asset shall be made by a valuer with relevant qualifications. The relevant Assistant Director shall issue particulars of the asset and the price to all enquiring persons. Details of the asset shall be publicly advertised on at least one occasion and, in the case of land or property, a sign board erected upon the site.

- Invited Offers

The asset shall be advertised in accordance with the rules for Sale by Tender but no figure shall be placed in the particulars and interested parties shall be asked to make offers for consideration by the Council. In order to give guidance to prospective purchasers a minimum figure may be quoted where appropriate.

- Sale by Public Auction

Properly qualified and experienced auctioneers shall be commissioned to act on behalf of the Council in offering for sale by auction assets in the Council's ownership.

COMPLIANCE

31 STANDARDS OF CONDUCT AND OBSERVANCE OF RULES

All employees involved in the award or the potential award of any Contract or the disposal or potential disposal of any asset shall:

- act with integrity and honesty; and
- exercise all fairness and impartiality; and
- comply with the Rules; and
- respect the Officer's Code of Conduct; and
- observe any policy adopted by the Council on measures to combat bribery and corruption

and shall report instances of suspected fraud and other irregular activity connected with such award or disposal under any whistleblowing policy adopted by the Council.

ANY MANIFEST OR MATERIAL DEPARTURE FROM THESE RULES OR THE OFFICER'S CODE OF CONDUCT OR ADOPTED ANTI-BRIBERY POLICY IS A DISCIPLINARY OFFENCE.

PROCUREMENT STEERING GROUP

TERMS OF REFERENCE

1. INTRODUCTION

1.1 PSG means the Procurement Steering Group comprising a Core Group of:

- Section 151 Officer
- Monitoring Officer
- Director of Finance (unless represented as Section 151 Officer)

or their nominees, and a Strategy Group comprising:

- The PSG - Core Group and
- Assistant Directors invited from those who have undertaken substantial procurement activity over the period since the last Strategy Group meeting.
- The relevant Council Member(s) responsible for procurement (to be invited as appropriate and at least annually) and
- Such other Council Members as any of the Core Group may invite on a case by case basis

or their nominees.

1.2 The PSG – Core Group may transact its business electronically.

The PSG – Strategy Group shall meet quarterly. It may otherwise transact its business electronically.

2. TERMS OF REFERENCE OF THE PSG

2.1 The function of the PSG – Core Group is to consider and, if appropriate, approve the award of all Contracts:

- between £150,000 and £500,000 in value or amount, and
- above £500,000 in value or amount in consultation with the Lead Member responsible for the procurement.

PROVIDED the decision to be taken is not required to be determined by the Executive as a Principal Procurement Decision

2.2 The function of the PSG – Strategy Group is to:

- Perform a strategic and scrutiny role in relation to the Council's commissioning programme and all matters relating to the Council's contracting policy,
- Provide a forum for Project Officers to discuss policy development, seek strategic advice and raise questions, issues and problems with Contract policy,
- Define and spread best-practice as it relates to contracting and Contract management and monitoring,
- Provide advice to Officers as appropriate on contracting issues, and

- Advise Members and the Chief Executive on the need for any revision to the Rules, including changes to financial thresholds.

3. PROCEDURES FOR THE PSG

- 3.1 The PSG – Core Group and the PSG – Strategy Group shall both be chaired by the Monitoring Officer or his/her nominee.
- 3.2 The Head of Procurement and Contract Management shall convene all meetings of the PSG – Core Group and the PSG – Strategy Group, and at least two working days before such meeting the Head of Procurement and Contract Management shall send to every member an agenda and copies of all reports.
- 3.3 Members of the PSG – Core Group and the PSG – Strategy Group, or their nominees, shall attend any meeting of them when requested to do so.
- 3.4 Minutes shall be made by the Head of Procurement and Contract Management of the proceedings of the PSG – Core Group and the PSG – Strategy Group.

4. PERSONNEL, PROPERTY AND INFORMATION TECHNOLOGY MATTERS

- 4.1 Every report to the PSG – Core Group which has information technology implications shall be referred to the Director of Digital and IT before the report is considered.
- 4.2 Every report to the PSG – Core Group which has staffing implications shall be referred to the Director: HR before the report is considered.
- 4.3 Every report to the PSG – Core Group which has land and property implications shall be referred to the Assistant Director: Property, Investment and Contract Management before the report is considered.

APPENDIX 2

ROLES AND RESPONSIBILITIES

Directors:

- Oversee procurement activity within their Directorate and;
- Ensure the requirements of the Rules are upheld at all times.

Assistant Directors

- Ensure there is sufficient budget available for the Works, Supplies and/or Services to be acquired by their Project Officer;
- Ensure that the procurement proceeds in all respects in conformity with the Rules;
- Make Contract awards affecting their service with a value below £150,000 (excepting any such project authorisations or Contract awards as may arise from the Right to Challenge, which shall fall to be made by the Executive, as appropriate);
- Respond to expressions of interest received under the Right to Challenge, and issue relevant notifications as appropriate;
- Report to the Executive as appropriate seeking recommendation to approve, reject or modify any expression of interest received under the Right to Challenge;
- Publish in Find a Tender the detail of all Contracts exceeding the GPA Procurement Thresholds that are awarded in connection with their service area;
- Publish in Contracts Finder the detail of all Contracts between £25,000 and the GPA Procurement Thresholds that are awarded in connection with their service area
- Publish on the Council's Contracts Register the detail of all Contracts above £5,000 that are awarded in connection with their service area;
- Manage all Contracts within their service area;
- Waive the call for competition (in accordance with the procedure prescribed in section 17) in relation to procurements below £10,000;
- Produce yearly Contract management reports to the Head of Procurement and Contract Management in accordance with section 28; and
- Sign Contracts below £150,000 on the Council's behalf.

Project Officers

- Plan and co-ordinate specific procurement projects;
- Obtain all necessary authorisations (whether from their Assistant Director, the PSG – Core Group, or Executive, as the case may be) prior to progressing any stage of a procurement project;
- Draw up or revise Contract specifications;
- Liaise with the Director: Law and Governance to ensure the Contract forms chosen for use in connection with the procurement are fit for their intended purpose;
- Collate and assemble all tender documentation;
- Preserve the confidentiality inherent in any competitive process, particularly in relation to tender evaluation reports, working papers and minutes of meetings;
- Undertake competitive processes, particularly bid evaluations, in such a way as to ensure all bidders are treated fairly and equally;
- Prepare reports to Executive (as the case may be), the PSG – Core Group, the PSG – Strategy Group or Assistant Directors as appropriate;
- Ensure all necessary permissions are concluded before their Contract begins;
- Administer and monitor their Contracts on a day to day basis to ensure compliance with the specified standards; and

- Ensure from time to time that information held on Contracts Finder, Find a Tender and the Contracts Register is fully up-to-date.

APPENDIX 3

GROUND ON WHICH COMPETITION CAN BE WAIVED

1. The rules respecting the requirement to run a competition for Works, Supplies or Services in these Rules may be waived, and a Contract may be awarded directly to a supplier of such Works, Supplies or Services without competition, in any of the specific cases and circumstances laid down in paragraphs (2) to (9) of this Appendix 3. In any other cases, the use of this procedure is not allowed.

Competition can generally be waived:

2. Where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been received in response to an open or restricted procedure, provided the original conditions of the contract are not substantially altered.
3. Where the contract can only be performed by a particular supplier because (i) the contract is for a unique work of art or artistic performance (ii) competition is absent for technical reasons or (iii) the Works, Supplies or Services required are protected by exclusive rights including intellectual property rights BUT ONLY in the case of (ii) and (iii) above where no reasonable alternative exists and the absence of competition is not due to an artificial narrowing down of the parameters of the procurement.
4. In cases of extreme urgency brought about by events unforeseen by the Council where the time limits applicable to other procedures cannot be complied with, as long as such circumstances are not in any event attributable to the Council.

Competition can also be waived for supply contracts where:

5. The products involved are manufactured purely for the purposes of research, experimentation, study or development and the contract does not include quantity production to establish commercial viability or to recover research and development costs.
6. Additional deliveries by the original supplier are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, and a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance PROVIDED contracts let in reliance on this ground, and any recurrent contracts, do not exceed 3 years.
7. The supplies are quoted and purchased on a commodity market.
8. The supplies or services are purchased on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

Competition can also be waived for new works and services which repeat similar works or services already entrusted to the current supplier provided that:

- such works or services are in conformity with a basic project for which the original contract was awarded in accordance with one of the other procurement procedures; and
- the basic project indicated the extent of possible additional works or services and the conditions under which they would be awarded; and
- as soon as the first project was put up for tender, the possible use of this procedure was disclosed and the total estimated cost of subsequent works or services were taken into consideration when determining the contract value; and
- the order for such new works or services is issued within the period of 3 years following the conclusion of the original contract.

APPENDIX 4

Council Policies Affecting or Affected by Procurement Projects

- ICT Acceptable USE Policy Electronic Communications
- ICT Software
- ICT Internet Acceptable Usage Policy
- ICT Removable Media Policy
- ICT Third Party Access Policy
- ICT Mobile Device Policy
- ICT Information Security Policy
- Data Protection Act and GDPR Policy
- Complaints Policy
- Persistent Complaints Policy
- Anti-fraud and corruption policy
- Anti-bribery policy
- RIPA Policy
- Whistle blowing policy
- Confidential reporting policy
- Declarations of interest policy
- Customer complaints policy
- Safeguarding policy
- Equalities Policy
- Corporate priorities policy