



WAKEFIELD COUNCIL

CONTRACT PROCEDURE RULES

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1 INTRODUCTION

1.1 Procurement is the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts, as illustrated below in the procurement cycle:



1.2 These Contract Procedure Rules (CPRs) provide a corporate framework for the procurement of all Goods, Services and Works by the Council, including the procurement of Income Contracts and Concession Contracts (defined below). These CPRs are designed to ensure that the Council obtains value for money along with the required level of quality and performance in all the Contracts it enters into. The disposal of equipment assets is not within the scope of these CPRs. [The Control of Assets Procedure Manual](#) outlines the process to be adopted in these situations.

1.3 In these CPRs the following definitions apply:

Authorised Officer	means any officer involved in undertaking procurement activity on behalf of the Council;
Chief Officer	means one of the following; Chief Executive, Corporate

	Director, Chief Finance Officer or Service Director for the Service;
Concession Contracts	means a Contract under which the execution of works or the provision and management of services is entrusted to one or more providers, the consideration for which is the right to exploit those works or services. Usually this will involve a transfer of operating risk to the Contractor and them receiving payment from third parties, not wholly from the Council;
Contract	means any form of contract, agreement for the supply of Goods, Services and/or Works that the Council enters into;
Contractor	means any person, partnership, company or any other organisation which provides or offers Goods, Works and/or Services to the Council;
DPS	means a Dynamic Purchasing System which is a completely electronic system which may be established between the Council and/or other public bodies and one or more Contractors to purchase commonly used Goods, Works or Services where the volumes to be delivered are not set out at the outset;
Duty of Best Value	Means the Council's statutory duty under the Local Government Act 1999 to secure continuous improvement in the way the Council's functions are exercised having regard to a combination of economy, efficiency and effectiveness and in consideration of the overall value of Contracts (including their economic, environmental and social value);
FOI	means the Freedom of Information Act 2000, Environmental Information Regulations 2004, Local Government Transparency Requirements and any other law which places the Council under an obligation to disclose or publish information;
Framework Agreement	means an agreement between the Council and/or other public bodies and one or more Contractors where the volumes to be delivered are not set out at the outset but which establish terms (including price) and standards under which the Contractor will enter into a Contract to provide Goods, Works and/or Services;
Goods	means all supplies and materials that the Council purchases or obtains;
Income Contract	means any Contract that the Council enters into that generates income for the Council or by their operation establish a right for a Contractor or a third party to generate an income;
Light Touch Regime	means the parts of the Regulations which apply to the procurement of Contracts for 'social and other specific services'

	(defined at Schedule 3 of the Regulations) that are deemed to be of lower interest to cross-border competition;
Local Government Transparency Requirements	means the legislation and statutory codes requiring the Council to publish information such as the Local Government Transparency Code and the Regulations;
Regulations	means the Public Contracts Regulations 2015 (as amended) and/or the Concession Contracts Regulations 2016 (as applicable) as supplemented by the EU Directives on the procurement of Goods, Works, Services and Concessions and as amended and supplemented by the European Court of Justice (often referred to as the 'EU procurement rules');
Services	means all services which the Council purchases or obtains;
Wakefield District	means the geographical area served by the Council; and
Works	means the execution, or both design and execution, of construction works and civil engineering works including the execution of repairs in relation to those works.

- 1.4 All values referred to in these CPRs are exclusive of Value Added Tax (VAT).
- 1.5 Any dispute regarding the interpretation of these CPRs shall be referred to the Chief Finance Officer for resolution.
- 1.6 The Chief Finance Officer shall formally review these CPRs at least annually.

2 COMPLIANCE WITH CONTRACT PROCEDURE RULES

- 2.1 The provisions contained in these CPRs are subject to the statutory requirements of both the European Union and the United Kingdom Government. The letting and content of Contracts shall conform to all statutory requirements relating to Contracts and procurement. This requirement cannot be waived, since a failure to comply with legislation may result in a legal challenge with consequent reputational and/or financial risk.
- 2.2 In addition where specific statutory procedures are prescribed for certain types of procurement or Contract, then these procedures must be followed at all times. In any case where the Council approves, through a resolution of its Cabinet, to have separate procedure rules for particular types of Contract, then such rules (which must be prepared in consultation with the Chief Executive and the City Solicitor) will take precedence over these CPRs.

- 2.3 Subject to CPRs [2.1](#) and [2.2](#), every Contract for the supply of Goods and Services and for the execution of Works made by or on behalf of the Council shall comply with these CPRs, the Council's Financial Procedure Rules (set out in the Constitution) and the Council's Procurement Strategy. All Council employees and any third party providers engaged to procure, manage or supervise a Contract on behalf of the Council must be provided with a copy of (or access to) these CPRs and comply with them.
- 2.4 Any exception to these CPRs must only be made with the written authority of the Chief Finance Officer (for exceptions valued £100,000 and above) or the Service Manager – Corporate Procurement (for exceptions valued between £25,001 and £99,999) and the relevant Chief Officer concerned in accordance with CPR [17.4](#). Such exceptions should not be treated as the norm and early advice must always be sought from the Corporate Procurement Team and the City Solicitor's Office before applying an exception.
- 2.5 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant sections of the Council's Constitution, this includes ensuring the correct approval processes are followed. Where procurement activity is determined to be a Key Decision (as defined in the [Constitution](#)) an executive decision must be sought prior to any commitments being made. Officers should contact the City Solicitor's Office for further information.
- 2.6 All officers should manage procurement activity in accordance with the Duty of Best Value and, where appropriate, or necessary to comply with statutory obligations, in a manner that is non-discriminatory, transparent and fair; and avoids any conflict of interest. If any conflicts of interest do arise, these should be referred immediately to the City Solicitor and recorded in the Register of Interests.
- 2.7 The Regulations require tenders to be advertised in the Official Journal of the European Union (OJEU) where the value exceeds (at January 2018), net of VAT;
- a. £4,551,413 for works;
 - b. £181,302 for the purchase of goods;
 - c. £615,278 for [social and other specific services](#) (subject to the Light Touch Regime);
 - d. £4,551,413 for Concession Contracts; and
 - e. £181,302 for all other services.
- 2.8 Service Directors are responsible for ensuring processes are in place to comply with these CPRs and Regulations within their own service area.

2.9 These CPRs **do not** apply in relation to the procurement of Legal Services in respect of a specific matter which are in contemplation of;

- Arbitration conciliation;
- Judicial proceedings before the courts; and
- In the procurement of legal advice given in the preparation for any of the proceedings referred to above, or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings.

However, no such Services shall be procured without the approval of the City Solicitor.

2.10 PARTNERSHIPS

2.10.1 The CPRs apply to any proposal for the Council to become involved in a joint venture or partnership agreement, including the monitoring of any such agreement.

a) In relation to the CPRs, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be performed; and

b) Provides a role for the Council or any of its members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but not be limited to, companies, trusts and management committees).

2.10.2 Before any consideration is given to the Council entering into a joint venture or partnership or a strategic service delivery partnership with any external organisation; and in particular before any detailed negotiations are entered into or before a Contract is made or undertaking given by or on behalf of the Council in relation to a joint venture or partnership, the relevant Chief Officer must submit detailed information concerning the joint venture or partnership to the Chief Finance Officer. The Chief Finance Officer will liaise with the relevant Chief Officer or his/her representative to ensure that an appropriate project board is convened.

2.10.3 Any project to develop a strategic service delivery partnership (which may or may not involve a transfer of staff to an external organisation) must be referred to the Council's Cabinet for:

- a. Initial approval to commence the project; and
- b. Approval to award the Contract, supported by a robust business case.

- 2.10.4 Contracts of this nature may involve significant risks including staff transfer, implications across a number of services or a significant potential for reputational or financial risk. As such the processes must be managed in an appropriate manner using Council approved project management methodologies and progress reports must be provided to the Corporate Management Team (CMT) at key milestones, which are to be agreed by the relevant Chief Officer.
- 2.10.5 Procurement processes for strategic partnerships, joint ventures and PFI projects must include where relevant:
- a) The issue of an information memorandum to prospective bidders setting out the background to the project, the Council's objectives and an outline of the procurement process and timetable, with roles and responsibilities made clear.
 - b) An invitation to bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms. This should continue to be examined as part of contract management.
 - c) The inclusion in invitation to tender for partnerships, a requirement for bidders to submit optional, priced proposals for the delivery of specified social benefits which are relevant to the Contract and adds value to the [Wakefield District Good Growth Action Plan](#) .

3 ESTIMATING CONTRACT VALUES

- 3.1 The method for determining the estimated total value of a Contract/Income Contract, should be based on the total amount (net of VAT) which the Council expects to pay and/or any other forms of remuneration the Council, Contractor (or a third party) will receive by operation of the Contract over the term of the Contract. Such calculation must include, where relevant any maintenance and ongoing support costs. (*Example calculation: Estimated Contract Value = (Annual Cost+other forms of remuneration) * Contract Length*)).
- 3.2 In the case of a Goods or Services Contract that does not have a fixed term/contract length (i.e. a consultancy project) the estimated contract value shall be calculated based on the monthly value multiplied by 48.
- 3.3 In determining the value of a Contract, the Council must also include the potential value of any options to extend that may be built into the Contract and take into consideration the value of **all** lots where the Contract is being broken into multiple lots.

- 3.4 When determining the value of a Framework Agreement the anticipated value of all spend through that Framework Agreement including the spend of any other contracting authorities (e.g. other local authorities) who are able to access the Framework Agreement must be taken into consideration.
- 3.5 Officers must ensure that estimated values are **not** disaggregated in an attempt to avoid the applicability of these CPRs. Requirements must be calculated based on all Council spend (i.e. the corporate requirement rather than an individual service areas need).
- 3.6 Where a proposed procurement includes two or more types of provision (i.e. Goods, Services or Works) the value shall be based on the provision that characterises the main subject of the Contract in question.

4 EXISTING ARRANGEMENTS AND IN-HOUSE SERVICES

- 4.1 In all instances Goods, Services and Works must be obtained via appropriate existing approved arrangements where these exist irrespective of value. Such arrangements/services are detailed below, in order of priority (with a. being the highest priority) in which they must be considered:

a. **In-house services**

Where the Council has an in-house service, external companies **must not** be used for these services unless the Service Manager responsible for the in-house service confirms specifically that they are unable to meet the requirements on that occasion.

b. **Council partnership arrangements**

Any requirement which includes architect, design, surveying, build, demolition or similar services (excluding Highway related services); property and estates management, facilities management, leases, rents, sale, acquisition, buildings health and safety, repairs/maintenance and minor/major works, premises support, logistical services, energy and utilities services, management of asbestos in Council premises and all other work in relation to building fabric management shall be referred to Property and Facilities Services Corporate Landlord Team for appropriate discussions to take place with the Council's strategic partner, Engie, to either undertake the work directly or sub-contract the work and manage it on behalf of the Council. Only the Property and Facilities Services Corporate Landlord Team can deem a project to be unsuitable for the Council's strategic partner to undertake; and could include instances such as:

- The work is of a specialist nature and the Council's strategic partner is not able to offer that specialism; or

- There are strategic reasons for sourcing the work elsewhere. This is subject to the Council's Contract Manager from within Property and Facilities Services Corporate Landlord Team consulting with the Contract Manager from the Council's partner.

c. Established corporate Contracts/Framework Agreements awarded by the Council or approved arrangements

The use of Council corporate Contracts/Framework Agreements awarded by the Council shall be mandatory for all Goods, Services or Works that have been included in the scope of those arrangements.

Where the supply is of a significantly higher than normal value for the existing arrangement (for example bulk purchases) the Authorised Officer should consult with the Corporate Procurement Team to determine whether special rates should be sought, or an alternative procurement method is required.

4.2 Information relating to the above arrangements will be published regularly on the [Council's intranet](#).

4.3 Where an existing arrangement or in-house service exists and the officer is seeking to procure outside of these arrangements, the Authorised Officer is required to maintain a documented audit trail to demonstrate the correct approval has been granted from the relevant officer(s) to procure outside of these arrangements.

5 PUBLIC TO PUBLIC CONTRACTS

5.1 If the Authorised Officer is considering entering into a contract with another public body, early advice must be sought from the Corporate Procurement Team and the City Solicitor's Office. It should not be assumed that arrangements entered into between the Council and other public bodies (e.g. other local authorities) are outside the scope of EU public procurement law.

6 CONCESSION CONTRACTS

6.1 If the Authorised Officer is considering entering into an arrangement which could constitute a Concessions Contract, early advice must be sought from the Corporate Procurement Team and the City Solicitor's Office.

7 ENGAGEMENT OF CONSULTANTS

7.1 Approval **must be** obtained from the appropriate Portfolio Holder and the Corporate Director Business Change before engaging **any** consultant, consultancy firm or external adviser. To obtain the correct approval, the following

[e-form](#) must be completed, which will then be emailed to the relevant Corporate Director, who will be required to discuss this with the Corporate Director Business Change and seek approval. A copy approval form signed by the Corporate Director Business Change **must be** returned to the Corporate Procurement Team.

- 7.2 An Authorised Officer may only appoint external consultants or advisers providing the professional or consulting services required are not available within the Council. Where the service is available within the Council, but the service concerned does not have the resources to meet the needs, this should be addressed through temporary staffing arrangements rather than consultancy. Where such services are available in-house, the Authorised Officer will be required to follow the procedure outlined in [4.1](#) above.
- 7.3 The appointment of external consultants and advisers shall be undertaken in accordance with the relevant sections of the Procurement Code of Practice – [The Use of Consultants and Advisers toolkit](#). Particular reference should be given to determining the employment status of all external consultants in accordance with the regulations laid down by HM Revenue and Customs.
- 7.4 External consultants and technical officers engaged to procure or manage Contracts must follow these CPRs and their Contracts must place them under obligations to do so.
- 7.5 External consultants who are instructed to prepare procurement documents on behalf of the Council must do so with regard to the Council's standard documentation and the documents prepared must be referred to the Corporate Procurement Team for approval before they are published.
- 7.6 All Contracts for external consultants and advisers shall explicitly require that the consultants or advisers provide without delay any or all documents and records maintained by them relating to the services provided on request of the Authorised Officer, and lodge all such documents and records with the appropriate officer at the end of the Contract.
- 7.7 Where the engagement of a consultant is required to support a procurement process or related project, the consultant must sign a confidentiality agreement drafted by the City Solicitor's Office and be bound by the confidentiality requirements of the Local Government Act 1972, as amended.

8 FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS (DPS)

8.1 CALL OFF ARRANGEMENTS

- 8.1.1 Where a call off is proposed under an existing Framework Agreement or DPS that has been established by a consortium, collaboration or other public body, the Council may consider using this Framework Agreement or DPS if:
- a. The Framework Agreement or DPS has been established by an entity, and via a process, which permits the Council to access those arrangements lawfully;
 - b. It is in the best interest of the Council to access the Framework Agreement or DPS, representing clear value for money, which must be documented for Audit purposes.
- 8.1.2 Before undertaking a call-off under any Framework Agreement or DPS, thorough due diligence should be undertaken and advice sought from the Corporate Procurement Team and the City Solicitor's Office to confirm it is able to be used and whether it is appropriate to use it.
- 8.1.3 Call-offs must be awarded based on the criteria identified in the Framework Agreement or DPS.
- 8.1.4 Where the call-off is undertaken via a direct award process (which is prescribed in the Framework Agreement), the Contractor must be requested in writing to supply a written submission, that is verified to confirm it can meet the requirements of the Council in accordance with the terms and conditions and pricing established in the Framework Agreement in advance of entering into a Contract.
- 8.1.5 Accessing a Framework Agreement or DPS does not remove any of the requirements detailed within the **PRE PROCUREMENT ACTIVITY** section below.
- 8.1.6 Subject to the due diligence confirming the suitability of the Framework Agreement or DPS, it can be used as a potential route to market without going down one of the procedures outlined in the **NORMAL PROCEDURE** irrespective of value.

8.2 ESTABLISHING A FRAMEWORK AGREEMENT/DPS

- 8.2.1 Where the Council is establishing a Framework Agreement or DPS which may be accessed by other contracting authorities the estimated Contract value must take account of all potential work that may be put through the agreement (see CPR **3.4**) and follow the procedures set out in these CPRs.
- 8.2.2 If the Council is establishing a Framework Agreement or DPS in accordance with CPR **8.2.1** reference must be made within the procurement documents explaining that the Framework Agreement or DPS is intended for a wider use, and advice should be sought from the City Solicitor's Office to ensure the terms upon which other contracting authorities access those arrangements are clear and offer appropriate protection to the Council.

- 8.2.3 In establishing a Framework Agreement, the total duration (including any extensions) cannot exceed four years except in exceptional circumstances relating to the subject matter of the Framework Agreement. Any proposal to establish a Framework Agreement with a duration exceeding four years should be referred to the Corporate Procurement Team and the City Solicitor's Office for advice.
- 8.2.4 Where, taking into account the above, the estimated value of the Framework Agreement or DPS is estimated to be above the relevant EU threshold, the Authorised Officer must ensure that the names of the other public bodies are included in the OJEU notice either individually or by an identifiable class. Refer to the Corporate Procurement Team for guidance on the correct wording to be used.
- 8.2.5 In establishing a Framework Agreement or DPS, the Council must ensure that the terms of the Framework Agreement or DPS make the process by which Contracts under the Framework Agreement or DPS are entered into is explicitly clear.

9 PRE PROCUREMENT ACTIVITY

Contracts valued between £25,001 and £99,999

- 9.1.1 For all procurement activity with an estimated value between £25,001 and £99,999 including further competition and direct award processes conducted under established Framework Agreements a [Route to Market Assessment](#) should be completed.
- 9.1.2 The [Route to Market Assessment](#) must be signed off by the relevant Service Manager with responsibility for the service area concerned and the Service Manager – Corporate Procurement.
- 9.2 **Contracts valued £100,000 and above** – the following information is compulsory for all procurement activity with an estimated value above £100,000 including further competition and direct award processes conducted under established Framework Agreements.
- Whilst the following documents are mandatory for all procurements above £100,000, the detail contained within them should be proportionate to the risk and value of the proposed procurement and concluding Contract; Procurement Business Case (containing);
 - Risk Log
 - Stakeholder and Communication Plan
 - An assessment of the different routes to market.

9.3 IDENTIFICATION OF STAKEHOLDERS

- 9.3.1 All stakeholders (internal and external) should be appropriately identified prior to commencing any activity. All stakeholders should be captured on the [stakeholder and communications plan](#). This plan identifies the reasons why the stakeholder has been identified, the role they will undertake, when they need to be involved in the process and should be used to identify the information requirements the stakeholder needs, the reason why the information is needed along with details of who will provide this information and when.
- 9.3.2 The stakeholder and communications plan should be updated regularly during the entire procurement cycle (including the management of the contract) and can be used to evidence any consultation undertaken in support of the Public Services (Social Value) Act 2012 (see [9.6.4](#)).

9.4 MARKET ENGAGEMENT

- 9.4.1 Before commencing a procurement procedure consideration should be given to engaging with the market. This engagement may be used by the Council to gather information about what the market is capable of offering. Prior to undertaking any such market engagement, advice must be sought from the Corporate Procurement Team in relation to whether such engagement is appropriate and also determine the method of such engagement.
- 9.4.2 Where market engagement is undertaken, the Authorised Officer must ensure appropriate measures are taken to ensure that competition is not distorted, for example:
- a. Ensuring an exchange of information in the context of or resulting from the involvement of the market engagement with other candidates and/or tenderers;
 - b. Allowing sufficient time limits for the receipt of tenders so those candidates/tenderers not involved in market engagement can digest the information presented and read any background supporting documents issued;
or
 - c. Where no other alternative exists, exclude the organisation involved in market engagement from the procurement procedure (prior to exclusion, the bidder must be given the opportunity to prove that their involvement is not capable of distorting competition).
- 9.4.3 Where market engagement is undertaken through the use of an advertisement on [YORtender](#) or through the use of a Prior Information Notice (PIN) within OJEU,

the details of this advertisement also needs to be recorded on Contracts Finder.

9.5 IDENTIFICATION OF RISKS

9.5.1 A [risk log](#) for the procurement process and the eventual contractual relationship must be produced and maintained through the procurement cycle by the Authorised Officer, in consultation with the relevant stakeholders identified. As a minimum the risk log should not only identify the risks, but detail how they will be managed, the responsible officer(s) and the review period.

9.5.2 Through the use of the risk log it is essential that consideration is given to any:

- Legal
- Contractual
- Financial
- Political/reputational
- Economic
- Technological
- Social
- Environmental
- Equality/diversity
- Business continuity; and
- Civil protection and planned event response and recovery implications that may occur throughout the procurement life cycle (including the subsequent Contract entered into).

9.6 DEVELOPMENT OF A PROCUREMENT BUSINESS CASE

9.6.1 A [procurement business case](#) must be developed for every procurement process, including further competition and direct award processes conducted under established framework agreements or DPS (defined at [8](#)). Where the procurement business case is recommending a direct award, this report will also act as the document to approve the award of the contract (therefore removing the requirement detailed at [14.9.1](#) to complete a Tender Evaluation Report). The business case should clearly explain the background to the Contract, details of the research undertaken and options available, the procurement plan (including details of any implications) and details of the arrangements that will be established for the management of the Contract and any required exit strategies that may be deployed.

9.6.2 Whilst there are a range of considerations to be made within the procurement business case, detailed below are some of the key considerations:

9.6.3 **Financial Implications**

In developing the business case, consideration should be given based on the advice from the Chief Finance Officer and the City Solicitor within the financial and legal implications and the degree of security (if any) required to protect the Council from a Contractor default. The decision must be based on the risks associated with the Contract. The level of risk may vary depending upon various characteristics including, but not limited to, the following:

- The value of the Contract;
- The type of Goods, Services or Works being procured;
- The payment profile of the Contract;
- The financial strength of the suppliers in the market;
- Affordability and proportionality.

Consideration should be given to whether additional security is required in the form of a performance bond or some other form of financial or performance guarantee.

For Contracts which are dictated by a particular date or series of dates, the Authorised Officer shall assess the need to include provision for liquidated damages based on advice from the City Solicitor. Liquidated damages should only be included within a Contract where they can be genuinely pre-estimated.

Affordability and proportionality must always be taken into consideration when deciding whether some form of financial security is appropriate and required.

Where the Council will own an asset as a result of a Contract, Financial Services must be consulted to input into the business case in order to identify any International Financial Reporting Standards (IFRS) implications.

The procurement business case should also confirm the budget provision for the proposed procurement including the correct account code to be used, any taxation or insurance implications after seeking advice from the appropriate Council officers.

9.6.4 **Social Value**

Where the Public Services (Social Value) Act 2012 applies (i.e. in relation to Contracts for Services with a value above the relevant EU threshold) the Council has a statutory duty to consider, prior to publication of an OJEU notice, how the procurement might improve the economic, social and environmental well-being of the geographical area that the Council serves and to consider undertaking related

consultation. The Council has, however, adopted a policy which requires consideration to be given to what social value¹ can be derived from all procurements it undertakes. Refer to [Delivering Social Value Through Procurement](#) toolkit for further guidance. This consideration must be captured in the [procurement business case](#) and the [stakeholder and communications plan](#) updated to reflect any consultation undertaken.

The considerations with the [procurement business case](#) should also include information regarding incorporating skills, apprenticeships and jobs into procurement processes as detailed in [Incorporating skills, apprenticeships and jobs](#) toolkit.

Authorised Officers should consider where appropriate how they can support and promote the policies and corporate priorities of the Council. In particular, how local suppliers and Small to Medium Sized Enterprises (SME's) can be encouraged to bid for Council Contracts. This includes ensuring that tenders are not framed in a way to necessarily debar SME's, the voluntary sector and community groups and whether it would be appropriate and in the best interest of the Council to sub-divide a Contract into lots.

9.6.5 **Transactional Implications**

All orders and payments for Goods, Services and Works must be undertaken in accordance with Financial Procedure Rules. An Official Order must be placed upon contract award, using approved council systems. It is therefore important that as part of the development of the procurement business case, agreement is reached with the Council's Financial Services: Payments and Controls Manager on the process to be incorporated into the tender/Contract documents for placing orders and payment of invoices.

It is particularly important that this is agreed in advance of the Contract entered into as the Council is required to publish on its website all items of expenditure on goods, works and services which exceed £500 in value.

- 9.6.6 The [procurement business case](#) must be signed off by the relevant Service Manager with responsibility for the service area concerned and the Chief Finance Officer (along with any other relevant Chief Officer). All business cases requiring sign off by the Chief Finance Manager must be referred in the first instance to the Corporate Procurement Team for an overview.

¹ Social value can be defined as any improvement to the social, economic and/or environmental wellbeing of the district, its citizens and businesses.

Where changes occur after the business case has been signed off, but before the procurement commences that affect any of the content included in the business case, an amendment document must be prepared and signed off by the officers referred to in [9.6.6](#) prior to any tender documents being issued.

9.7 DEVELOPMENT OF TENDER DOCUMENTATION

- 9.7.1 It is essential that Authorised Officers only use the standard tender template documentation available from the Corporate Procurement Team. Authorised Officers must not use their own version of documents. Where there are provisions included (or omitted) from within the corporate documentation which the Authorised Officers feel (in)appropriate for their particular procurement, they should contact the Corporate Procurement Team for further advice.
- 9.7.2 A clear specification of requirements (identifying outputs or outcomes rather than inputs, unless there is a demonstrable need to specify inputs) should be developed for every procurement process undertaken. The specification should incorporate (where agreed) the views of stakeholders along with details that may mitigate risks identified through the risk process referred to above.
- 9.7.3 The specification should also include details of any Social Value requirements identified through the risk log and business case development.
- 9.7.4 The tender documents must clearly describe the evaluation criteria/methodology (price and quality) to be used including all sub-criteria.
- 9.7.5 It is essential that all procurement documentation is finalised before any tender is issued to market, as all procurement documentation (including contract documents) **must be** made available at the point of advertisement.

10 NORMAL PROCEDURE

10.1 CONTRACTS VALUED UPTO £25,000 (INCLUSIVE)

- 10.1.1 These CPRs in general do not apply to Contracts with a value of less than £25,000. However the CPRs with regards to in-house, Council partnership arrangements and established corporate Contracts referred to at [4](#), and the duty to comply with the Duty of Best Value etc. at [2.6](#), **do apply**.
- 10.1.2 Where there are no arrangements in place as per [4](#) above and due regard has been given to the duties at [2.6](#), purchases with a value of less than £25,000 should, wherever possible, be placed with Contractors within the Wakefield District.

- 10.1.3 For all Contracts valued below £25,000 the Authorised Officer must retain on file a note outlining the process undertaken and justification for the decision to award work to a given Contractor. It is also good practice to obtain a written quotation.
- 10.1.4 To comply with the Local Government Transparency Requirements, details of all Contracts awarded over £5,000 must be reported to the Corporate Procurement Team using the [pro-forma](#) template. This must contain a rationale why the Contract complies with the Duty of Best Value and, if applicable, justification why a Contractor from the Wakefield District is not being used. This information will be captured on the Council's centralised contracts register.

10.2 CONTRACTS VALUED FROM £25,001- £99,999

- 10.2.1 Contracts that are estimated to be for amounts between £25,001 and £99,999 must be let on a competitive basis on [YORtender](#).
- 10.2.2 The Authorised Officer must undertake a [Route to Market Assessment](#) to determine the most appropriate procedure to undertake.
- 10.2.3 If the Open procedure is selected the Authorised Officer must ensure the Contract is required to be let on a competitive basis which is advertised to the open market through the [YORtender](#) portal and on Contracts Finder.
- 10.2.4 If the Restricted procedure is selected the Authorised Officer must invite a minimum of 3 Contractors to submit a tender. There is no upper limit on the number of Contractors that can be invited.
 - 10.2.4.1 Authorised Officers must choose a minimum of 2 contractors, wherever possible, from the Wakefield District (based on previous knowledge, experience or research) to submit a tender through the [YORtender](#) portal. The Authorised Officer must be confident that competitive bids will be received from the 2 Contractors invited, based on their earlier market consultation.
- 10.2.5 Where the Authorised Officer is unsure of the market or the likely response to be received, a discussion should be held with the Corporate Procurement Team who will provide advice on the procedure which should be undertaken.
- 10.2.6 There is no minimum time limit for which procurement processes within this threshold need to be advertised. However, it is expected that a sufficient (but not disproportionate) time limit is applied to allow potential bidders to respond. This therefore needs to be considered on a case by case basis, dependent upon any prior market engagement undertaken, the complexities of the specification and the level/amount of detail required within the tender response.

10.2.7 Tenders undertaken for procurements between these thresholds **must not** include a pre qualification stage or a stage in the procurement process where the authority can assess the suitability of a candidate for the purpose of reducing the number of candidates to a smaller number who will proceed to a later stage of the process.

10.2.8 Suitability questions may be included within a procurement, where they are:

- a. Relevant to the subject matter of the procurement; and
- b. Proportionate

but must be considered as part of the wider overall quality evaluation.

10.2.9 Where there is a need to determine the financial standing of a company as part of the evaluation process, this should be done through due diligence with the top scoring bidder only.

10.3 CONTRACTS VALUED FROM £100,000 - £ 181,301

10.3.1 Contracts that are estimated to be for amounts between £100,000 and £181,301 are required to be let on a competitive basis, which is advertised to the open market, through the [YORtender](#) portal and on Contracts Finder.

10.3.2 There is no minimum time limit for which procurement processes within this threshold need to be advertised. However, it is expected that a sufficient (but not disproportionate) time limit is applied to allow potential bidders to respond. This therefore needs to be considered on a case by case basis, dependent upon any prior market engagement undertaken, the complexities of the specification and the level/amount of detail required within the tender response.

10.3.3 Tenders undertaken for procurements between these thresholds **must not** include a pre qualification stage or a stage in the procurement process where the authority can assess the suitability of a candidate for the purpose of reducing the number of candidates to a smaller number who will proceed to a later stage of the process.

10.3.4 Suitability questions may be included within a procurement, where they are:

- a. Relevant to the subject matter of the procurement; and
- b. Proportionate

but must be considered as part of the wider overall quality evaluation.

10.3.5 Where there is a need to determine the financial standing of a company as part of the evaluation process, this should be done through due diligence with the top scoring bidder only.

**10.4 LIGHT TOUCH REGIME CONTRACTS VALUED £181,302 – EU THRESHOLD
CONCESSION CONTRACTS VALUED £181,302 – EU THRESHOLD &
WORKS CONTRACTS VALUED £181,302 – EU THRESHOLD (SEE 2.7)**

10.4.1 The procurement of Contracts for the provision of [Light Touch Regime Services](#) (see 2.7), Concession Contracts and Contracts for Works with a value between £181,302 and the relevant EU Threshold may be undertaken in accordance with alternative procurement procedures as outlined in 10.3.

10.4.2 Procurement of any such Contracts must, however, be let on a competitive basis, which is advertised to the open market, through the [YORtender](#) portal and on Contracts Finder.

10.4.3 The most common procedures to be used for Contracts within these thresholds are processes broadly equivalent to the open and restricted procedures set out in the Regulations. Where consideration is given to any of the other procedures, early advice must be sought from the Corporate Procurement Team and the City Solicitor's Office.

10.4.4 The choice of procurement procedure selected must be detailed in the [procurement business case](#) setting out the justification for using the selected procedure.

10.5 ALL CONTRACTS VALUED ABOVE THE EU THRESHOLD (SEE 2.7)

10.5.1 Where the value of the proposed Contract exceeds the European threshold (taking account of aggregation), it must be tendered in accordance with the [Regulations](#).

10.5.2 The Corporate Procurement Team **must** be consulted at every stage of the procurement cycle for contracts valued above these thresholds.

10.5.3 The Regulations allow a range of different procedures:

- Open tender
- Restricted tender
- Competitive procedure with negotiation
- Competitive dialogue
- Innovation partnership

- 10.5.4 The open and restricted procedures are the most commonly used procedures. Where consideration is given to any of the other procedures, early advice must be sought from the Corporate Procurement Team and the City Solicitor's Office.
- 10.5.5 Where a restricted tender procedure is proposed a minimum of 5 Contractors should be shortlisted to invite to tender (where at least 5 suitable Contractors express interest).
- 10.5.6 The choice of procurement procedure selected must be detailed in the [procurement business case](#) referred to at 9.6, setting out the justification for using the selected procedure.
- 10.5.7 All tenders above the EU threshold(s) must be advertised in the Official Journal of the European Union (OJEU) using the [YORtender](#) portal.
- 10.5.8 All OJEU notices for procurements shall be referred in advance of sending to the OJEU, to the Corporate Procurement Team.
- 10.5.9 Publication of the tender documents at a national level (which must be [YORtender](#) and Contracts Finder) **must not** occur until **48** hours after the despatch of the OJEU notice.

10.5.9.1 **Time limits**

For Contracts valued above the EU threshold there are minimum timescales (see [APPENDIX 1 – MINIMUM TIMESCALES](#)) to be adhered to, for which bidders are given the opportunity to express interest, complete and return the tender documentation. The timescales stipulated are dependent upon the type of notice issued to act as a call for competition and should be treated as **minimum** timescales and not be relied upon as the standard.

When determining the time limits for the receipt of Selection Questionnaires (SQs) and Tenders, the Authorised Officer **must** be proportionate and fair to the market and take into consideration, the complexity of the specification and tender submission requirements, along with any previous market consultation undertaken. The justifications for the time limits set, should be detailed within the [procurement business case](#) referred to at [Error! Reference source not found.](#)

11 **RECEIPT AND CUSTODY**

11.1 **CONTRACTS VALUED £25,001 - £99,999**

- 11.1.1 The preferred method for the receipt of all tenders with a value between £25,001 and £99,999 is electronically through the [YORtender](#) portal unless there is a

reasonable justification for why this is not appropriate and alternative arrangements have been approved by the Corporate Procurement Team.

- 11.1.2 Where tenders of this value are received electronically through the [YORtender](#) portal, they will remain anonymous until after the deadline has passed, and have formally been opened. Where alternative arrangements have been agreed, tenders may be addressed impersonally to the relevant Authorised Officer. The tenders must remain in the custody of this Officer until the time appointed for opening. The Officer shall ensure that procedures are in place for recording receipt, opening and storage of all tenders received.

11.2 CONTRACTS VALUED £100,000 AND ABOVE

- 11.2.1 All tenders (including SQs) valued £100,000 and above must be received electronically through the [YORtender](#) portal **only**, and will remain anonymous until after the deadline has passed.
- 11.2.2 SQs are not deemed to be formal tenders and will become available to the Authorised Officer through the YORtender portal once the deadline has passed.

12 EXTENDING TENDER DEADLINES AND LATE SUBMISSIONS

- 12.1 In exceptional circumstances the deadline may be extended subject to prior approval from the Corporate Procurement Team.
- 12.2 For those tenders received electronically, the [YORtender](#) portal will not permit responses to be submitted, or deadlines to be extended after the deadline has passed.
- 12.3 For tenders (valued £25,001 - £99,999) which are submitted in hard copy format and received after the specified time shall be disqualified. Any such tender should be returned promptly to the bidder who should be notified accordingly. The tender envelope may be opened to ascertain the name and address of the bidder concerned.

13 OPENING (VERIFICATION)

- 13.1 All tenders (valued £25,001 - £99,999) received through the [YORtender](#) portal must be opened and recorded at one time and by one officer. Where a tender is received in hard copy format, these must be opened and recorded at one time, but by two officers. Any tender received in both electronic and hard copy format must be opened at the same time. The opening officer (verifier) **must be** someone independent from the procurement process and not involved in the evaluation.

- 13.2 All tenders (valued £100,000 and above) received through the [YORtender](#) portal shall be opened and recorded at one time and by one officer designated for that purpose by the City Solicitor.
- 13.3 In respect of tenders with a value in excess of £100,000; any Member of the Council who so wishes may be present at the opening. Internal Audit staff also have the right to attend tender opening.
- 13.4 Where external agencies contribute to the overall funding of a project, representatives of the agency may also attend the opening of tenders and be allowed to make note of the tenders and receive a report on the tenders received, provided that such persons agree to observe commercial confidentiality and be bound by the confidentiality requirements of the Local Government Act 1972, as amended.

14 EVALUATION

- 14.1 An evaluation panel must be convened for all evaluation processes undertaken. Representation on the panel must be from people who have knowledge of the subject area and be proportionate to the size and value of the procurement being undertaken.
- 14.2 For all Contracts, regardless of value, no person with a personal or financial interest in any of the Contractors submitting a proposal should be involved in evaluating tenders or involved in any way in influencing the decision as to which Contractor is to be awarded the Contract. A [declaration of interest form](#) must be completed by each officer involved in the evaluation process prior to the 'group consensus' meeting taking place and held on file by the Authorised Officer.
- 14.3 The evaluation of tenders **must be** in accordance with the evaluation criteria specified in the original tender documents. Under no circumstances should there be a deviation away from this.
- 14.4 Where a Contractor submits a qualified or conditional tender, they must be given the opportunity to withdraw the qualification or condition without amendment to the bid submitted. If the Contractor fails to do so their bid must be rejected unless it is dealt with as an alteration to their submission in accordance with [14.7](#) below.
- 14.5 Where a bid received appears to be abnormally low, the Council is under a statutory duty to request that the Contractor concerned provides a full and detailed response to explain the price/cost proposed. Identifying and dealing with abnormally low bids shall be the responsibility of the Authorised Officer. The Council may reject an abnormally low bid, where the justification doesn't satisfactorily account for the low level of price. Where consideration is being

made to the rejection of a bid on these grounds advice must be sought from the Corporate Procurement Team and the City Solicitor's Office.

- 14.6 It is essential that during the evaluation process the principles of probity, non-discrimination, fairness and equal treatment are applied. As such negotiation following the receipt of tenders is only permissible in limited circumstances, following the advice of the Corporate Procurement Team and the City Solicitor's Office. These circumstances should however, only be used to address minor issues as any form of inappropriate negotiation could expose the Council to a risk of challenge. Negotiation following the receipt of tenders **must not** be undertaken where the tender was subject to the Regulations and the EU Procurement Directives.

14.7 ALTERATIONS

- 14.7.1 An external tender may be amended after it has been received and before it is accepted if it is identified during the evaluation process that a genuine arithmetical error has been made that can be corrected, by way of clarification, subject to the following:
- a. The Contractor may be given the details of the error or discrepancy found during the examination of the tender and shall be given the opportunity of confirming the tender without amendment or withdrawing their tender; or
 - b. Amending the tender to correct genuine arithmetic errors provided that in this case, apart from these arithmetic errors no other adjustment, revision or qualification is permitted. In these cases written confirmation should be requested from the Contractor as to the error or discrepancy and confirmation of what the corrected entry should be.
- 14.7.2 The Authorised Officer must ensure that a record of all amendments made under this CPR is maintained.

14.8 DUE DILIGENCE

- 14.8.1 Following the evaluation process of all Contracts valued above £25,000, and upon reaching consensus on the top scoring Contractor, a due diligence process must be undertaken. This is to confirm as a minimum that:
- The bid received is bona fide and sustainable;
 - The Council fully understands the bid that has been submitted; and
 - The Contractor has the technical capability to deliver the Contract; and
 - The Contractor has the relevant policies / certificates required (including evidence of adequate insurance cover for public and employers liability; and professional indemnity and product liability where required).

14.8.2 Minutes from any due diligence meetings held must be formally agreed in writing with the winning Contractor for inclusion within the final Contract.

14.9 APPROVAL

14.9.1 For all Contracts valued above £25,000 (including further competitions from frameworks or DPS), prior to formally notifying bidders whether they have been successful or not (regardless of whether the decision taken is to award the contract or abandon the process), a [tender evaluation report](#) must be prepared, detailing the process that has been undertaken, a review of the initial business case, the outcomes achieved along with any associated issues and risks.

14.9.2 For all Contracts valued above the EU Threshold, the tender evaluation report **must** include all the relevant details required for a Regulation 84 report; including:

- The name and address of the Council;
- The subject matter and value of the procurement;
- The results of the selected candidates/tenderers and the reasons;
- The results of the rejected candidates/tenderers and the reasons;
- The reasons for any tenders that were rejected on the basis of being abnormally low;
- The name of the successful tenderer and the reasons why they were successful;
- The share of the Contract which the successful tenderer intends to subcontract;
- The name of the main subcontractors;
- Justification for the use of the following procedures where appropriate;
 - Competitive procedure with negotiation
 - Competitive dialogue
 - Negotiated procedure without prior publication.
- The reasons why the Council has decided not to award a Contract (where applicable);
- Why means other than electronic have been used for the submission of tender (where applicable);
- Any conflicts of interest detected and measures taken.

14.9.3 Contracts Valued between £25,001 and £99,999

The [tender evaluation report](#) must be approved by the Service Manager with responsibility for the service area undertaking the procurement and the Service Manager – Corporate Procurement (and any other relevant Chief Officers) and be referred in the first instance to the Corporate Procurement Team for an overview.

14.9.4 Contracts Valued £100,000 and above

The [tender evaluation report](#) must be approved by the Service Manager with responsibility for the service area undertaking the procurement and the Chief Finance Officer (and any other relevant Chief Officers) and be referred in the first instance to the Corporate Procurement Team for an overview.

15 ACCEPTANCE

- 15.1 All Contractors must be notified in writing of their success / failure in a tender process. Notifications must be made using the template letters available from the Corporate Procurement Team. Notifications must be issued electronically through the [YORtender](#) portal.
- 15.2 Notification also includes a decision where the Council has decided to abort a process.
- 15.3 It is important to notify Contractors as soon as possible after their elimination from a process. Therefore, in the case of all tenders which relate to procurements valued above the relevant EU threshold, any Contractor eliminated from a process where a SQ has been undertaken must be notified following the evaluation of that stage in the process.
- 15.4 For all procurements concerning Contracts with values above the relevant EU Threshold (2.7) it is essential that all rejection letters contain the following information:
- The award criteria used;
 - The score of the tenderer obtained against those award criteria;
 - The score the winning tenderer obtained;
 - The name of the winning tenderer;
 - The characteristics and relative advantages of the winning tender; and
 - Precise details of the standstill period (i.e. key dates).
- 15.5 The standstill period requires a minimum of 10 calendar days (where the notification is made electronically) between the communication of the award decision and Contract conclusion, with day 1 being the day after the award decision is issued via [YORtender](#). Where the notification is not issued electronically or is followed up by posted notification, the standstill period must be no less than 15 calendar days. The standstill period must end on a weekday. This is to allow unsuccessful companies an opportunity to challenge the decision made.

15.6 Whilst the standstill period referred to above is not a legal requirement for below threshold procurement, above threshold procurements under the light touch regime or call offs under a Framework Agreement or DPS, it is normal practice by the Council to apply a voluntary standstill period to allow an opportunity for unsuccessful aggrieved bidders to challenge/complain, and for the Council to satisfactorily deal with such instances before entering into Contract.

16 AWARD

16.1 Following the notification of successful/unsuccessful bidders referred to above at [15](#), the Authorised Officer is required to submit a [pro-forma](#) to the Corporate Procurement Team so the details of the awarded Contract can be published on the Council's corporate contracts register to meet the Local Government Transparency Requirements and on Contracts Finder (if valued at over £25,000).

16.2 For all Contracts valued above the EU Threshold, the Authorised Officer will be required to submit a Contract Award Notice in OJEU within 30 calendar days following the award of the Contract. Such notices do not apply to call offs from a Framework Agreement above the EU threshold.

16.3 Following the award of the Contract, the Authorised Officer is required to report to the Corporate Procurement Team details of any efficiencies that have been generated following the procurement process.

17 EXCEPTIONS

17.1 Subject to statutory requirements tenders need not be invited in accordance with these CPRs in the following cases:

- a. Where the technical characteristics of the Goods are only compatible with an existing supply or installation, such that procurement of another product other than one available from the original Contractor would result in incompatibility and/or disproportionate technical difficulties. The duration of a Contract negotiated in accordance with this exception shall not exceed 3 years.
- b. The procurement of a unique work of art or artistic performance.
- c. Where competition is absent for technical reasons where no reasonable alternative or substitute exists.
- d. Where competition is absent due to exclusive rights, including but not limited to intellectual property rights and copyright where no reasonable alternative or substitute exists.

- e. Where the price of the Goods, Services or Works that are to be procured are controlled by statutory bodies, trade organisations or legislation and no reasonable satisfactory alternative is available.
- f. Where the Contract is for the execution of work or the supply of goods or services that are required **so urgently**² that compliance with any competitive process prescribed by these CPRs cannot be achieved.
- g. Where the Contract relates to Goods, Services or Works where the publication of documents detailing those requirements could reasonably be considered to prejudice security having considered the use of reasonable measures that would protect such security and allow the normal procurement process to be followed (e.g. the use of confidentiality agreements).
- h. To allow for the continuation of contractual arrangements with a Supplier beyond the term of a Contract, in exceptional circumstances and where the duration of continued contractual arrangements is determined in accordance with the timescales required to complete a re-procurement or the decommissioning of the provision.
- i. In any case where the Authorised Officer, acting reasonably, otherwise determines there can be no genuine competition.
- j. An alternative, competitive process to that prescribed by CPR **10.3** maybe approved for Contracts with a value between £25,000 and £181,301 subject to reasonable justifications for such a request.
- k. The selection of a Supplier upon the instruction of a third party, providing all the funding is met by a third party.

17.2 Where an exception is sought under **17.1h** above and either:

- the value of the exception is above the relevant EU Threshold (**2.7**); or
- the value of the exception and the extant Contract added together is in excess of the relevant EU Threshold;

the Authorised Officer shall seek advice from the City Solicitor prior to proceeding with the required decision-making process.

² Not due to any action or inaction of the Council

- 17.3 All exceptions with a total value in excess of £100,000 require the support of the Chief Finance Officer (in consultation with the City Solicitor as appropriate) who is ultimately responsible for procurement within the Council, as well as the approval of the procuring Chief Officer in accordance with [17.4](#) below. Exceptions with a value of less than £100,000 require the support of the Service Manager, Corporate Procurement.
- 17.4 An [exceptions request form](#) must be completed for every instance of an exception with a total value of £25,000 or more to inform the Chief Finance Officer and/or the Service Manager – Corporate Procurement and the relevant Chief Officer for the service of all the relevant implications associated with the proposed course of action and aid their decision making. The template must clearly document the exception to be applied, along with the justifications and all necessary procurement, legal and financial risks and the support of the Chief Finance Officer or the Service Manager Corporate Procurement.
- 17.5 A copy of the exceptions request form must be retained and a completed copy will be held within the Corporate Procurement Team. Should the Chief Officer concerned approve the exception, the exceptions [e-form](#) must be completed to demonstrate that approval has been granted. The e-form must quote the unique reference number provided by the Corporate Procurement Team, which Chief Officer granted the approval and the date this approval was given. A copy of each completed e-form will be automatically forwarded to the Chief Officer, Internal Audit and the Corporate Procurement Team, where a record of all approved exceptions will be maintained. The relevant Chief Officer is responsible for ensuring the appropriate Portfolio Holder is kept informed.
- 17.6 Where an exception has been approved, the Authorised Officer must ensure that the best possible balance of Value for Money and quality is obtained for the Council. A specification must be developed and appropriate Terms and Conditions must be approved and a formal quote/tender must be requested from the company. The company **must not** be told that they are the only company submitting a bid. A copy of the final Contract must be uploaded to [YORtender](#) and details of this Contract published to the Council's contract register to fulfil its obligations under the Local Government Transparency Requirements and on Contracts Finder. It is recommended that you contact the Corporate Procurement Team for advice regarding this.

18 **CONTRACTS AND PURCHASE ORDERS**

- 18.1 It is Council policy that **all** requests (irrespective of value) for Goods, Services and Works are supported by an official council purchase order generated from an approved council system.

- 18.2 Every purchase order placed by the Council via the Agresso system (or other Council system) regardless of value must incorporate standard terms and conditions approved by the City Solicitor.
- 18.3 Every Contract which exceeds £25,000 in value shall be in writing in a form approved by the City Solicitor.
- 18.4 The City Solicitor shall determine whether a Contract should be entered into as a deed. All Contracts executed as deeds (i.e. under the Council's common seal) shall be executed by the City Solicitor.
- 18.5 All written Contracts shall specify:
- a. details of Works, Goods or Services to be provided or undertaken;
 - b. details of the Contract price to be paid or method of calculation of such prices along with a statement of any discounts or other deductions; and
 - c. the period or times within which the Contract is to be performed.
- 18.6 Any Contract that deviates from the standard payment term³ of the Council **must be** agreed with the Council's Financial Services: Payments and Controls Manager.
- 18.7 Every written Contract must contain a clause stating that in circumstances where the Contractor fails to comply with its contractual obligations in whole or in part, or commits a fundamental breach of the Contract, the Council may:
- a. terminate the Contract, either wholly or to the extent of such default;
 - b. make good the default and/or complete the requirements encompassed in the Contractor's former obligations (set out in the Contract) itself or appoint another Contractor or agent to do so;
 - c. recover from the Contractor any additional costs incurred in making good the default and/or in the completion of the Contractor's former obligations.
- 18.8 All Contracts shall require that if one or more sums of money are to be paid to the Council, the Contractor must pay interest in respect of any late payment of such sums at the rate stated in the Contract from the date when payment is due until the date when payment is received.
- 18.9 Where appropriate the Contractor shall be placed under a contractual obligation to comply with the requirements of the Equality Act 2010 and obligated to provide the

³ 30 calendar days from receipt of a valid invoice.

Council with information on request in relation to compliance with those requirements.

- 18.10 Where appropriate the Contractor shall be placed under contractual obligations to comply with data protection law and ensure that the Council is able to comply with those statutory obligations.
- 18.11 Where appropriate the Contract shall place the Contractor under a duty to comply with the requirements of the Health and Safety at Work Etc. Act 1974 and any other legislation relevant to health and safety.
- 18.12 Where Contractors are discharging Council functions they shall be placed under an obligation to ensure the Council's compliance with the Duty of Best Value.
- 18.13 Where appropriate Contracts shall require that Goods, Services and Works comply with any relevant British and European Union standards, specifications and/or codes of practice (or equivalent standards current at the date of the tender documents being published).
- 18.14 Every Contract shall include a clause requiring the Contractor to hold and maintain appropriate insurance cover (e.g. employer's liability, public liability, professional indemnity cover) with a reputable insurance provider at any statutory levels or any higher levels deemed necessary in consultation with the Council's insurance officer.
- 18.15 Every written Contract shall include a clause preventing a Contractor from transferring, disposing, assigning, and/or subletting all or any part of the Contract without the prior consent of the Council given in writing.
- 18.16 All tenders and Contracts must contain a notice/clause relating to FOI and a schedule that allows Contractors to clearly identify those sections or clauses which they believe are commercially confidential within the terms of FOI.
- 18.17 If a Contract is to be entered into for the provision of business critical Services or Supplies, consideration shall be given to the inclusion of clauses that contractually obligate the maintenance of adequate business continuity processes in order to minimise the Council's risk of exposure.
- 18.18 In every Contract a clause shall be inserted to ensure that the Council shall be entitled to terminate the Contract, and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor (including its employees or agents):
 - a. Does anything improper to influence the Council to award the Contract; and/or

b. Commits an offence under the Bribery Act 2010 and/or under Section 117 of the Local Government Act 1972.

18.19 Every Contract with a value above the EU Threshold (thresholds at the time of writing at CPR 2.7) shall contain a clause which enables the Council to terminate the Contract in order to comply with its obligations at Regulation 73 of the Regulations.

18.20 Where the Council enters into contract with external consultants / advisers a clause shall be included in the contract which determines their employment status.

19 CONTRACT MANAGEMENT

19.1 For every contractual relationship the Council enters into the Chief Officer for the service must ensure that a suitably experienced and trained officer is identified to adequately manage the Contract. This should have been established as part of the development of the [procurement business case](#)

19.2 The nominated contract manager will be responsible for (as a minimum):

- Regularly reviewing management information and supplier performance (as detailed in the tender and Contract documentation);
- Meeting with the supplier to discuss Contract progression, performance, innovation etc.;
- Dealing with instances of off and non-contract spend within the Council;
- Benchmarking to ensure the contract is delivering value for money;
- Monitoring any ongoing efficiency savings and reporting these to the Strategic Procurement Team;
- Monitoring that any skills, apprenticeships and job outcomes are achieved, (along with any other wider social benefits) and reporting these to the Corporate Procurement Team at agreed intervals;
- Informing options for future procurements/extensions to Contracts

20 VARIATION / MODIFICATION / TERMINATION TO CONTRACTS

20.1 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.

20.2 When considering a variation, modification or the termination of an existing Contract, advice **must be** sought in advance from the Corporate Procurement Team and the City Solicitor's Office.

21 EXTENDING EXISTING CONTRACTS

21.1 An extension to a Contract may only be permitted where the details of any extension provisions were included within the scope of the Contract, tender documents and OJEU notice (where relevant).

21.2 If there was no provision in the contract for an extension an exception to these CPRs must be identified and dealt with in accordance with CPR **17**.

21.3 Prior to exercising a contractual right to extend a Contract (valued £100,000 and above), the Authorised Officer must ensure that an [Options Appraisal](#) is undertaken to determine if it is in the best interest of the Council to extend the current arrangement and seek approval of the recommended option from the appropriate Service Manager (or higher authority if this is deemed appropriate) of the service and the Service Manager – Corporate Procurement.

21.4 Before exercising a contractual right to extend a Contract (valued £100,000 and above) the Authorised Officer must make reasonable efforts to negotiate improved Contract terms with regards to cost and/or quality of the Goods, Services and/or Works being delivered (having regard to **20**). The terms must be confirmed in writing and [YORtender](#) **must be** updated accordingly to show the extended Contract period.

21.5 The Authorised Officer shall seek the advice of the City Solicitor's Office in advance of any negotiation of a Contract who shall formalise any required variation to a Contract.

APPENDIX 1 – MINIMUM TIMESCALES

Note: Number of days is referred to as calendar days

MINIMUM TIMESCALES – PROCUREMENT REGULATIONS 2015						
	Selection Stage ⁴	Tender Stage	If Electronic Accepted ⁵	Tendering Following PIN ⁶	Tender by Arrangement ⁷	Urgency ⁸
Open Procedure	NA	35 Days	30 Days	15 Days	N/A	15 Days
Restricted Procedure	30 Days	30 Days	25 Days	10 Days	At least 10 Days	15 Days / 10 Days
Competitive Procedure with Negotiation	30 Days	30 Days	25 Days	10 Days	At least 10 Days	15 Days / 10 Days
Competitive Dialogue	30 Days	N/A	N/A	N/A	N/A	N/A
Innovation Partnership	30 Days	N/A	N/A	N/A	N/A	N/A

⁴ Where a Prior Information Notice has been used as a call for Competition in the Restricted Procedure and the Competitive Procedure with Negotiation, the 30 day timescale commenced from when the invitation to confirm interest is sent

⁵ Where the contracting authority accepts that tenders may be submitted by electronic means, the time limit for receipt of tenders may be reduced by 5 days

⁶ Where a Prior Information Notice was sent for publication between 35 days and 12 months before the contract notice was sent

⁷ In the Restricted Procedure and the Competitive Procedure with Negotiation, the contracting authority may set the time limit for receipt of tenders by mutual agreement with all candidates. In the absence of such an agreement the time limit shall be at least 10 days

⁸ In matters of urgency, duly substantiated by the contracting authority, the time limit for tenders shall be no less than 15 days in the Open Procedure. In the Restricted Procedure and Competitive Procedure with Negotiation, the timescale for the selection stage shall be no less than 15 days and the tender stage shall be no less than 10 days