



**CITY OF YORK COUNCIL**

## **CONTRACT PROCEDURE RULES**

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## **Contract Procedure Rules**

These Contract Procedure Rules (**CPRs**) set out the key responsibilities and actions that Officers and Directors must follow when undertaking procurements.

All procurements and contracting arrangements made by or on behalf of the Council must be carried out in accordance with these CPRs. Rule [2526](#) sets out the only circumstances in which the other Rules are specifically excluded or may be waived. Appendix A contains a series of definitions. Any term which is defined is shown in the CPRs beginning with a capital letter.

## **Maintained Schools**

Where Maintained Schools enter into Contracts, they do so as agents of the Council. Accordingly Maintained Schools must follow these CPRs in addition to the York Scheme for Financing Schools (the **Scheme**), except where specifically stated otherwise. Where any conflict exists between these CPRs and the Scheme, the rules of the Scheme shall prevail.

Specific governance thresholds for Maintained Schools are set out in Appendix B. These are to be used in place of the thresholds contained at Rule 8.

For the purposes of these CPRs, the Authorised Officer for a Maintained School shall be the Head Teacher and the Chief Officer and/or Director shall be the Governing Body.

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## **1. Basic Principles and Compliance**

All procurement procedures and every Contract entered into by the Council must:

- 1.1 realise value for money by achieving the optimum combination of whole life costs, and quality of outcome;
- 1.2 be consistent with the highest standards of integrity;
- 1.3 operate in a transparent manner;
- 1.4 ensure fairness in allocating public contracts;
- 1.5 comply with all legal requirements including the Procurement Regulations and any other applicable international treaty principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment;
- 1.6 comply with the Council's Constitution, these CPRs and the Council's Financial Regulations;
- 1.7 comply with the Council's strategic objectives and policies, including the Council's Procurement Strategy and the Council's Employee and Member Codes of Conduct; and
- 1.8 comply with the guidance set out in the Procurement Toolkit which should be read in conjunction with these CPRs;

These CPRs are applicable to the contracting activities of any Strategic Partnership for which the Council is the Accountable Body unless the Council expressly agrees otherwise.

## **2. Officer Responsibilities**

### **2.1. Authorised Officers**

- 2.1.1 Authorised Officers must comply with these CPRs, the Council's Constitution and all UK and applicable international legal requirements. Authorised Officers

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must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these requirements.

2.1.2 Authorised Officers must:

(i) consult and seek advice from Commercial Procurement in relation to any proposed procurement;

~~(i)~~(ii) ensure, in relation to any proposed procurement, that the proposed procurement expenditure is contained in a Forward Procurement Plan and contained within ~~an~~ approved budget secured prior to commencement of the procurement in accordance with the Financial Regulations;

~~(ii)~~(iii) keep the records required by Rule 5 of these CPRs;

~~(iii)~~(iv) take all necessary procurement, legal, risk & insurance, —financial, data protection and professional advice, taking into account the requirements of these CPRs;

~~(iv)~~(v) prior to carrying out a procurement process or letting a Contract on behalf of the Council, check whether:

- (A) the Council already has an appropriate Contract in place in the ~~Contracts~~Contract Register; or
- (B) an appropriate national, regional or other collaborative contract is already in place.

~~(v)~~(vi) ensure that if the Council already has an appropriate Contract in place, that it is used, (unless it can be established that the Contract

does not fully meet the Council's specific requirements (to be determined on a case-by-case basis)), following consultation with Commercial Procurement and Legal Services;

~~(vi)~~(vii) ensure that if an appropriate national, regional or collaborative contract is available, consideration is given to using this, provided the contract offers Best Value. Authorised Officers must consult with Commercial Procurement to discuss;

~~(vii)~~(viii) ensure that when any employee, either of the Council or of a Supplier, may be affected by any transfer arrangement, then any TUPE issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise;

~~(viii)~~(ix) consult with all relevant stakeholders including Members, trade unions and service users where TUPE may apply to identify and assess all options to ensure the Council's required outcomes are achieved;

~~(ix)~~(x) in consultation with Commercial Procurement establish a written specification and evaluation criteria (where competition is involved) and procurement methodology which must be formally approved at the relevant governance thresholds outlined in Rule 8 - Powers and Key Decisions (note the relevant decision-making body as identified in the governance thresholds may give Authorised Officers written delegated authority to define the specification and evaluation criteria themselves);

~~(x)~~(xi) consult and seek advice from ~~Commercial Procurement and~~ Legal Services prior to beginning a procurement where:

(A) TUPE applies; and/or

~~(B)~~ the service to be procured involves personal data, in which case the Authorised Officer shall also liaise with the Information Governance team;

~~(B)~~(C) the procurement exceeds £~~400~~150,000 in aggregate for the whole contract period (including any extensions).

~~(xi)~~(xii) ~~register~~Register all completed procurements with a value of £5,000 or more on the ~~E-Sourcing System~~Contract Register.

2.1.3 Failure to comply with any of the provisions of these CPRs, the Council's Constitution, UK law or other applicable international legal requirements will be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

## 2.2 Chief Officers

Chief Officers must:

2.2.1 ensure their service area complies fully with the requirements of these CPRs;

2.2.2 ensure contracts are recorded in the ~~Contracts~~Contract Register as held and maintained by Commercial Procurement;

- 2.2.3 work with Commercial Procurement to identify the total expenditure relating to a particular category of spend by developing a Category Plan;
- 2.2.4 ensure that their service area provides the requisite information to allow Commercial Procurement to maintain and update the Forward Procurement Plan;
- 2.2.5 ensure all procurement activity is undertaken by suitably skilled and experienced staff;
- 2.2.6 report any breaches of these CPRs to the Monitoring Officer and Chief Finance Officer.

### 3. Relevant Contracts

3.1 All Relevant Contracts must comply with these CPRs. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works or the provision of supplies or services. These include arrangements for:

- 3.1.1 the supply or disposal of goods;
- 3.1.2 the carrying out of building or engineering works;
- 3.1.3 the hire, rental or lease of goods or equipment;
- 3.1.4 the delivery of services, ~~including (but not limited to) those related to:~~
- ~~3.1.5 the recruitment of staff;~~
- ~~3.1.6 land and property transactions;~~
- ~~3.1.7 3.1.5 financial involving those elements set out in Rule 3.3 below; and consultancy services.~~
- ~~3.1.6 the delivery of shared services and/or collaboration arrangements between the Council and other public~~

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authorities and/or public bodies and/or related overarching arrangements.

- 3.2 The following will not be classed as Relevant Contracts:
- 3.2.1 contracts of employment which make an individual a direct employee of the authority; (whether on a permanent or temporary basis) and/or secondment arrangements;
  - 3.2.2 subject to Rule 3.3, agreements relating solely to the acquisition, disposal, or transfer of land (to which the Financial Regulations apply);
  - 3.2.3 subject to Rule 4, the payment of grants to third parties;  
or
  - 3.2.4 those contracts/arrangements which are specifically excluded in accordance with Rule 25.9 below.
- 3.3 Any acquisition, disposal, or transfer of land which involves elements requiring the supply of works, goods and/or services to or on behalf of the Council will be treated as Relevant Contract and these CPRs apply to all aspects of the procurement of those works, goods and/or services. Officers must ensure that they consult with Legal Services and Property Services as appropriate to ensure compliance with this Rule 3.3.

#### 4. Grants

- 4.1 Where the Council is required to carry out works or deliver goods or services, the Council cannot elect to award a Grant where the sole purpose for doing so would be to avoid conducting a competitive tender process in accordance with these CPRs.
- 4.2 Taking into account Rule 4.1 above, Directors shall consider when procuring the provision of services, supplies or works whether a Grant would be a preferable means to achieving its objectives rather than following a competitive bid process.

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- 4.3 A Grant may only be awarded in circumstances where:
- 4.3.1 there is the legal power to make a Grant for the purpose envisaged; and
  - 4.3.2 the making of the Grant does not contravene UK, EU or any other applicable international rules on state aid.
- 4.4 Where the value of a Grant is less than ~~££175,000~~ over 3 years, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.
- 4.5 Where the value of the Grant exceeds ~~££175,000~~ over 3 years but is less than the relevant Procurement Threshold a competitive grants process must be completed. The opportunity must be advertised on the E-Sourcing System.
- 4.6 Where the value of a Grant exceeds the relevant Procurement Threshold, a competitive process must be completed and the opportunity must be advertised on the E-Sourcing System.
- 4.7 The Authorised Officer shall take all such steps as are appropriate to monitor and review the performance of the Grant agreement, having regard to its value, nature, duration and subject matter. As part of the Grant monitoring and review process the Authorised Officer shall maintain adequate records of performance and details of review meetings with the Grant recipient.
- 4.8 All Authorised Officers must complete the Best Value Grant form which is available from the Commercial Procurement team.

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## 5. Records

- 5.1 The Procurement Regulations require Contracting Authorities to maintain the following comprehensive records of procurement activities:
- 5.1.1 contract details including value;
  - 5.1.2 selection decision;
  - 5.1.3 justification for use of the selected procedure;
  - 5.1.4 names of bidding organisations, both successful and unsuccessful;
  - 5.1.5 reasons for selection and rejection;
  - 5.1.6 reasons for abandoning a procedure;
  - 5.1.7 details of sub-contractors;
  - 5.1.8 conflicts of interest identified and action taken.
- 5.2 The outcome of any competitive procurement process must be recorded in electronic format on the E-Sourcing System. Information from the E-Sourcing System will also be used for the tracking of procurement savings, sustainability benefits, and other data.
- 5.3 Commercial Procurement maintains the Contract Register which records key details of all Contracts (including contract reference numbers) with an aggregate value of £5,000 or more.
- 5.4 Where a Contract has not been awarded using the E-Sourcing System, Officers must ensure full details of that Contract are passed to the Head of Procurement for inclusion in the Contract Register where the aggregate value of the Contract is £5,000 or more. Decisions as to why the E-Sourcing System was not used

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must be recorded in writing and sent to Commercial Procurement.

- 5.5 Full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a Contract must be kept by Commercial Procurement for the duration of the Contract and a minimum of six years after the Contract has expired or twelve years after the Contract has expired where it is executed under common seal as a deed.
- 5.6 It is the responsibility of Chief Officers to ensure that all Contracts are properly entered into, administered and controlled to safeguard the Council's interests, secure Best Value and minimise the risk of theft, fraud, collusion and corruption.
- 5.7 Officers must comply with any Council requirements to record decisions on the Officer Decision Log.

## **6. Risk Assessment**

- 6.1 All procurements ~~which~~that require an Invitation to Tender and/or Requests for Quotation (see Rule 11 below), must be supported by a risk assessment (where appropriate). This risk assessment must be carried out at the start of the procurement process and, where appropriate, will include a Financial Appraisal in accordance with Rule 17.2.
- 6.2 The risk assessment process will identify where further specialist advice should be sought.

~~6.3 The approved risk log and matrix are available from Commercial Procurement.~~

## **7. Advertising**

- 7.1 Officers must liaise with Commercial Procurement to ensure that the minimum advertising requirements are met in line with the Procurement Regulations when conducting any procurement

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process (including Framework Agreements or Dynamic Purchasing Systems). Officers should refer to the further guidance in the Procurement Toolkit.

7.2 Where Contracts with a value of £25,000 (including VAT) and above are advertised **anywhere**, they must also first be advertised on Contracts Finder. ~~This applies to Contracts that otherwise fall outside the scope of the Procurement Regulations.~~

7.3 Where Contracts have a value above the relevant Procurement Threshold they must ~~also~~ be advertised on Find a Tender.

## **8. Powers and Key Decisions**

8.1 This Rule does not apply to Maintained Schools, who must consult the governance thresholds contained at Appendix B.

8.2 In consultation with the Monitoring Officer, Directors must ensure that the Council has the legal power to enter into any Contract.

8.3 Directors must ensure that they have delegated powers to enter into any Contract or to grant another Officer authority to do so.

8.4 No Contract will be entered into unless an adequate budget is in place.

~~8.5 Rules 8.5 to 8.10 outline the governance thresholds required for all aspects of governing a procurement process.~~

8.68.5 Where a decision has already been made by Executive or an Executive Member and the budget is in place to permit a course of action then further approval is not required to award Contracts necessary to implement that decision.

8.78.6 Where schemes are included in the Capital Programme this has already been approved and further Executive approval is therefore not required. However, a copy of the relevant report must be sent to Commercial Procurement for audit purposes.

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~~8.88.7~~ It is recommended that any approval sought includes a specific delegation to the Authorised Officer to award the Contract at the conclusion of the procurement. In other circumstances the procedure set out in Rules 8.9 to 8.11 below must be followed.

~~8.98.8~~ Where the aggregate contract value (including any extension) is £250,000 or less Directors may agree or authorise another Officer to enter a Contract under their delegated powers.

~~8.108.9~~ Where the aggregate contract value (including any extension) is between £250,000 and £500,000 then the decision to enter the contract requires the approval of an Executive Member or the Executive unless the procurement is treated as Routine as defined in Rules 8.12 and 8.13 below.

~~8.118.10~~ Where the aggregate contract value (including any extension) exceeds £500,000 the decision will be regarded as a Key Decision unless the Chief Finance Officer acting in consultation with the Monitoring Officer has approved the procurement as Routine in accordance with Rules 8.12 to 8.13 below.

~~8.128.11~~ A Routine procurement is any arrangement that represents a low commercial and legal risk to the Council and involves the procurement of goods, services or works with a clearly defined specification that clearly relate to ~~the day to day operation of the Council.~~ core administrative, infrastructure or business functions of the Council (a sample list of such services is set out in Appendix C).

~~8.138.12~~ ~~Routine procurements will be limited to items such as utilities, insurance or stationery, without which the Council would be unable to operate.~~ A procurement which relates to the carrying out of a statutory function of the Council shall not be considered Routine.

8.148.13 Where Officers consider a procurement process may be Routine, they must liaise with Commercial Procurement who will determine whether the procurement is in fact Routine and advise on the relevant paperwork to be submitted to the Chief Finance Officer/Head of Procurement. Authorisation to treat a procurement as Routine must be sought before the procurement process commences.

8.158.14 A Director may enter into a Contract regardless of value where the procurement has been treated as Routine.

8.168.15 A register of Routine procurements will be maintained and reported to the Executive Member for Finance—& Performance, Major Projects & Equalities.

8.178.16 In relation to all Key Decisions, Authorised Officers must ensure that all authorisations are in place before the procurement process begins.

8.188.17 Notice of every Key Decision must be published on the Council's Forward Plan.

8.198.18 The Executive scheme of delegation requires that all Key Decisions ~~are~~ reserved to the Executive unless specifically delegated to an Executive Member or an Officer or where the Leader and Chief Executive/Operating Officer are acting in case of urgency.

8.208.19 This Rule 8 applies to all Relevant Contracts and all call-offs from Framework Agreements or Dynamic Purchasing Systems.

## **9. Pre-Tender Market Testing, Consultation and Deciding on the appropriate Procurement Route**

9.1 The Council may consult potential Suppliers, prior to the issue of the Invitation to Tender or Request for Quotation, in general terms about the nature, level and standard of the supply, contract

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packaging and other relevant matters, provided this does not prejudice any other potential Supplier.

- 9.2 When engaging with potential Suppliers, the Council must not seek or accept technical advice from them on the preparation of an Invitation to Tender or Request for Quotation where this may prejudice the equal treatment of all potential Suppliers or otherwise distort competition.
- 9.3 In the case of the re-procurement of an existing Contract sufficient care must be taken to ensure that the process is fair and is seen to be fair. The objective is to ensure a level playing field for all potential Suppliers, whilst acknowledging that any incumbent Supplier has an inherent advantage due to having previously worked for the Council. Advice must be sought from Commercial Procurement to ensure the specification is clear and unambiguous.
- 9.4 In undertaking any market testing activities or consultation with potential Suppliers, the Authorised Officer responsible should refer to any guidance contained in the Procurement Toolkit.
- 9.5 Guidance on choosing the appropriate procurement route can be found in the Procurement Toolkit.

## **10. Framework Agreements**

~~10.1 A list of available, appropriate Framework Agreements and Dynamic Purchasing Systems (including those established by other public sector bodies to which the Council has access) for certain requirements can be obtained from Commercial Procurement along with guidance on how these Framework Agreements and Dynamic Purchasing Systems are to be used.~~

~~10.2~~10.1 Call-off contracts or orders made under Framework Agreements or Dynamic Purchasing Systems must be operated in accordance with these CPRs and/or the requirements of the Framework Agreement or Dynamic Purchasing System

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themselves. **Further advice must be sought from Commercial Procurement or Legal Services.**

~~10.3.1~~10.2 Where a Framework Agreement with more than one supplier provides an option for a direct call-off to one Supplier, this can only be done if all the following conditions are met:

~~10.3.1~~10.2.1 The Framework Agreement's process for doing so is followed;

~~10.3.2~~10.2.2 The aggregate Contract value (including VAT) and including any extension) is less than £500,000;

~~10.3.3~~10.2.3 Where the aggregate Contract value (including any extension) exceeds £500,000, the relevant Chief Officer has approved the direct call-off method after advice from the Authorised Officer and Commercial Procurement; and

~~10.3.4~~10.2.4 The Authorised Officer believes that it represents Best Value for the direct call-off method to be used.

### **Establishment of Framework Agreements and Dynamic Purchasing Systems**

~~10.4~~10.3 Authorised Officers (in conjunction with Commercial Procurement and Legal Services) may establish a Framework Agreement or Dynamic Purchasing System. (DPS). The Head of Procurement ~~and relevant Assistant Director~~ must agree to the establishment of any Framework Agreement or ~~Dynamic Purchasing System~~DPS prior to any selection or procurement processes being undertaken. The Framework Agreement or ~~Dynamic Purchasing System~~DPS is otherwise treated as any other procurement and will follow the same levels and process as required by the value and object of the Framework Agreement or ~~Dynamic Purchasing System~~DPS. Note, there are additional

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requirements under the Procurement Regulations for the establishment and further use of a Framework Agreement or ~~Dynamic Purchasing System DPS~~, and advice must be sought from Commercial Procurement ~~and Legal Services~~ to ensure the Procurement Regulations are adhered to.

~~40.5~~10.4 A Framework Agreement or ~~Dynamic Purchasing System DPS~~ can be established jointly with other Contracting Authorities.

~~40.6~~10.5 Any future call-off from the established Framework Agreement or ~~Dynamic Purchasing System DPS~~ requires authorisation in accordance with the governance thresholds set out in Rules 8.9 to 8.11.

~~40.7~~10.6 Where a Framework Agreement has been established by the Council, any extension or termination thereto shall be governed by Rules 20 and 21 below in addition to the Procurement Regulations.

## **11. Procurement Competition Requirements**

### **11.1 Competition Requirements**

11.1.1 The Authorised Officer must establish the total value of any Contract, including whole life costs, annual cost and incorporating any potential extension periods which may be awarded. The value of the Contract must be considered as the sum of all payments made to the Supplier during the whole life of the Contract, including extensions. The Authorised Officer must have particular regard to the rules relating to aggregation contained within the Procurement Regulations (further details on which can be found in the Procurement Toolkit).

11.1.2 Authorised Officers must ensure that values are not split in an attempt to avoid the applicability of these CPRs or the Procurement Regulations.

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~~11.1.3 Based on the value of the Contract, quotations or tenders must then be invited in line with the following financial thresholds:~~

~~(i) Up to and including £5,000 – Best Value~~

~~(ii) 11.2 Over £5,000 and value up to and including £100,000 – at least three written quotations (this threshold may be lower where Officers deem there is additional risk associated with the project; in such cases advice must be sought from Commercial Procurement.)5,000 – Best Value~~

~~(iii) Over £100,000 – Invitation to Tender. At least four written tenders with completed Form of Tender and Declaration of Non-Collusive Tendering.~~

~~11.1.4 Where the estimated Contract value meets the appropriate Procurement Threshold (details of which can be obtained from Commercial Procurement), the Authorised Officer must consult Commercial Procurement at the outset to determine the correct procedure for conducting the procurement exercise. In these instances, the Procurement Regulations will apply in addition to these CPRs.~~

~~11.1.5 These rules are subject to the overriding requirement that a Contract of any value which is likely to have ‘cross border’ interest (ie to be of interest to contractors outside the UK) must be advertised.~~

~~11.2 ContractIn relation to all Contracts with a value up to and including £5,000~~

~~11.2.1 All purchasing up to and including £5,000 must be procured using it is the responsibility of the relevant Authorised Officer to check whether there is an Internal Service Provider or through an existing Contract arrangement or via a suitable approved Framework~~



Agreement or Dynamic Purchasing System ~~where they exist~~which can be used.

11.2.2 ~~It is the responsibility of the relevant Authorised Officer to check whether a suitable Internal Service Provider, existing Contract, Framework Agreement or Dynamic Purchasing System exists or not.~~ Where no appropriate Internal Service Provider, existing Contract, Framework Agreement or Dynamic Purchasing System exists, ~~and the estimated value of a Contract is up to and including £5,000~~ the invitation of quotations ~~is not mandatory but~~ should be invited where appropriate.

11.2.3 If the Authorised Officer believes that it represents Best Value for the Council to make a direct appointment without the need for competition, they may do so providing a written record of the decision (including reasons) is kept by them.

### 11.3 Contract value over £5,000 and up to and including £100,000 – Three Quotations

11.3.1 In relation to all Contracts with a value between £5,000 up to and including £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract, Framework Agreement or Dynamic Purchasing System which can be used.

11.3.2 Where no appropriate Internal Service Provider, existing Contract or approved Framework Agreement or Dynamic Purchasing System exists, ~~if the estimated value of a Contract exceeds £5,000 but does not exceed £100,000~~ a minimum of three written quotations must be invited from suitable potential Suppliers. Efforts should be made to ensure that a diverse group of Suppliers are asked to quote using the following principles:

- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
- (b) Where possible, ensuring local Suppliers are invited to quote;
- (c) Where possible, not just inviting the same group of Suppliers who have previously quoted for this or previous similar work;
- (d) Where possible, looking for novel or new Suppliers.

11.3.3 The written quotations must be obtained and documented in accordance with proper record keeping set out in Rule 5 and in accordance with the requirements of Rule 13.

11.3.4 All potential Suppliers invited to submit quotations will be provided in all instances with identical information and instructions.

11.3.5 The evaluation of the quotations will be carried out by Authorised Officers.

#### 11.4 Contract value over £100,000 – Invitation to Tender

11.4.1 In relation to all Contracts with a value in excess of £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract or Framework Agreement or Dynamic Purchasing System which can be used.

Where no appropriate Internal Service Provider, existing Contract, approved Framework Agreement or Dynamic Purchasing System exists, ~~competition is required for Contract with a value over £100,000.~~

11.4.2 ~~Where there are sufficient numbers of potential Suppliers,~~ at least four written tenders must be invited from potential

Suppliers. Efforts should be made to ensure that a diverse group of potential Suppliers are asked to tender using the following principles:

- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
- (b) Where possible, ensuring local Suppliers are invited to quote;
- (c) Where possible, not just inviting the same group of Suppliers who have previously quoted for this or previous similar work;
- (d) Where possible, looking for novel or new Suppliers.

11.4.3 Where it has not been possible to identify four potential Suppliers or less than four responses to the invitation to tender have been received, approval to continue with the procurement must be sought from the Head of Procurement.

~~11.4.3~~11.4.4 The tendering process must be conducted in accordance with the Council's detailed procedure rules set out in the Procurement Toolkit. Authorised Officers must consult with Commercial Procurement to establish the most appropriate tendering process/procurement route which will be determined on a case by case basis (depending on a number of factors including but not limited to the scope, value and technical requirements of the procurement).

## 11.5 Contract value over the Procurement Threshold

11.5.1 Where the estimated Contract value reaches the relevant Procurement Threshold, Officers are required to procure the Contract in accordance with the Procurement Regulations and these CPRs. In all such circumstances

appropriate advice must be sought from Commercial Procurement.

11.5.2 The current Procurement Thresholds are available from Commercial Procurement.

#### 11.6 Assets for Disposal

Assets for disposal must be dealt with in accordance with the Financial Regulations.

#### 11.7 Concession Contracts

11.7.1 Concession Contracts may be established by Authorised Officers in conjunction with Commercial Procurement. Generally, Concession Contracts will result in an income to the Council. The thresholds set out in Rule 8 will also apply to Concession Contracts.

11.7.2 For the purpose of Rule 8 the value of a Concession Contract is defined in the Concession Contracts Regulations. That is the value shall be the total turnover of the concessionaire generated over the duration of the Contract, net of Value Added Tax, as estimated by the Council, in consideration for the works and/or services which are the object of the Concession Contract and for the supplies incidental to such works and services.

11.7.3 Contracts below the relevant thresholds defined in the Concession Contracts Regulations may be let using a three quotation process as outlined in Rule 11.3. Contracts above the relevant thresholds must be let in accordance with the process outlined in the Concession Contracts Regulations. Commercial Procurement will advise on the appropriate route and process to follow when letting Concession Contracts.

## **12. Evaluation Criteria and Standards**

### **12.1 Evaluation Criteria**

12.1.1 In any procurement exercise (regardless of overall Contract value) the successful tender must be the one which offers either:

- (i) the most economically advantageous tender based on “price or cost” using a cost effectiveness approach, such as, life cycle costing; or
- (ii) the most economically advantageous tender balanced between quality and price.

In the latter case, the Council will use criteria linked to the subject matter of the Contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental & sustainability characteristics, social value (including but not limited to compliance with wider Council obligations such as membership of the Living Wage Foundation and sourcing fair trade where appropriate), running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion. ~~The price element of the evaluation will always be 40% or greater unless a waiver has been given for alternative weightings (in accordance with Rule 26.3) or, if using a Framework Agreement or Dynamic Purchasing System, an alternative weighting system is provided for under that Framework or Dynamic Purchasing System.~~

12.1.2 The price element of an evaluation shall be 40% or greater unless:

- (a) the relevant contract is being procured using a Framework Agreement or Dynamic Purchasing

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System which provides for an alternative weighting system; or

(b) the Authorised Officer has, in consultation with the Head of Procurement and Finance, determined that an alternative weighting system would be more appropriate due to either the size, value and/or available budget, risk-profile and/or nature of the procurement. The Authorised Officer must submit reasonings supported by Commercial Procurement to the Head of Procurement and Finance for approval prior to the procurement exercise being advertised.

~~12.1.2~~12.1.3 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate tenders provided that such criteria ~~relates~~relate to the subject matter of the Contract and is objectively quantifiable and non-discriminatory. The criteria can include, for example, sustainability considerations, support for the local economy or the use of sub-contractors. The potential Suppliers' approaches to continuous improvement and setting targets for service improvement or future savings could also be included.

~~12.1.3~~12.1.4 The procurement documentation must clearly explain the basis of the evaluation decision to potential Suppliers, making it clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

12.1.5 Once the tender documentation has been issued to the market, changes to the evaluation criteria shall only be permitted in exceptional circumstances following approval by the Head of Procurement.

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~~12.1.4~~12.1.6 There is no scope to change the evaluation criteria once quotations or tenders have been received.— If quotations or tenders received mean the original evaluation criteria are no longer able to achieve the most economically advantageous tender, then the procurement process must be abandoned and treated as market engagement before a new procurement exercise is established with new evaluation criteria. In such a case, no award will be made from the original procurement exercise and Commercial Procurement ~~and Legal Services~~ must be consulted.

## 12.2 Standards

Relevant British, EU and International standards which apply to the subject matter of the Contract, and which are necessary to properly describe the required quality must be included within the procurement documentation, the specification, and the Contract. Officers should refer to further guidance set out in the Procurement Toolkit.

## **13. Invitation to Tender / Request for Quotation**

13.1 Invitations to Tender/Requests for Quotation must be issued in accordance with the requirements of these CPRs.

13.2 All procurement documentation must be issued electronically. All procurements with a value over £25,000 must be conducted through ~~the~~an E-Sourcing System.

13.3 Where the E-Sourcing System is used, all communications with Suppliers must be undertaken exclusively through the E-Sourcing System. This includes any clarification questions asked by the potential Suppliers and responses provided by the Council.

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13.4 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the E-Sourcing System, permission to conduct a procurement process by alternative means must be obtained from the Head of Procurement.

## **14. Submission, Receipt and Opening of Tenders / Quotations**

### **14.1 Opening of Tenders and Quotations**

14.1.1 Tenders and Quotations, except those which have been approved as exempt from electronic tendering in accordance with Rule 13.4, must be submitted electronically via the E-Sourcing System. Tenders submitted by any other means must not be accepted.

14.1.2 Detailed procedure notes on tendering requirements and protocols are set out in the Procurement Toolkit.

### **14.2 Hard Copy Arrangements**

14.2.1 ~~In the event that~~If approval to conduct a tender process outside the E-Sourcing System has been obtained in accordance with Rule 13.4 and “hard copy” tenders are to be accepted, these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Head of Procurement without any mark revealing the bidding organisation’s identity.

14.2.2 All hard copy tenders will be held by the Head of Procurement until the tender opening date/time has been reached.

14.2.3 All hard copy tenders for the same Contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Commercial Procurement. A register of tenders received will be kept by Commercial Procurement and will be



initialled on each occasion by the Authorised Officers who are present at the opening of the tenders.

14.2.4 ~~In the event that~~ If approval to conduct a quotation process outside the E-Sourcing System has been obtained in accordance with Rule 13.4 and hard copy quotations are to be accepted these must be submitted in a plain envelope marked “Quotation for ...” followed by a description of the goods, works or services being procured.

14.2.5 All hard copy quotations must be opened together once the official return date/time has been passed.

## **15. E-auctions**

15.1 Where a tender is to be carried out by way of a collaborative e-auction process the following procedures will apply:

15.1.1 approval for this approach must be sought in advance of the auction from the relevant Chief Officer and Head of Procurement;

15.1.2 the auction must be provided through a recognised managed service provider approved by the Head of Procurement;

15.1.3 the process for selecting potential Suppliers must be agreed in advance with the Head of Procurement;

15.1.4 the tender evaluation process must be agreed in advance with the Head of Procurement;

15.1.5 the time limit for the auction must be set in advance, clearly notified and be appropriate to the nature of the auction;

15.1.6 a minimum of two Authorised Officers must be in attendance at the managed service provider’s viewing

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room to ensure the process is conducted fairly and in accordance with the Procurement Regulations. One of the Authorised Officers must be an independent observer and have had no involvement with the exercise. They should not leave the room during the auction.

15.1.7 prior to start of the auction, Officers attending must satisfy themselves that the correct quality weightings (if applicable) have been loaded into the software and that the software is working correctly;

15.1.8 the final scoring of all the bidders needs to be documented and counter signed by each Officer immediately after the close of the auction;

15.1.9 the e-auction summary report which is normally produced by the e-auction provider (within a week of the auction) must be cross referenced to the Officers own records and both must be kept on file;

15.1.10 a signed copy of both these records must be passed to Head of Procurement ~~and copied to the Monitoring Officer;; and~~

15.1.11 if the lowest price bidder is not successful approval for the award of a Contract must be sought in line with these CPRs.

15.2 The application of these e-auction procedures exempts the tender from the opening rules set out at Rule 14. It does not exclude compliance with any other regulations as set out elsewhere in these CPRs.

15.3 The Council will arrange for award notices to be sent to the successful Supplier (following a 10-day Standstill Period) and brief the losing Providers. A copy of the award notice must be kept on file.

15.4 The Council must ensure that a discrete Contract complying with the Council's standard terms and conditions is put in place with each successful Supplier.

## **16. Clarification Procedures**

16.1 The Council can ask bidding organisations for clarification of any details submitted as part of their bid. However, any such clarification must ~~not involve changes to the basic features of the bidding organisation's submission.;~~

(i) not involve changes to the basic features of the bidding organisation's submission; and

(ii) be issued and responded to by Commercial Procurement.

16.2 When requesting clarification, the Authorised Officer must follow any guidance contained in the Procurement Toolkit. It must not be used to negotiate or re-negotiate Contract terms. Authorised Officers are required to take all necessary procurement and/or other relevant professional advice if they are in any way unsure of what may or may not constitute a 'clarification' under the Procurement Regulations.

16.3 All clarification questions raised by bidding organisations must be considered and responded to by Commercial Procurement.

16.4 If any amendments are required to the tender documentation or contract terms and conditions as a result of clarifications these must be approved by Commercial Procurement and/or Legal Services as appropriate.

## **17. Evaluation, Financial Appraisal, Award of Contract and Debriefing of Organisations**

### **17.1 Evaluation**

The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the relevant procurement documents (see Rule 12 above) provided to bidding organisations, and in line with any guidance detailed in the Procurement Toolkit.

### **17.2 Financial Appraisals**

Financial Appraisals must be completed in respect of all third parties submitting bids for Contracts in excess of £100,000. It is the responsibility of the Authorised Officer in consultation with the relevant Finance Manager to take all steps reasonably necessary (having regard to the subject matter, value and duration of the Contract and any other relevant factors) to complete a risk assessment of the potential Supplier's financial stability and to ensure this is done to a standard required by the Finance Manager.

### **17.3 Award of Contract**

17.3.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.

~~17.3.2 Where mandated by the procurement is subject to the Procurement Regulations (see Rule 11.5 above), process used, a Standstill Period must be included in the procurement timetable and observed before the Contract can be awarded. ~~Authorised~~~~

~~17.3.3 Authorised Officers should refer to the guidance in the Procurement Toolkit and must consult with Commercial Procurement and, where appropriate, Legal Services in~~

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relation to the Standstill Period requirements and associated documentation to be issued to bidders.

17.3.4 Where a Standstill Period applies, successful and unsuccessful bidders will be sent a Contract award letter containing all the debrief information required under the Procurement Regulations. A copy of ~~the~~each Contract award letter must be kept on file.

~~17.3.2~~17.3.5 Following successful completion of the Standstill Period, the successful bidder(s) will be issued with their Contract to sign.

~~17.3.3~~17.3.6 Provided the winning bid:

- (i) is the most economically advantageous;
- (ii) is within the financial budget made for it;
- (iii) complies with the Council's proposed terms and conditions; and
- (iv) meets the Contract specification,

it may be accepted by the relevant Authorised Officer.

~~17.3.4~~17.3.7 Where a tender is not:

- (i) the most economically advantageous (if payment is to be made by the Council); or
- (ii) the highest tender (if payment is to be received by the Council),

\_\_\_\_\_ the award of the Contract must be passed to the Chief Finance Officer for decision clearly setting out the reasons why this is required.

~~17.3.5~~17.3.8 Once approved, all proposed Contract awards over £100,000 must be recorded in the Officer decision log on the mod.gov system.

~~17.3.6~~17.3.9 The approval of the relevant Executive Member and Chief Finance Officer must be given if a tender received as part of a capital scheme results in the scheme or project exceeding the approved financial budget by 10% or £50,000 (whichever is the lower) and this cannot be accommodated within the original financial budget.

#### 17.4 Debriefing

The Authorised Officer will, as part of good practice, offer feedback to all tenderers who submitted a bid about the characteristics and relative advantages of the successful bid-~~(s)~~. This will usually include:

17.4.1 how the award criteria were applied;

17.4.2 the prices or ranges of prices submitted, but not in either case correlated to the tenderers; ~~and~~

~~17.4.3 the names of their competitors and whether there were three or more competitors taking part in the tendering exercise.~~

**Authorised Officers must refer to the guidance set out in the Procurement Toolkit and consult with Commercial Procurement prior to issuing any feedback to bidders.**

#### **18. Post Tender Negotiation**

18.1 Post tender negotiations must not be undertaken where the value of the Contract exceeds the relevant Procurement Threshold.

18.2 Post tender negotiations with selected Suppliers, where the value of the Contract is below the relevant Procurement Threshold, may be carried out where:

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18.2.1 permitted by law; and

18.2.2 the ~~Director~~relevant Chief Officer in consultation with Commercial Procurement and Legal Services considers that added value may be obtained; and

18.2.3 the post tender negotiations are conducted by a team of suitably experienced officers approved by the ~~Director~~relevant Chief Officer and who have been trained in post tender negotiations. Commercial Procurement and Legal Services must be invited to attend any negotiation; and

18.2.4 a comprehensive, written record of the negotiations is kept by the Council; and

18.2.5 a clear record of the added value to be obtained as a result of the post tender negotiations is incorporated into the Contract with the successful Supplier.

## **19. Contract Documents**

### **19.1 Form of Procurement Documents**

The Council's standard procurement documents, which accompany the contract documents, will be used wherever possible and appropriate. Where there is any deviation from ~~these, the standard procurement documents~~, the documents to be used must be reviewed by ~~Legal Services~~Commercial Procurement before being issued. These documents are available from Commercial Procurement.

### **19.2 Form of Contract**

19.2.1 Contractual commitments can only be made by Officers who are formally authorised to do so in the relevant directorate scheme of delegated authority. An up-~~to~~-date record of delegated authorities across the Council is kept by Commercial Procurement.

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19.2.2 ~~All Contracts made on behalf of~~ Should the Council ~~must~~ be ~~evidenced~~ utilising a particular Framework Agreement or DPS for the first time, Legal Services must be engaged to approve the form of Call-Off Contract or Order Form, the Call-Off terms and conditions and any other associated documents.

19.2.3 ~~Unless subsequent Call-Offs require further amendment in writing in an appropriate format approved~~ accordance with the Procurement Regulations, they can proceed without additional approval from Legal Services.

19.2.4 ~~For the sake of clarity however, if any Call-Off terms require any amendment at any stage of a Procurement (as part of a mini-competition or otherwise), approval must be sought from Legal Services and Commercial Procurement.~~

19.2.5 ~~If the Council intends to make a direct award under a Framework Agreement or DPS, no amendments are permitted to the Call-Off terms and conditions.~~

~~19.2.2~~ 19.2.6 ~~The Council will not accept Suppliers' terms and conditions without Legal Services confirming that they are acceptable, and/or without any amendments required by Legal Services. If any case arises, a copy of the terms and conditions must be sent to Legal Services for approval.~~

~~19.2.3~~ 19.2.7 ~~Every Contract must be made~~ in writing by either:

- (i) the issue of a purchase order and accompanying standard terms and conditions for the purchase or supply of goods, services and/or works with an aggregate Contract value (including any extensions) of not more than ~~£100,000;~~ or



- (ii) the preparation of formal written contracts for the purchase or supply of goods, services and/or works with an aggregate Contract value (including any extensions) of £100,000 and above or lower where the nature of the Contract requires a formal written contract.

19.2.8 With regards to:

- (i) Rule 19.2.7(i) above, no amendments requested by any Supplier to the purchase order standard terms and conditions will be accepted without the prior approval of Legal Services; and
- (ii) Rule 19.2.7(ii), any formal contracts must be drafted using either a template form of Contract previously approved and/or drafted by Legal Services, or a new bespoke document created by Legal Services. A Supplier's standard terms and conditions must not be accepted except in accordance with Rule 19.2.6 above.

19.3 Deeds

19.3.1 All Contracts:

19.3.1 (i) in excess of £500,000; or

19.3.2 (ii) where the subject matter warrants an extended period of twelve years' protection; or

19.3.3 (iii) for nil consideration; or

19.3.4 which novate, assign, vary or extend an existing Contract;  
or

19.3.5 (iv) where there is a legal requirement for the Contract to be executed as a deed;

must be executed as a deed under common seal by Legal Services in accordance with Article 24: Finance, Contracts and Legal Matters, unless agreed otherwise by the Monitoring Officer or except where indicated in Appendix B.

19.3.2 Contracts to novate, assign, vary or extend an existing contract:

- (i) must be executed as a deed where the original contract terms do not expressly permit such novation, assignment, variation or extension; or
- (ii) are not required to be executed as a deed where the original contract terms expressly permit such novation, assignment, variation or extension.

#### 19.4 Contract Signature/Sealing

19.4.1 Contracts must:

(i) where the Contract is in the form of a deed, be made under the Council's seal or electronic seal and attested by Legal Services as required by the Constitution; or

(ii) where the Contract is ~~in the form of an agreement it will~~ be signed underhand as a simple contract, be signed (either by a Chiefhand or by electronic signature) by:

(ii)(a) an Authorised Officer authorised as required by the Constitution with the appropriate level of delegated authority as set out in the relevant directorate's scheme of delegation; or

(b) Legal Services.

19.4.2 When submitted to Legal Services for signing or sealing, all Contracts must be accompanied by an Authorisation to Sign or Seal Form setting out the decision-making process and authority. This form can be obtained from Legal Services.

## 19.5 Legal Services Review of ~~Tenders and~~ Contracts

19.5.1 To ensure the integrity of the procurement process:

- (i) ~~all proposed Invitations to Tender, where they are not in compliance with Officers intend to deviate from the Council's standard documentation, terms and conditions, all Contracts~~ must be reviewed by Legal Services; and
- (ii) any proposed ~~Invitations to Tender which are subject to the Procurement Regulations, Contracts via an Open or Restricted process,~~ which are deemed to be of medium or high risk, must be reviewed by Legal Services;
- ~~(iii) all proposed Contracts, where they are not in compliance with the Council's standard documentation, must be reviewed by Legal Services~~
- ~~(iv) any proposed Contracts which are subject to the Procurement Regulations, or which are deemed to be of high risk, must be reviewed by Legal Services.~~

~~19.5.2 Officers must consult with Legal Services as appropriate to ensure compliance with this Rule 19.5.~~

## 19.6 Bonds, ~~Parent Company Guarantees~~ and Liquidated & Ascertained Damages

19.6.1 Chief Officers (in consultation with Commercial Procurement and Legal Services) will consider whether to include provision for payment of liquidated & ascertained

damages by a Supplier for delay or breach of contract where appropriate, taking into account the subject matter and risk associated with the Contract. Such consideration will be recorded in writing.

19.6.2 When considered appropriate by a Chief Officer the Supplier will be required to provide a performance bond to secure the performance of the Contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the Contract or such other sum as the Authorised Officer (in consultation with a Finance Manager) considers appropriate.

19.6.3 Where considered appropriate by a Chief Officer, the Supplier will be required to provide a parent company guarantee in a form acceptable to the Council prior to entering into the Contract.

## **20. Contract Extension and Variation**

### **20.1 Extensions**

20.1.1 Commercial Procurement and Legal Services must be consulted in relation to any proposed Contract extension.

20.1.2 Contract extensions shall only be permitted if they are put in place before the Contract expiry date, the relevant notice has been given to the Supplier and where the proposed extension is in accordance with the contract terms.

20.1.3 Where the terms of a Contract expressly permit extensions, Commercial Procurement will support Officers to complete the required paperwork to give notice to the Supplier and document the extension in the agreed form in writing.

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~~20.1.3~~20.1.4 Where the terms of a Contract do not expressly permit an extension, Commercial Procurement and Legal Services shall advise whether it is possible to otherwise agree an extension by way of variation to the Contract. Any variations shall be carried out in accordance with RuleRules 19.6.3 and 20.2~~below~~.

~~20.1.4~~20.1.5 Approval for the extension must be given by an Officer with the appropriate level of delegated authority. This process must be recorded in writing.

~~20.1.5~~20.1.6 Prior to seeking approval from the relevant Chief Officer to take up a contract extension the Authorised Officer must establish whether the extension will deliver Best Value.

~~20.1.6~~20.1.7 Before taking an extension, the Authorised Officer must check the original spending authorisation decision (obtained in accordance with Rule 8) to confirm that authorisation to extend the Contract is in place. Where the original decision does not contain authorisation for an extension of the Contract, further authorisation may be sought under Rule 8. The value of the decision used to determine the authorisation requirement shall be the original Contract value plus the value of the proposed extension.

~~20.1.7~~20.1.8 All extensions to any Council contracts must be in writing and reported to the Head of Procurement in order that the E-Sourcing System can be updated.

## 20.2 Variations

20.2.1 Variations will be dealt with in accordance with these CPRs and the Procurement Regulations. Further guidance must be sought from Commercial Procurement and Legal Services.

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20.2.2 All Contract variations must be carried out:

- (i) within the scope of the original Contract. Contract variations that materially affect or change the scope of the original Contract are not permitted; and
- (ii) following consideration as part of the Category planning process.

20.2.3 All Contract variations must be in writing (in the form specified by the Contract where applicable) and signed or sealed by both the Council (in accordance with Rule 19.3.2 and 19.4.1 above and the Supplier. Approval for the Contract variation must be given by the by the ~~Monitoring Officer and~~ Head of Procurement, or their delegated officers.

20.2.4 Where appropriate (taking into account any change in contract value, contract term, range of services provided etc), Contract variations must be reported to the Head of Procurement in order that the E-Sourcing System can be updated.

20.2.5 A new procurement will be required in case of material change where one or more of the following conditions are met:

- (i) the variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of Suppliers other than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;
- (ii) the variation increases the value of the Contract or the Framework Agreement substantially in favour of

the Supplier in a manner which was not provided for in the original Contract or Framework Agreement;

- (iii) the variation extends the scope of the Contract or Framework Agreement considerably.

Further guidance must be sought from Legal Services where the Chief Officer considers there is any possibility that the proposed variation might fall under this Rule 20.2.5.

## **21. Termination of Contract**

**21.1 Prior to terminating any Contract, Officers must consult Commercial Procurement and Legal Services.** It will only be possible for Contracts to be terminated early, where provided for within the Contract and if this action is authorised by the relevant Chief Officer through a Delegated Decision. A copy of the report and decision for termination of any Contract exceeding £100,000 in aggregate for the whole of the contract period (including any extensions) must be sent to the Head of Procurement for monitoring purposes. All termination letters under this Rule must be drafted and issued via Legal Services in conjunction with the Authorised Officer.

## **22. Prevention of Corruption**

22.1 Rules and regulations pertaining to the prevention of corruption are outlined in the Financial Regulations and must be adhered to at all times.

## **23. Declaration of Interests**

23.1 To ensure that persons involved in the procurement process are aware of and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required to be

completed for all procurement processes which identifies actual and potential conflicts of interest. This must be completed by all Officers involved in the procurement process prior to commencement of the procurement process. If an actual or potential conflict of interest arises during the procurement process a new Conflict of Interest and Confidentiality Undertaking Declaration form shall be immediately completed and submitted by the Officer concerned and the Monitoring Officer and the S151 Officer shall be notified in accordance with Rule 23.2.

- 23.2 If it comes to the attention of a Member, Authorised Officer or other Officer that a Contract in which they have an interest (determined in accordance with the Members' and/or Employee Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, they shall immediately give written notice to the Monitoring Officer and the S151 Officer.

#### **24. Contract Management / Monitoring**

- 24.1 All Contracts must have an appointed contract manager for the entirety of the Contract. The responsible Chief Officer must ensure a contract manager is designated prior to contract award.
- 24.2 Contract management, monitoring, evaluation and review must be conducted in line with guidance detailed in the Procurement Toolkit.

#### **25. External Body ~~Grant~~ Funding Rules**

- 25.1 Where a procurement process is funded, in whole or part, by ~~grant~~external funding which has been awarded to the Council by an external funding body, the Authorised Officer must consult with Commercial Procurement and Legal Services to ensure that any rules or conditions imposed by the funding body are adhered to in addition to the requirements of these CPRs.



25.2 Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

## **26. Waiver and Exemptions**

### Waivers

26.1 Except where the Procurement Regulations apply, the Executive has the power to waive any requirements within these CPRs for specific projects upon request.

26.2 Additionally, except where the Procurement Regulations apply, these CPRs may be waived where the circumstances are certified by the Chief Finance Officer, or their deputy advised as appropriate by the Monitoring Officer and Head of Procurement as meeting any of the following criteria:

~~26.2.1 for works, supplies or services which are of such special character that it is not possible to obtain competitive prices;~~

~~26.2.2~~ 26.2.1 for supplies purchased or sold in a public market or auction;

~~26.2.3 for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills;~~

~~26.2.4~~ 26.2.2 with an organisation which has won a Contract for an earlier phase of work via a competitive process and where the work forms part of a ~~serial programme and has previously been identified as such;~~ larger project and/or serial programme. For the sake of clarity, this particular ground will **only** be available provided that:

(a) it was previously identified in the relevant tender and/or contractual documentation that the work being supplied by the relevant organisation formed part of a larger project and/or serial programme, and

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(b) the award of any additional work can be done so without breaching the Procurement Regulations and/or exposing the Council to unacceptable risk;

~~26.2.5~~26.2.3 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the Contract to cover this additional requirement, without breaching the Procurement Regulations and/or exposing the Council to unacceptable risk;

~~26.2.6~~26.2.4 for works, supplies and/or services which, after the testing the market, are found to be only available from one organisation (either due to their highly specialised nature); the use of innovative technology or service models, or any exclusive proprietary rights belonging to the relevant supplier), provided that:

(a) this can be properly evidenced by the Authorised Officer (including confirmation that no other viable alternative works, supplies and/or services are available), and

(b) Commercial Procurement are satisfied that the Council has not artificially narrowed its requirements to avoid conducting a competitive tender process in accordance with these CPRs;

~~26.2.7~~26.2.5 involving such extreme urgency, that it is/would not be possible to comply with the CPRs; competitive procurement procedures and timescales set out within these CPRs. For the sake of clarity, this ground will not apply where said extreme urgency has come about due to circumstances that can be attributed to any action, inaction and/or delay on the part of the Council;

~~26.2.8~~26.2.6 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts

or cultural event which cannot be procured competitively due to the nature of the requirement;

~~26.2.9~~26.2.7 in relation to time limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;

~~26.2.10~~26.2.8 in relation to external grant funding that has been awarded on the condition that a specific Supplier be appointed by the Council;

~~26.2.11~~26.2.9 where relevant UK or other applicable international legislation not otherwise referred to in these CPRs ~~prevents the usual~~allows another procurement process ~~from being followed~~to be undertaken;

~~26.2.12 In relation to the price quality ratio (Rule 12.1.1) where, after consultation with officers from Finance, Commercial Procurement, the client team wishes to use a price percentage lower than 40%; and/or~~

~~26.2.13~~26.2.10 ~~where Legal are satisfied that~~ there is a significant risk to the statutory functions of the Council, or to its governance, audit or finances, a significant safeguarding risk, or a significant risk of failure in the case of an immediate statutory inspection, if the Supplier is not engaged (such confirmation in all cases to be confirmed in writing by the relevant Chief Officer~~;-).~~

26.3 If a waiver of these CPRs is required, the Authorised Officer will complete and submit a waiver form, using a template document obtained from Commercial Procurement. The waiver form must set out the detail of the specific Rule(s) being waived and confirmation of the Rule within 26.2 under which the waiver is being sought along with the financial, legal, risk and equality implications of the waiver sought.

- 26.4 The process to be followed in respect of waivers is set out in the Procurement Toolkit.
- 26.5 In relation to Maintained Schools, the Governing Body shall have the power to waive any requirement of these CPRs where the Head Teacher has submitted a waiver form in accordance with Rule 26.3 confirming that any of the criteria listed at Rule 26.2 apply.
- 26.6 If the waiver is approved the Authorised Officer can then proceed with the waiver to these CPRs. Officers are only authorised to incur expenditure up to the amount included in the final agreed waiver. Should any additional expenditure or further service be required a new waiver must be requested.
- 26.7 With the exception of those relating to Maintained Schools, every waiver form will be recorded on a master register maintained by Commercial Procurement. Each Maintained School must maintain their own master register of waiver forms.
- 26.8 Where a waiver is being requested, Authorised Officers are required to seek waivers at the outset of any procurement process or, where relevant, at such time during a procurement process that it becomes apparent that it is not possible to comply in full with the competition procedures outlined in Rules 11.3 and 11.4. No Contract resulting from a waiver being requested will be entered into without a waiver authorisation being in place.
- 26.9 Authorised Officers are not required to seek waivers in the case of an Emergency or as a result of an Emergency where there is danger to the safety of persons or serious risk of loss or damage to the Council's assets or interests, or the interests of another party. In such circumstances, the Authorised Officer may enter into such Contracts as necessary by means that are reasonable under the circumstances.

### Exemptions

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26.10 These CPRs do not apply to Contracts:

26.10.1 for the execution of mandatory works by statutory undertakers; (i.e., companies and agencies which have been given general licence to carry out certain development and highways works, such as utilities and telecoms companies or nationalised companies such as Network Rail);

26.10.2 for legal services in respect of specific matters which are in contemplation of:

(a) ~~Arbitration~~arbitration conciliation;

(b) Judicial proceedings before the courts;

26.10.3 for the provision of legal advice given in preparation for any of the proceedings referred to in Rule 26.10.2(a) or (b) 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.

26.10.4 which have been procured on the Council's behalf:

(i) through collaboration with other local authorities or other public bodies, where a competitive process which complies with the CPRs of the leading organisation has been carried out; or

(ii) by a national or regional contracting authority where the process followed is in line with the Procurement Regulations;

26.10.5 to cover urgent special educational needs, urgent social care needs or urgent operational needs, if in the opinion of the relevant Director (in consultation with the Head of Procurement) the exemption is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this

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exemption by the relevant Director must be preceded by a written report under Rule 26.3 using the waiver form, setting out the reason for such urgency, how it complies with ~~relevant legislation and represents Best Value~~the Procurement Regulations and any other relevant legislation, and represents Best Value. For the sake of clarity, this ground will not apply where in the opinion of the Head of Procurement (with advice from Legal Services where necessary) said urgency has come above due to circumstances that can be attributed to any action, inaction and/or delay on the part of the Council;

26.10.6 for the renewal of licences or contracts for goods or services where:

- a) the supply is restricted to either the original Supplier or their selected re-sellers; and
- b) competition does not affect the price paid owing to the way the market operates and/or the need for compatibility; and
- c) the value of three years' aggregated renewals has not exceeded, or will not exceed, £150,000; and
- d) the relevant Chief Officer has agreed to the renewal.

26.11 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs.

## **27. Breaches of CPRs**

27.1 Breaches of the CPRs are extremely serious matters and will be fully investigated and reported on following referral or discovery. All Directors are responsible for reporting all known or discovered breaches of these CPRs to the ~~Chief Finance Officer and Monitoring Officer~~Head of Procurement as soon as they become

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aware of it in practice. Any Director can be called to Audit & Governance Committee to explain any breach.

27.2 Breaches identified are reported to the [Head of Procurement and recorded. Training needs will be identified and provided to officers across the Council. Should repeated breaches be made, an investigation to remove an Officer's delegated authority will commence.](#)

27.127.3 Breaches are reported to Governance, Risk & Assurance Group to identify where improvements need to be made and to ensure training is provided where necessary.

## 28. Data Protection

28.1 Where a Contract involves data processing by the Supplier on behalf of the Council then sufficient due diligence must be undertaken to ensure that the Council only uses Suppliers who provide guarantees to implement appropriate technical and organisational measures in such a manner as to meet the requirements of the UK GDPR and Data Protection Act 2018 and protect the rights of individuals.

28.2 Every written Contract that involves the processing of personal data by a Supplier on behalf of the Council must set out the subject matter and duration of the processing, the nature and purpose of the processing, the types of personal data and categories of data subjects and obligations and rights of the Council. In particular the Contract must contain clauses that meet the requirements of Article 28(3) of the General Data Protection Regulations. Authorised Officers should consult with Legal Services as per Rule 2.1.2(x)(c).

28.3 Authorised Officers should consult with the [Corporate Information Governance team at the outset of a procurement process to:](#)

(a) discuss the data protection implications and obligations set out in Rule 28.2 above and as much information as possible

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should be included in the Contract prior to the publication of tender documentation;

~~28.3~~ (b) establish whether a Data Protection Impact Assessment is required in relation to any proposed Contract involving the processing of ~~Personal Data~~personal data.



## APPENDIX A - DEFINITIONS

<b>“Accountable Body”</b>	means where the Council is held accountable by the Government for a particular sum of money which actually may not be managed by, or be in the control of, Council Officers;
<b>“Authorised Officer”</b>	means a person authorised by the relevant Chief Officer to act on the Council’s behalf;
<b>“Best Value”</b>	means the optimum combination of whole life costs, quality and benefits to meet the customer’s requirement;
<b>“Category”</b>	means each category identified in the category overview table which is set out in the Council’s Procurement Strategy;
<b>“Category Plan”</b>	means strategic planning of the category, at a category or sub-category level, including review of the current position, constraints and opportunities, desired outcomes, options and actions. The template plan should be used in all cases except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;
<b>“Chief Finance Officer”</b>	means the Council’s section 151 Officer currently the Chief Finance Officer or their nominated deputy;

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<b><del>“Chief Officer”</del></b>	means the head of the procuring directorate and includes the Chief <del>Executive, Deputy Chief Executive, Operating Officer, Corporate</del> Directors, <del>Directors</del> , Assistant Directors and officers with appropriate delegations and sub-delegations;
<b>City of York Scheme for Financing Schools</b>	means the scheme which sets out the financial relationship between the Council and Maintained Schools;
<b>Commercial Procurement</b>	means the Council’s Commercial Procurement team;
<b>Concession Contract</b>	has the meaning given in regulation 3 of the Concession Contracts Regulations;
<b>Concession Contracts Regulations</b>	means the Concession Contracts Regulations 2016 and any successor, amending or enabling legislation;
<b><del>“Constitution”</del></b>	the Council’s constitution which is available on the internet and sets out the rules that the Council and all Council employees and Members must follow;
<b><del>“Contract(s)”</del></b>	means an agreement between the Council and a Supplier made by formal agreement or by issue of a letter of acceptance or official order for goods, services and/or works;

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<b><u>“Contracts Finder”</u></b>	means the web-based portal provided for the purposes of the Procurement Regulations by or on behalf of the Cabinet Office;
<b><u>“Contract Register”</u></b>	means the register of all Contracts maintained by Commercial Procurement;
<b><u>“Contracting Authorities”</u></b>	has the meaning given in the Procurement Regulations;
<b><u>“(The) Council”</u></b>	means City of York Council;
<b><u>“CPRs”</u></b>	means these Contract Procedure Rules;
<b><u>“Delegated Decision”</u></b>	means a formal decision taken in accordance with the Council’s Constitution and sub-delegation schemes. It is for the Officer seeking the Delegated Decision to decide which type of decision is required in accordance with the Constitution;
<b><u>“Director”</u></b>	means an Officer of the Council designated as a director;
<b>Dynamic Purchasing System <u>or</u> <u>DPS</u></b>	means a completely electronic process for making commonly used purchases that meet the requirements of a Contracting Authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification and

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	requirements of the relevant Contracting Authority;
<b>“Emergency”</b>	means an urgent situation or crisis created as a result of a natural disaster (such as flooding or an earthquake) or tragedy (such as an explosion or plane crash);
<b>“E-Sourcing System”</b>	means the Council’s chosen E-sourcing system (currently YORtender), an e-sourcing mandated for access to a specific framework or an approved alternative;
<b>Executive</b>	has the meaning given in the Council’s Constitution;
<b>Executive Member</b>	has the meaning given in the Council’s Constitution;
<b>“Financial Appraisals”</b>	means checking the financial status including the credit rating of a Supplier;
<b>“Finance Manager”</b>	means a manager from the Council’s internal finance team;
<b>“Financial Regulations”</b>	means the governance rules and regulations relating to the management of the Council’s financial affairs, set out in Appendix 10a of the Constitution;
<b>“Find a Tender”</b>	means the web-based portal provided for the purposes of the Procurement Regulations, for above Procurement Threshold

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	processes, by or on behalf of the Cabinet Office;
<b>“Framework Agreement”</b>	<p>means a framework agreement with one or more Contracting Authorities and one or more Suppliers which establishes an arrangement for:</p> <ul style="list-style-type: none"> <li>i. Multiple orders to be placed with one economic operator (a single supplier framework); or</li> <li>ii. A framework of multiple economic operators to engage in further competitions or direct awards (a multiple supplier framework);</li> </ul> <p>that has been set up either by the Council or an organisation other than the Council and has been authorised by Commercial Procurement for use in Council procurements;</p>
<b>“Forward Procurement Plan”</b>	<p>means practical planning of the procurement, or group of similar procurements, including approach, resourcing and timetable. This involves identifying major projects within each category of spend to be maintained by the relevant Chief Officer. It also provides a basis for information for Commercial Procurement to meet the Council’s reporting obligations.</p>

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	The Forward Procurement Plan will be in such format as prescribed by the Head of Procurement except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;
<b>“Governing Body”</b>	has the meaning given in the City of York Scheme for Financing Schools;
<b>“Grant”</b>	means funding awarded to a third party organisation for the purpose of helping deliver community cohesion or providing complementary activities to those carried out by the Council;
<b>“Head of Procurement”</b>	means the Officer who is responsible for the procurement function on behalf of the Council;
<b>“Internal Service Provider”</b>	means any internal service area for example Building Services, Yorkcraft, Commercial Procurement, or Legal Services etc;
<b>“Invitation to Tender”</b>	means an invitation by the Council to a potential Supplier to tender for the provision of goods, services and/or works;
<b>“Key Decision”</b>	has the meaning set out in Rule 8.11 of the CPRs;
<b>“Leader”</b>	means the Leader of the Council;

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<b>“Legal Services”</b>	means the Council’s internal legal team;
<b>Maintained Schools</b>	Means the schools maintained by the Council as set out in the City of York Scheme for Financing Schools;
<b>“Member(s)”</b>	means elected member(s) of the Council;
<b>“Monitoring Officer”</b>	means the Council’s principal solicitor currently the Director of Governance;
<b>“Officer(s)”</b>	means employee(s) of the Council;
<b>“Officer Decision Log”</b>	means the section of the Council’s website where decisions made by senior officers are recorded;
<b>“Participants”</b>	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract;
<b>“Procurement Regulations”</b>	means the Public Contracts Regulations 2015 and any successor, amending or enabling legislation implemented to govern the award of public contracts;
<b>“Procurement Strategy”</b>	means the Council’s published procurement strategy setting out its ambition for procurement and confirming a category

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	management and whole lifecycle approach to procurement;
<b>“Procurement Threshold”</b>	means the designated threshold above which the Procurement Regulations shall apply to a Contract;
<b>“Procurement Toolkit”</b>	means the manual that accompanies these CPRs which provides detailed guidance on procurement techniques, considerations and the effect of these CPRs;
<b>“Relevant Contract”</b>	has the meaning set out in Rule 3 of these CPRs;
<b>“Request for Quotation”</b>	means a request by the Council to a potential Supplier for a quotation for the provision of goods, services and/or works;
<b>“Routine”</b>	has the meaning set out in Rules 8.11 and 8.12;
<b>“Rule(s)”</b>	means any rule contained in these CPRs;
<b>“Standstill Period”</b>	means a 10 day standstill period before a Contract can be awarded to the successful bidder to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award;
<b>“Strategic Partnership”</b>	means a partnership with an organisation that the Council has a long term arrangement with for

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	the provision of goods, works and / or services;
<b>“Supplier(s)”</b>	means the person or entity with whom the Council has a Contract;
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any successor, amending or enabling legislation;

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## **APPENDIX B - ARRANGEMENTS FOR SCHOOLS**

Maintained Schools must use the following governance thresholds instead of those found in Rule 8.

<b>Contract Value</b>	<b>Authorisation Required By</b>
£500,000 and above	Council Executive (decision)
£250,000 up to £499,999.99	Governing Body (minute or decision)
£50,000 up to £249,999.99	Chair of Governing Body or relevant governing committee (written instruction)
£1 up to £49,999.99	Head-teacher  OR  The Governing Body in conjunction with the Head-teacher may decide upon a scheme of delegation appropriate to each school and staffing arrangements.

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### APPENDIX C – ROUTINE PROCUREMENTS

The below table sets out some examples of the types of goods and services that may be considered Routine. This is included as a reference guide only and whether or not a procurement is Routine shall be determined on a case by case basis by the Head of Procurement in accordance with Rule 8.13.

<u>Example of Routine Procurement</u>	<u>Approval Required</u>
<u>Software licences for existing software</u>	<u>Head of Procurement</u>
<u>ICT hardware, software and / or services to maintain the security, integrity and statutory function of core or business systems</u>	<u>Head of Procurement</u>
<u>Utilities and such services</u>	<u>Head of Procurement</u>
<u>Statutory subscription items such a TV licences</u>	<u>Head of Procurement</u>
<u>Stationery, postal services, staff travel, and other comparable business administration contracts</u>	<u>Head of Procurement</u>
<u>General financial services (banking, merchant processing or other comparable services) excluding audit</u>	<u>Head of Procurement</u>

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