SECTION 17 of the Constitution

17. CONTRACT PROCEDURE RULES (FORMERLY STANDING ORDERS FOR CONTRACTS)

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Appendix A – European Public Contract Regulations 2015
17.1 **Introduction**

17.1.1 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.

17.1.2 These Contract Procedure Rules (CPRS) provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to safeguard the interests of the Council and its employees and to ensure that all procurement activity is conducted with openness, probity and accountability.

17.2 **Definitions and Interpretations**

In these Rules the following definitions apply:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>Approved List</td>
<td>A list of suitable prospective Contractors/Suppliers approved for the purposes of the supply of goods or services or the execution of works.</td>
</tr>
<tr>
<td>Authorised/Delegated Officer</td>
<td>Means the holder for the time being of any post named in the Scheme of Delegations as having delegated powers and duties in respect of the procurement concerned.</td>
</tr>
<tr>
<td>Award Criteria</td>
<td>The criteria which form the basis of contract award.</td>
</tr>
<tr>
<td>Chief Officer</td>
<td>Means any Officer in the following categories of Officer, Chief Executive, Corporate Director, Chief Officer and/or</td>
</tr>
<tr>
<td><strong>Head of Service.</strong></td>
<td></td>
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</tr>
<tr>
<td><strong>Competitive Dialogue Procedure</strong></td>
<td>Is an EU compliant process for dealing with complex public contracts, where the delivery for the supply of goods, works or services is unknown and needs to be resolved through negotiation with suitable providers. Legal justification is required.</td>
</tr>
<tr>
<td><strong>Contract</strong></td>
<td>Means any form of agreement (including, without limitation, official purchase orders) for the supply of goods, provision of services or carrying out of works.</td>
</tr>
<tr>
<td><strong>Contractor</strong></td>
<td>Means any contractor, supplier or provider with whom the Council enters into a contract for the carrying out of works, provision of services or supply of goods. Include in-house provision, and where appropriate, the relevant Sub-Contractor.</td>
</tr>
<tr>
<td><strong>Contract Value</strong></td>
<td>For the purposes of calculating the thresholds under these CPRS, the value of a contract is the estimated total value payable by the Council to a contractor over the terms of the contract, including allowable extensions. In the case of indefinite contract periods, the term of the contract is assumed to be 4 years.</td>
</tr>
<tr>
<td><strong>Debriefing</strong></td>
<td>Providing feedback to bidding organisations in terms of strengths and weaknesses of their proposals.</td>
</tr>
<tr>
<td><strong>Electronic Procurement/Tendering</strong></td>
<td>A procedure by which, advertising a requirement for goods, services and works, and issuing and receiving Tender</td>
</tr>
<tr>
<td>Document Type</td>
<td>Definition</td>
</tr>
<tr>
<td>---------------</td>
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</tr>
<tr>
<td>Electronic Auction</td>
<td>A repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or of new values concerning certain elements of tenders, which occurs after an initial evaluation of the tenders, enabling them to be ranked using automated evaluation methods.</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EU Public Procurement Directives</td>
<td>Rules and regulations set by the European Union with regard to procurement for public sector organisations and apply to the public works, supplies (goods) and service contracts.</td>
</tr>
<tr>
<td>EU Thresholds</td>
<td>EU and Government Procurement Agreement thresholds for advertisement of goods, works and services contracts as advised by the Government (for the period 1st January, 2016 – 31st December, 2017 at £164,176 for goods and services contracts and £4,104,394 for works contracts).</td>
</tr>
<tr>
<td>Framework Agreement</td>
<td>An agreement with one or more contractors, the purpose of which is to establish the terms (in particular with regard to price and quality) governing a contract or contracts to be awarded during the period for which the framework agreement applies.</td>
</tr>
<tr>
<td><strong>Goods</strong></td>
<td>Covers all goods, supplies, substances and materials that the Council purchases, hires or otherwise obtains.</td>
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</tr>
<tr>
<td><strong>Grant and Grants</strong></td>
<td>A sum of money paid or to be paid by the Council to a third party, and in respect of which the Council does not require the grantee to provide the Council with any Services, or Goods or carry out any Works for the Council’s direct benefit. The Grant may be conditional (i.e. obligation to spend the Grant in a particular manner, to account for that spend and repay the Grant if the Grant conditions are breached).</td>
</tr>
<tr>
<td><strong>Joint Commissioning</strong></td>
<td>Where the Council jointly with one or more local authorities or public bodies, enters into a contract.</td>
</tr>
<tr>
<td><strong>Lowest Cost</strong></td>
<td>In relation to a tender means the lowest price if payment is to be made by the Council, and the highest price if payment is to be made to the Council and, in either case, refers to a tender which conforms to the Council’s tendering requirements.</td>
</tr>
<tr>
<td><strong>Most Economically Advantageous Tender</strong></td>
<td>The most economically advantageous tender to the Council determined by criteria which may include quality, price, technical capacity, delivery period and or period of completion etc.</td>
</tr>
<tr>
<td><strong>Negotiated Procedure</strong></td>
<td>Whereby the Council has negotiated the terms of the Contract with one or more providers, contractors or suppliers selected by it.</td>
</tr>
<tr>
<td><strong>OJEU</strong></td>
<td>The Official Journal of the European Union in which all high value public sector contracts in the EU are advertised.</td>
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</tr>
<tr>
<td><strong>Open Procedure</strong></td>
<td>Involves accepting applications and tenders from all interested parties.</td>
</tr>
<tr>
<td><strong>Pre-qualification</strong></td>
<td>This procedure allows the Council to restrict the number of applicants (tenderers) to whom it issues an invitation to tender. The Council is permitted to shortlist applicants by using specified short-listing criteria including economic/financial standing, capacity and capability, management, equal opportunities, sustainability and health and safety.</td>
</tr>
<tr>
<td><strong>Procurement</strong></td>
<td>Means 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.</td>
</tr>
<tr>
<td><strong>Procurement Acceptance/Contract Award Report</strong></td>
<td>A written report produced in a standard form, detailing the procurement process adopted and the recommendation for award relating to a particular contract.</td>
</tr>
<tr>
<td><strong>Procurement Strategy</strong></td>
<td>A corporate document that outlines the Council’s approach to procurement and sets out the organisations procurement aims and objectives.</td>
</tr>
<tr>
<td><strong>Quality</strong></td>
<td>Fitness for purposes when judging against the standards specified in the</td>
</tr>
<tr>
<td><strong>Quotation</strong></td>
<td>A formal offer to supply or purchase goods, or materials, execute works or provide services (including consultancy), at a stated price based on the Council’s terms and conditions (£0 - £50k).</td>
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<tr>
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</tr>
<tr>
<td><strong>Restricted Procedure</strong></td>
<td>This procedure allows the Council to restrict the number of applicants (tenderers) to whom it issues an invitation to tender. The Council is permitted to shortlist applicants by using specified short-listing criteria including their economic/financial standing, capacity and capability, management, equal opportunities, sustainability and Health and Safety.</td>
</tr>
<tr>
<td><strong>Selection Criteria</strong></td>
<td>The criteria by which a short list of bidders is to be developed.</td>
</tr>
<tr>
<td><strong>Services</strong></td>
<td>Includes all services which the Council purchases or otherwise obtains, including advice, specialist consultancy work, agency staff etc.</td>
</tr>
<tr>
<td><strong>Short-listing</strong></td>
<td>The process of selecting bidders who are to be invited to quote or tender or to proceed to final evaluation.</td>
</tr>
<tr>
<td><strong>Tender</strong></td>
<td>A formal offer to supply or purchase goods, or materials, execute works or provide services (including consultancy), at a stated price based on the Council’s terms and conditions (Above £50k).</td>
</tr>
<tr>
<td><strong>Tenderer/Tenderers</strong></td>
<td>Individual, individuals, partnerships, companies or other bodies invited to submit quotes/tenders/prices for</td>
</tr>
</tbody>
</table>
| **providing the Council with services,**
| **supplying goods or carrying out works.** |
| Value | Values ‘up to’ a figure include that exact figure, but excluding Value Added Tax (VAT). |
| Variation and Variations | Means any alteration to a contract, including additions, omissions, substitutions, alterations, or changes of any other nature. |
| Works | Includes all works of new construction and repairs in respect of physical assets (buildings, roads, etc) including all those activities constituting works for the purposes of the Public Contract Regulations 2015. |

17.3 **Schools**

Schools must ensure that their financial arrangements comply with the current financial regulations, these CPRS and schemes of delegation issued by the Local Authority.
17.4 **Basic Principles**

All procurement procedures must:

17.4.1 realise value for money by achieving the optimum combination of whole life costs, and quality of outcome;

17.4.2 be consistent with the highest standards of integrity;

17.4.3 operate in a transparent manner;

17.4.4 ensure fairness in allocating public contracts;

17.4.5 comply with all legal requirements including European Union (EU) treaty principles;

17.4.6 support all relevant Council priorities and policies, including the Medium Term Financial Strategy; and

17.4.7 comply with the Council’s Corporate Strategy for Commissioning and Procurement.

NB These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise.

17.5 **Normal Procedures**

These CPRS relate to four categories of procurement based on the estimated value of the contract:

(i) Up to £5,000
(ii) £5,000 to £50,000
(iii) £50,000 to European Union (EU) Procurement Thresholds
(iv) Above EU Thresholds

** Current regulations require tenders to be advertised in the EU Journal where the value exceeds:
- £164,176 for the purchase of goods and services, and
- £4,104,394 for works

(Current values are set 1st January, 2016 – 31st December, 2017)

17.6 Officer Responsibilities

17.6.1 Officers

(a) Officers will comply with these Contract Procedure Rules (CPRS), the Council’s Constitution and with all UK and EU legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

(b) Officers will:

(i) take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRS;

(ii) keep the records required by Rule 17.27 of these CPRS in a manner determined by the Chief Finance Officer;

(iii) prior to letting a contract on behalf of the Council, check whether:

(A) the Council already has an appropriate contract in place in the Corporate Contracts Register; or

(B) an appropriate national, regional or other collaborative contract is already in place.

1. Where the Council already has an appropriate contract in place,
then this must be used unless it can be established that the contract does not fully meet the Council’s specific requirements in this particular case, and this is agreed following consultation with Corporate Procurement.

2. Where an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

(iv) ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

(c) Failure to comply with any of the provisions of these CPRS the Council’s Constitution or UK or EU legal requirements may be brought to the attention of the Monitoring Officer, Head of Internal Audit, or relevant Corporate Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

17.6.2 Chief Officers

Chief Officers will:

(a) ensure their Service Areas complies fully with the requirements of these CPRS;
(b) ensure contracts are recorded in the Corporate Contracts Register as held and maintained by Corporate Procurement;

(c) ensure that their Service Areas provides the requisite information to allow the Council to maintain its Procurement Work Programme.

17.7 **Exemptions**

17.7.1 Except where the Public Contracts Regulations 2015 apply, the Executive Committee has the power to waive any requirements within these CPRS for specific projects after considering a written report from the relevant Chief Officer. However, such actions should not be granted as a matter of administrative convenience but include:

(a) where grant conditions of funding bodies specify appropriate alternative arrangements;

(b) for works, supplies or services which are either patented or of such special character that it is not possible to obtain competitive prices;

(c) where relevant UK or EU legislation not otherwise referred to in these CPRS prevents the usual procurement process from being followed.

**NB** *Whilst grants are not covered by these CPRS, there are rules on the awarding of grants which do not need to be observed. The Council cannot simply choose to treat procurement as a grant in order to avoid conducting a competitive process.*

17.7.2 Additionally, these Rules may be waived or varied where the circumstances are certified by any two of the Chief Executive or Head of Legal & Corporate
Compliance or Chief Finance Officer (Section 151 Officer) as meeting any of the following criteria:

(a) In an emergency which must be first certified on the approved form as an emergency involving such urgency that it is not possible to comply with the CPRS; a written report must be presented by the Chief Officers to the next available meeting of the Executive Committee on the nature of the emergency and expenditure involved. A copy of the signed emergency certificate should be forwarded to the Chief Finance Officer and the Head of Legal and Corporate Compliance.

(b) In cases where contracts need to be awarded to take advantage of late funding opportunities or equivalent appropriate circumstances, and subject to the same approval procedures as for emergencies above.

17.7.3 These CPRS do not apply to contracts:

(a) for the execution of mandatory works by statutory undertakers;

(b) advice or instruction of Counsel made by the Head of Legal and Corporate Compliance;

(c) transactions made in relation to investments and borrowings made by the Chief Finance Officer;

(d) for Social Care (individual or collective) requirements, which may include but are not limited to; care support, development or advice to individual clients (children or adults), in order to provide for their well being. However, comparable controls should be demonstrated;
(e) 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;

(ii) by a National or Regional contracting authority where the process followed is in line with the Public Contracts Regulations 2006; or

(iii) under the terms of a Strategic Partnership arrangement approved by the Executive Committee.

17.8 Relevant Contracts

17.8.1 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, supplies or services. These include arrangements for:

(a) the supply or disposal of goods;

(b) the hire, rental or lease of goods or equipment;

(c) the delivery of services, including \(\text{but not limited to}\) those related to:

17.8.2 Relevant Contracts do \textbf{not} include:

(a) contracts of employment which make an individual a direct employee of the authority;

(b) agreements regarding the acquisition, disposal, or transfer of land; or
17.9 **Budget Approval**

17.9.1 No contract shall be let unless the expenditure involved has been included in approved capital or revenue budgets or has been otherwise approved by or on behalf of the Council.

17.9.2 In addition, departments are required to forward details of all awards above £5,000 to Corporate Procurement who will maintain a corporate register of all Acceptance Reports. Procurement Acceptance Reports will also be used for the tracking of procurement savings, sustainability benefits, and other data.

17.10 **Risk Assessment**

17.10.1 All procurements via Invitation to Tender, and Requests for Quotation where appropriate, must be supported by a risk assessment. This risk assessment must be carried out at the start of the procurement process.

17.10.2 The Chief Officer/decision maker must be informed of any risks identified.

17.10.3 Details of the process to be followed, including the approved risk log and matrix, are available from Corporate Procurement.

17.11 **Advertising**

17.11.1 In accordance with the principles of the Welsh Government’s “Opening Doors”, The Charter for SME Friendly Procurement, contracts exceeding £25,000 shall be advertised on the Council’s Contract Management System (E-procurement) and the Welsh National Procurement Website (Sell2wales), where
practical, and providing that it represents best value for the Council.

17.11.2 The Corporate Procurement Manager will be responsible for publishing all notices in relation to EU contracts to ensure that the minimum advertising requirements, in line with EU treaty principles are met.
17.12 Approved Lists and Framework Agreements

17.12.1 Approved Lists

(a) Approved lists must not be used where they are prohibited under the Public Contracts Regulations 2006.

(b) Approved lists should only be used following consultation with the Head of Legal & Corporate Compliance and Chief Finance Officer (Rule 17.18).

17.12.2 Framework Agreements

(a) Framework Agreements are agreements between the Council and one, or three or more providers for the provision of goods, works or services on agreed terms for a specific period, for estimated quantities against which orders may be placed if and when required during the contract period.

(b) The term of a Framework Agreement must not exceed four years and, while an agreement may be entered into with one providers, where an agreement is concluded with several providers, there must be at least three in number.

(c) Where Frameworks are awarded to several providers, contracts based on Framework Agreements may be awarded in one or two ways, as follows:

(i) where the terms of the agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition; or
(ii) where the terms laid down in the Framework Agreement are *not* precise or complete enough for the particular call-off, by holding a further competition in accordance with the following procedure:

(A) inviting the providers within the Framework Agreement, that are capable of executing the subject of the contract, to submit bids electronically via the Further Competition step on the e-tendering system, with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the contract;

(B) awarding each contract to the bidding provider who has submitted the best bid on the basis of the relevant Award Criteria set out in the Framework Agreement.

(d) Before committing the Council to any Framework Agreement as set out in 17.12.2, the Chief Officer must seek approval from the Head of Legal & Corporate Compliance and the Chief Finance Officer.

17.13 **Collaborative Arrangements**

17.13.1 When a requirement can be fulfilled through an existing arrangement already in place through another Public Sector Organisation and the requirements of the European Procurement Rules have been complied with by the Public Sector Organisation, the arrangement will be in compliance with these CPRS. This includes purchasing through arrangements that have been
entered into for example but not limited to Welsh Government, Value Wales, National Procurement Service (NPS), Welsh Purchasing Consortium (WPC) and the Government Procurement Service (GPS).

17.13.2 Before committing the Council to a contract as set out in 17.13.1, the Chief Officer must seek approval from the Head of Legal & Corporate Compliance and the Chief Finance Officer.

17.14 **Shared Services**

Prior to the Council committing to a shared service arrangement with another public sector body, approval in the first instance must be sought from Corporate Management Team.

17.15 **Estimating Contract Values**

17.15.1 The estimated value of a contract/procurement exercise shall be the value of the total consideration, net of VAT, which the Council expects to be payable under the contract.

17.15.2 In determining the value of the contract, the Council shall, where relevant, take account of:-

(a) Any form of option.

(b) The term/period of the proposed contract.

(c) Any rights to renew the contract/extend the contract period.

17.15.3 In determining the value of any contract where the actual term of the contract is not specified or uncertain, then the value shall be taken as equating to the value of the monthly consideration multiplied by 48 (i.e. the
estimated value over a 4 year period). Guidance should be sought from Corporate Procurement where assistance is required in estimating contract values.

17.16 **Competition Requirements/Assets for Disposal**

17.16.1 **Competition Requirements**

(a) The Procurement Officer must establish the total value of the procurement including whole life costs and incorporating any potential extension periods which may be awarded.

(b) Based on this value, quotations or tenders must then be invited in line with the following:

(i) **Low Value Procurement (Quotations) – Below £5,000**

Where possible, goods, services and works must be obtained via existing approved arrangements including:

(a) In-house services provision
(b) Established corporate Framework Agreements and consortia arrangements

Where there are no existing approved arrangements, Chief Officers should obtain a minimum of two quotations to demonstrate competition. A written record of enquiries must be made and retained in a manner approved by the Chief Finance Officer.

(ii) **Intermediate Value Procurement (Quotations) – Between £5,000 and £50,000**
Where possible, goods, services and works **must** be obtained via existing approved arrangements including:

(c) In-house services provision  
(d) Established corporate Framework Agreements and consortia arrangements

Where there are no existing approved arrangements, consideration should be given to advertising the procurement opportunity.

Chief Officers shall select suppliers for goods, services or works when the estimated total value does not exceed £50,000. At least three written quotations **must** be obtained and they shall accept the lowest or most economically advantageous quotation.

All contracts for works and services between £5,000 and £50,000 should use the appropriate category on the Select Tender List (where one is available) and should be entered in a Register of Minor Contracts held by each Department in a format to be determined by the Chief Finance Officer.

In exception circumstances e.g. where it can be demonstrated that there are insufficient numbers of specialist contracts, a Chief Officer may invite few than three quotations. The reasons for inviting few than three quotations **must** be clearly
recorded in the Written Record of Quotations.

**Request for quotations must be conducted electronically via the Authority’s E-tendering system as approved by the Chief Finance Officer.**

(iii) **Medium Value Procurement (Tenders) – Between £50,000 and £164,176 for goods and services or £4,104,394 for works**

A minimum of 5 contractors must be selected to be invited to tender. Contractors must be chosen by one of the following methods:

- Selective tendering from the appropriate approved contractors list under (Rule 17.18).

- Sourcing from an existing Framework Agreement (Rule 17.12).

- Competitive tendering by advertisement (Rule 17.11).

If it can be demonstrated that there are fewer than 5 suitable contractors, all those considered suitable must be asked to tender.

Before tenders are invited, the specialist list and tender evaluation matrix must be reported to the Chief Finance Officer and Head of Legal and Corporate Compliance for approval.
Invitation to Tenders must be conducted electronically via the Authority’s E-tendering system as approved by the Chief Finance Officer.

(iv) High value contracts invited in accordance with EU Procurement Directives – for goods and services above £164,176 and for works above £4,104,394

In the case of procurements that fall to be dealt with under the European Union Procurement Directives and the Regulations that implement them, the Chief Officer shall consult the Corporate Procurement Manager to determine the most appropriate procedure for conducting the procurement exercise.

Tenders will be invited in accordance with the requirements of the said Directives and Regulations for the time being in force.

Such Directives and Regulations will take precedence over these CRPS.

Invitation to Tenders must be conducted electronically via the Authority’s E-tendering system as approved by the Chief Finance Officer.

17.16.2 Assets for Disposal/Tenders Generating Income for the Council

(a) In circumstances where the Council is permitted to sell assets, in line with the disposal policies (such as surplus Land & Property), this will generate income to the Council. In all such
instances the Chief Officer should advertise the sale in the most appropriate manner to maximise market interest. This should include local press and on the Council’s website.

(b) The Chief Officer shall accept either the highest price or the most economically advantageous tender dependent on the stipulated award criteria, and keep a record of the tenders received and tender sums, in a manner to be determined by the Chief Finance Officer.

17.17 Pre-tender Market Testing and Consultation

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

17.17.2 When engaging with potential suppliers, the Council must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition. Assistance should be sought from Corporate Procurement where consideration is being given to pre-tender market testing.

17.18 Selection of Approved Contractors/Suppliers

17.18.1 The Head of Legal & Corporate Compliance shall maintain a Select List of Contractors who have met the Council’s criteria for invitations to tender. This list is categorised according to the type of work and contract values for which each contractor is approved. Local small or medium enterprises (SME’s) will be
encouraged via notices on the Council’s E-tendering procurement system and internet site to apply for inclusion on tender lists.

17.18.2 The Head of Legal & Corporate Compliance can add or delete from the list of approved contractors. A Chief Officer must submit a report, for the approval of the Head of Legal & Corporate Compliance and Chief Finance Officer, detailing any proposed amendments to the list. Repeated failures to submit competitive tenders may result in suspension of a firm from the list and this will be considered by the Head of Legal & Corporate Compliance at the pre-tender selection stage.

17.18.3 The Chief Officer, together with the Head of Legal & Corporate Compliance and the Chief Finance Officer or their representatives, shall select at least 5 contractors on the list appropriate for the type and value of work. The process is set out in the standard Pre-Tender document. Tenderers will be chosen in the following order:-

- up to four local contractors taken in rotation; “Local Contractor” means – a Contractor who has a main office/or depot presence within the County Borough (not a mere postal address);

- a minimum of three other Contractors taken in rotation;

- up to two additional Contractors out of rotation if, in the opinion of the Chief Officer and the Head of Legal & Corporate Compliance and the Chief Finance Officer or their representatives, to do so would be in the best interests of the Council and a
written explanation is provided by the Chief Officer to this effect; and

- before the tender documents are issued, at least four Contractors must confirm in writing their acceptance of the invitation to tender. The initial letters of invitation, together with the written acceptance must be produced prior to opening any tenders.

17.19 **Selection of Specialist Contractors/Suppliers**

17.19.1 Chief Officers may create specialist lists of at least 5 contractors for specific contracts. The Chief Officer shall seek expressions of interest in tendering, and produce a matrix showing the selection evaluation criteria. Before tenders are invited, the specialist list and tender evaluation matrix must be reported to the Head of Legal & Corporate Compliance and the Chief Finance Officer. If less than 5 contractors are available, the reason must be recorded in the report.

17.20 **Evaluation Criteria and Standards**

17.20.1 **Evaluation Criteria**

(a) In any procurement exercise the successful bid should be the one which either:

(i) offers the lowest price; or

(ii) offers the most economically advantageous balance 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 characteristics,
running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion.

(b) Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include, for example sustainability considerations, support for the local economy, or the use of sub-contractors. The bidding organisations’ approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be in line with the Council’s corporate objectives and must be objectively quantifiable and non-discriminatory.

(c) The procurement documentation should clearly explain the basis of the decision to bidding organisations, making 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.

(d) Prior to inviting tenders, the Chief Officer shall submit a Specialist List Report and Tender Evaluation Matrix (detailing award criterion, weightings etc.) to the Chief Finance Officer and Head of Legal & Corporate Compliance for approval.

17.20.2 Standards

(a) 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 with the contract.
17.21 **Request for Quotation/Invitation to Tender**

17.21.1 Requests for Quotations/Invitations to Tender must be issued in accordance with the requirements of these CPRS.

17.21.2 All Requests for Quotations/Invitations to Tender exercise with a value in excess of £5,000 **must** be administered via the Council’s E-tendering system. Corporate Procurement should be contacted for further assistance (Rule ?). 

17.21.3 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 electronic system, permission to conduct a procurement process by alternative means must be obtained from the Chief Finance Officer.

17.22 **Contract Documents**

17.22.1 **Format of Contract Documents**

The Council’s harmonised procurement documents or conditions issued by a relevant professional body will be used. Where there is any deviation from these, the documents to be used must be reviewed by the Head of Legal & Corporate Compliance before being issued. Standard contract terms and conditions and procurement templates are available from Corporate Procurement.

17.22.2 **Terms of Contracts over £50,000**

All contracts over £50,000 must state, if the contractor fails to meet the terms of the contract, the contractor is liable for liquidated damages, estimated by the Chief Officer as a genuine pre-estimate of the loss likely to be incurred due to the contractor’s default.
17.22.3 Security for Performing Contracts

The Head of Legal & Corporate Compliance and Chief Finance Officer, in conjunction with the Chief Officer, may determine whether security is required from a contractor.

17.22.4 Corruption: Cancellation of Contracts

(a) All contracts must state that the Council will cancel any contract and recover all resulting losses if the contractor or his employees or agents with or without his knowledge:

(i) Does anything improper to influence the Council to give him the contract;

(ii) Commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972.

(b) All Invitation to Tender must be accompanied by a requirement for tenderers to confirm that they have not participated in any form of collusive tendering arrangements with other parties.

17.22.5 Form of Contract

(a) All contracts including those signed by a Chief Finance Officer shall be in a form approved by the Head of Legal and Corporate Compliance.

(b) Technical Officers should prepare appropriate contract specification documents within one month of the award of the contract, for the Head of Legal & Corporate Compliance to prepare and forward to contractors for signing. The contractor should return the signed contract to the Head of Legal & Corporate Compliance within one month.
of receipt. Persistent failure to meet such deadlines will result in suspension from select tender lists.

(c) No payment shall be authorised until a formal contract is in being, or written authority is given by the Head of Legal & Corporate Compliance to make such a payment.

17.22.6 Contract Signature

(a) Contract agreement must:

(i) where the contract is in the form of a deed, be made under the Council’s seal and attested as required by the Constitution; or

(ii) where the contract is in the form of an agreement, either:

(A) be signed by at least two Officers of the Council authorised as required by the Constitution; or

(B) be formalised by the sending of an award letter and the subsequent issuing of a purchase order.

(b) The Chief Officer should contact the Head of Legal & Corporate Compliance on the use of deeds and agreements to form contracts.

17.22.7 Review of Tenders and Contracts

To ensure the integrity of the procurement process:

(a) all proposed Invitations to Tender, where they are not in compliance with the County Borough Council’s harmonised contract documentation or
standard terms and conditions issued by a relevant professional body, will be reviewed by the Head of Legal & Corporate Compliance;

(b) any proposed Invitations to Tender which are subject to the Public Contracts Regulations 2006, or which are deemed to be of high risk, must be reviewed by the Head of Legal & Corporate Compliance and the Chief Finance Officer;

(c) any proposed contract where there is any deviation from the contract terms included in the invitation to tender must be reviewed by the Head of Legal & Corporate Compliance.

17.23 **Shortlisting or Pre-qualification**

The Council shall only enter into a contract with a Contractor if it is satisfied as to the Contractor’s competencies.

Any Shortlisting (i.e. supplier selection or pre-qualification) must have regard to the economic, financial and technical standards relevant to the contract and the Evaluation Criteria. Special rules apply to contracts covered by the Public Contracts Regulations 2006. Further assistance may be obtained from Corporate Procurement when considering any form of Shortlisting or pre-qualification.

17.24 **Submission, Receipt and Opening of Tenders/Quotations**

Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation of tender, consistence with the complexity of the contract requirements.

Where the Public Contract Regulations 2006 apply, Part 3 of the Regulations lays down specific minimum time periods for tenders. Corporate Procurement must be consulted prior to initiating any EU procurement exercise.
17.24.1 Tenders

(a) As in Rule 17.21 (above), tenders, except those which have been approved exempt from electronic tendering, must be submitted electronically via the Council's E-tendering system.

(b) Invitations to tender must clearly set out the latest tender return date and time.

(c) Late tenders will not be considered.

(d) At least three (3) valid tenders must be received; otherwise a report must be submitted to Corporate Management Team (CMT) seeking approval of the appropriate action.

17.24.2 Quotations

As in Rule 17.21 (above), competitive quotations valued in excess of £5,000, must be submitted electronically via the E-tendering system, except where specifically exempt under Rule 17.21.2. Quotations submitted by an other means must not be accepted.

17.24.3 Electronic Arrangements

(a) Quotations and Pre-qualification Questionnaires which are received electronically via the E-tendering system may be opened by the Officers designated by the appropriate Chief Officer. The system will not allow any quotations to be opened until the allocated return date/time has passed.

(b) Tenders (in excess of £50,000) which are received electronically via the E-tendering system
will be opened by Officers designated by the Head of Legal & Corporate Compliance, the Chief Finance Officer and appropriate Chief Officer.

17.24.4 Hard Copy Arrangements

(a) In the event that “hard copy” tenders are to be accepted (see Rule 71.21 and Rule of these CPRS for guidance) these must be submitted to the Head of Legal & Corporate Compliance, sealed, in a plain envelope, without any mark revealing the bidding organisation’s identity and clearly and prominently marked with the word ‘Tender’, followed by the title of the contract.

(b) All hard copy tenders will be held by the Head of Legal & Corporate Compliance until the tender opening date/time has been reached.

(c) All hard copy tenders for the same contract will be opened at the same time by the Head of Legal & Corporate Compliance in the presence of the Chief Finance Officer, together with the relevant Chief Officer.

(d) The Chief Officer must keep a record of all tender sums submitted, showing the gross price of the contract, together with any essential criteria.

(e) The Head of Legal & Corporate Compliance, the Chief Finance Officer and Chief Officers can designate Officers to be present at tender opening. All such representatives shall be at Scale 7 or over.

(f) In the event that hard copy quotations are to be accepted (see Rule 17.21 and Rule 17.24.2 of these CPRS for guidance) these must be submitted in a plain envelope marked “Quotation
for ....... “ followed by a description of the goods, works or services being procured.

(g) Hard copy quotations may be received directly by Service staff. All quotations must be opened together once with the official return date/time has been passed in the presence of at least two (2) Officers.

(h) The Chief Officer must keep a record of all quotations submitted, showing the gross price of the contract, together with any essential criteria.

17.25 Clarification Procedures

17.25.1 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.

17.26 Evaluation and Checking of Tenders

17.26.1 Evaluation

(a) The evaluation of bids must be conducted in accordance with the evaluation criteria and weightings as set out in the invitation to tender documentation as provided to bidding organisations.

(b) The evaluation criteria and weightings must be predetermined and approved by the Head of Legal & Corporate Compliance and the Chief Finance Officer. Guidance relating to the application of evaluation criteria/weighting may be obtained from Corporate Procurement.

17.26.2 Checking Tenders
(a) The lowest or most economically advantageous tender must be checked for arithmetical errors and any other significant error of principle.

(b) Where such an error(s) occurs, the tenderer shall be given details in writing (but no other information) and afforded the opportunity of confirming the tender submission as corrected or withdrawing his tender, also in writing.

(c) Where deemed reasonable and in the best interests of the Council, the Chief Officer shall have the discretion to consider a request from the tenderer to correct genuine arithmetical errors. If the tenderer elects to amend his original tender figure to correct such errors and the corrected tender is still the lowest or most economically advantageous tender, then the tender may be adjusted and the corrected figure recommended for acceptance. If such errors result in a tender sum being reduced then only the corrected figure may be recommended for acceptance.

(d) If the first tender is withdrawn, the second lowest or second most economically advantageous tender is to be checked, if necessary, this tenderer given a similar opportunity.

(e) The Head of Legal & Corporate Compliance and the Chief Finance Officer shall determine whether any exception to the above procedure should be authorised by the Executive Committee in accordance with Rule 17.7.

17.27 Records
The Public Contracts Regulations 2006 require contracting authorities to maintain the following comprehensive records of procurement activities:

(a) contract details including value;

(b) selection decision;

(c) justification for use of the selected procedure;

(d) names of bidding organisations, both successful and unsuccessful;

(e) reasons for selection;

(f) reasons for abandoning a procedure.

The outcome of any competitive procurement process must be recorded in a Procurement Acceptance Report as determined by the Chief Finance Officer and Head of Legal & Corporate Compliance.

**Reporting Tenders**

Before accepting any tender, the Chief Officer must submit a Procurement Acceptance report to the Head of Legal & Corporate Compliance and the Chief Finance Officer, stating:

(a) a description of the contract;

(b) the reason for excluding any contractor;

(c) the names and abbreviated addresses of those contractors that accepted the invitation to tender in alphabetical order;

(d) details of the amount of all tenders received in ascending order;
(e) reasons why any tender has not been opened;

(f) any matters arising out of Rules 17.25 & 17.26;

(g) the name of the tenderer recommended for acceptance and the amount of the tender.

(h) the revenue implications on the budget or the approved capital costs of the scheme, and any further details as required by Financial Regulation 4.

17.28.2 Where a tender has a cumulative value in excess of £2,000,000 the Chief Officer shall submit a Procurement Acceptance Report to the Executive Committee for approval prior to entering into any contractual relationship.

17.29 **Accepting Quotations (Below £50,000)**

17.29.1 Acceptance of quotations shall be decided by the Chief Officer.

17.30 **Accepting Tenders (Above £50,000)**

17.30.1 Following approval of a report in accordance with Rule 17.28 the Chief Officer can accept the lowest or most economically advantageous tender in accordance with the approved tender evaluation criteria (Rule 17.20).

17.30.2 Any exception to this procedure must be reported to the Executive Committee for approval in accordance with Rule 17.1.

17.30.3 In circumstances where the Chief Executive, Chief Finance Officer and Head of Legal & Corporate Compliance, in conjunction with the Chief Officer,
determine that the contract is of such high value and/or complexity that it is deemed appropriate, a report will be prepared for the Executive Committee to consider acceptance of the tender. Such a report is mandatory for all contracts with a cumulative value in excess of £2,000,000.

17.31 **Award of Contract and Debriefing of Organisations**

17.31.1 **Award of Contract**

(a) 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.

(b) Where procurement has been subject to the Public Contract Regulations 2006, a 10 day standstill period, before a contract can be awarded, will need to be included in the procurement timetable. In addition, the Council is required to publish a contract award notice in the Official Journal of the European Union (OJEU) no later than 48 days after the award of contract.

All communications relating to EU procurements will be issued via Corporate Procurement.

(c) Decisions on award of contract must be made in accordance with the scheme of delegations in Council’s Constitutions.

17.31.2 **Debriefing**

(a) Once the contract award decision has been made, then save for the successful tenderer, all those expressing an interest will receive a standard regret letter containing details of:
(i) The award criteria and weightings.

(ii) The score that the tenderer obtained against those award criteria and weightings (where relevant).

(iii) The score the winning tenderer obtained;

(iv) The name of the winning tenderer.

(b) If any additional information is to be disclosed to tenderers, this must be agreed in advance with the Corporate Procurement Manager, taking into account the requirements of any legislation relating to the disclosure of information.

(c) Debriefing is recommended in public purchasing policy guidelines as a means of assisting tenderers to improve their competitive performance.

(d) For all procurements over £50,000, debriefing will be conducted by the Authorised Officer with support/input being provided by the Corporate Procurement Manager as required.

(e) The list of points where debriefing is required or may be appropriate includes:-

(i) selection: where the candidate is not selected (short listed) to take part in the tender process.

(ii) award: where the tenderer was not awarded the contract after evaluation of proposals/tender. Such debriefing should never be conducted before the contract award decision is made and all
unsuccessful tenderers have been formally notified of the same. It should be made clear that the debriefing process cannot be used to change the choice of a contractor or to re-open the selection process.

(iii) any potential supplier is asked to withdraw or withdraws during the Procurement.

(f) Debriefing will only be conducted at the request of the contractor.

(g) If the award of a contract is subject to the EU Public Sector Procurement Directive, there must be a standstill period of a minimum of 10 calendar days between communicating the award decision to all tenderers and conclusion of the contract.

17.32 **Progress and Variations**

17.32.1 The appropriate Chief Officer will complete and submit contract progress reports to the Executive Committee and the Corporate Overview Scrutiny Committee on an exception basis.

17.32.2 Contracts over £500,000 when a plus or minus 5% slippage occurs.

17.32.3 All contracts over £500,000 which over-run by 50 working days.

17.32.4 The Corporate Overview Scrutiny Committee may refer contract reports to the appropriate Scrutiny.

17.32.5 The Chief Officer can approve interim variations to a contract when this has a **cumulative** value not
exceeding £10,000 or 10% of the original sum whichever is the lower.

17.32.6 When a variation to a contract is required which will have a cumulative value exceeding £10,000 or 10% of the original contract sum, but is still within the specific approved budget for the contract, the Chief Officer shall present a detailed progress report to the Chief Finance Officer and Head of Legal & Corporate Compliance for information rather than approval.

17.32.7 When a variation is required which will have a cumulative value exceeding the specific approved budget for the contract, this shall not be accepted until the Executive Committee has approved a progress report presented by the Chief Officer.

17.32.8 All variation or progress reports (following approval), must be communicated to Corporate Procurement who will maintain the corporate contracts register.

17.32.9 Where a variation is being applied for by Corporate Procurement, it must also be scrutinised by Internal Audit, to ensure the robustness of the procedure.

17.33 **Contract Management/Monitoring**

17.33.1 Once awarded, all contracts must have an appointed Contract Manager who will be responsible for day to day aspects of the Contract.

17.33.2 The day to day management of the contract shall include monitoring in respect of:

   (i)  performance

   (ii) compliance with specification and contract terms

   (iii) cost
(iv) any value for money/best value requirements
(v) user satisfaction
(vi) risk management
(vii) compliance with these CPRS (i.e. reporting of progress/variations etc.)

17.34 **Contractors Claims**

Claims from or against contracts must be considered by the Chief Officer who must consult with the Head of Legal & Corporate Compliance and Chief Finance Officer before any decision is made and CPR 17.32 applies to any payment of a claim as if it was a variation.

17.35 **Termination of Contract**

For any contract exceeding £50,000 in value, early termination must be approved by the Head of Legal & Corporate Compliance and Chief Finance Officer. Contracts with a lesser value may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract, following consultation with the Head of Legal & Corporate Compliance.

17.36 **Prevention of Corruption – Bribery Act**

17.36.1 Bribery is a criminal offence. The Council complies with the Bribery Act 2010. The Council does not and will not, pay bribes or offer improper inducements to anyone for any purpose, nor does it or will it accept any bribes or improper inducements.

17.36.2 Any alleged acts of bribery must be immediately reported to the Chief Finance Officer and Head of Legal
& Corporate Compliance so that appropriate action can be taken.

17.37 **Declaration of Interests**

    Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

17.38 **Purchase of Vehicles and Plant**

    The Chief Officer holding the Council's Vehicle Operator's Licence, shall be responsible for the purchase or hire of vehicles and plant in accordance with these Standing Orders for Contracts.

17.39 **Internal Providers**

    Where an in-house service is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider service and external bidding organisations.

17.40 **External Body Grant Funding**

    17.40.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Chief Officer must ensure that any rules or conditions imposed by the funding body are adhered to, in relation to the requirements of these CPRS.

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

17.41 **Electronic Procurement and Purchasing**
17.41.1 Aligned to the Council’s continued modernisation agenda, the Chief Finance Officer via Corporate Procurement has implemented a number of electronic procurement systems that should be utilised as corporate solutions to support the cost efficient procurement of goods, works and services (Rule 17.21).

(a) E-procurement (sourcing, tendering and contract management)

(i) All Requests for Quotations with an estimated value above £5,000 and all Invitations to Tender must be administered electronically via the E-procurement system.

(b) E-purchasing (raising purchase orders)

(i) All purchase orders issued for the provision of goods, works and services must be raised electronically via the Council’s integrated E-purchasing system (Civica).

Chief Officers should contact the Corporate Procurement Manager for further advice in relation to the application of E-procurement.
APPENDIX A – EUROPEAN PUBLIC PROCUREMENT REGULATIONS 2015