

# **CONTRACT PROCEDURE RULES**

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## SUMMARY OF KEY CONTRACT PROCEDURE RULES

Total Value	Competition	Advertising	Authority to tender or award	Signature of Contract	CPR
<b>Up to £5,000</b>	No competitive quotations required, but must demonstrate value for money	None required	Service Director's delegated authority	Service Director or officer authorised by him/her.	Part 2 Part 3
<b><u>QUOTATIONS</u></b> <b><u>£5,000 to £24,999</u></b>	Three competitive quotes	None	Service Director's delegated authority (Officer Decision)	Service Director or officer authorised by him/her.	Part 2 Part 4
<b><u>TENDERS</u></b> <b>£25,000 to EU Thresholds</b>	Five suppliers invited to tender (Six if there is an in-house bidder)	Advert in National Procurement Website or select from a DPS or Framework Agreement	Goods & Services Up to £99,999 – Service Director's delegated authority (Officer Decision)  Light Touch Services/Works/Concession Contracts Up to £499,999 - Service Director's delegated authority (Officer Decision)  Goods & Services between £100,000 and the EU Threshold – Portfolio Holder decision (ICMD)  Light Touch Services/Works/Concession Contracts between £500,000 and the relevant EU threshold – Portfolio Holder decision (ICMD)	Service Director  or Sealed by the Council  (as appropriate)	Part 2 Part 5

<p><b><u>EU TENDERS</u></b> <b>Over EU Thresholds</b></p>	<p>Use Restricted/Open procedure (unless advised otherwise by Legal).</p>	<p>OJEU advert and National Procurement Website</p> <p>Or select from a DPS or Framework Agreement</p>	<p>Goods &amp; Services between the EU Threshold and £2m – Portfolio Holder decision (ICMD)</p> <p>Goods &amp; Services £2m+ - Cabinet decision.</p> <p>Light Touch Services/Works/Concession Contracts over the relevant EU threshold – Cabinet decision.</p>	<p>Service Director or Sealed by the Council (as appropriate)</p>	<p>Part 2 Part 6</p>
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## Summary of Advertising, Notices and Reports Requirements

	Advertising/Notice Requirements	Advertising stage	Contract Award Notices	Reports
<b>Up to £25k</b>	None required	None Required	None required	None required but records to be kept
<b>Between £25k and Threshold</b>	Advert required unless using a Dynamic Purchasing System or Framework Agreement	Where advertised opportunity must also be published in National Procurement Website.	None required.	None required but records to be kept and held on eProcurement System.
<b>Above Threshold</b>	Advertise in OJEU	Must advertise in National Procurement Website via Council's eProcurement system	Must publish to OJEU and National Procurement Website within 30 days of contract award, conclusion of a Framework Agreement or Call Off from a Dynamic Purchasing System.	For every contract awarded or Framework Agreement and Dynamic Purchasing System established requirement to draw up a report with information set out in PCR 84
<b>Call Offs from Framework Agreements</b>	None required	None Required	None Required	Not required for Call off from Framework Agreement unless requested by Procurement Service.

# CONTRACT PROCEDURE RULES

## Part 1 Introduction

The Local Government Act 1972 requires the Council to have standing orders for how it enters into contracts. These Contract Procedure Rules are the standing orders required by the 1972 Act. They form part of the Council's Constitution and are, in effect, the instructions of the Council to officers and members for entering into contracts on behalf of the Council.

The purpose of these Contract Procedure Rules is to set clear rules for the purchase of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach or challenge. Accordingly, these Contract Procedure Rules must be followed for **all** contracts for:

- the supply of goods to the Council;
- the supply of services to the Council; and
- the carrying out of works for the Council.

The Council is also subject to the EU law with regard to public procurement, which requires all contract procedures, of whatever value, to be open, fair and transparent. These Contract Procedure Rules provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with EU law.

Following the Contract Procedure Rules will also help to ensure that the Council obtains value for money when it buys works, goods or services.

These Contract Procedure Rules are to protect the interests of the Council, its officers and members and the communities of Pembrokeshire.

For the avoidance of doubt, the Director of Social Services will in all cases retain authority to tender or award contracts which relate to the social service functions contained in Schedule 2 of the Social Services and Well-being (Wales) Act 2014.

## Part 1 Definitions

<b>Advertised</b>	<p>(a) the Council advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract; and</p> <p>(b) accordingly, the Council does not advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a Framework Agreement), regardless of how it draws the opportunity to the attention of those economic operators</p>
<b>Award a contract</b>	means to accept an offer by a supplier;
<b>Cabinet</b>	means the Leader of the Council and the other members of the Council's Executive, who are all portfolio holders;
<b>Chief Finance Officer</b>	means the officer designated under section 151 of the Local Government Act 1972. The Director of Resources is the Chief Finance Officer;



<b>Concession Contract</b>	<p>means a either a works or services contract for pecuniary interest concluded in writing by means of which one or more contracting authorities entrust the execution of works or the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the contract or in that right together with payment; and that meets the requirements of 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).</p> <p>Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are :</p> <ul style="list-style-type: none"> <li>(a) the award of the contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and</li> <li>(b) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.</li> </ul>
<b>Contract or contract</b>	means the bargain or agreement between the Council and a supplier for the supply of works, goods or services including Concession Contracts;
<b>contract document</b>	means the document setting out the terms and conditions of the contract. A purchase order is a contract document. Although at law a verbal agreement may be a contract, contracts for the Council must always be supported by appropriate written contract documents;
<b>Contractor</b>	see <b>Supplier</b> ;
<b>National Procurement Website</b>	means a web-based portal provided by or on behalf of the Welsh Government for the publication of information about contracts awarded ( <a href="https://www.sell2wales.gov.uk">https://www.sell2wales.gov.uk</a> )
<b>corporate contract</b>	means a contract for the supply of works, goods or services to the Council as a whole rather than for an individual service area e.g. stationery. Corporate contracts are generally procured and managed by the Procurement Service.
<b>Councils Code of Conduct</b>	means the Council's employee code of conduct which sets out the standards of behaviour that the Council expects of its employees as amended from time to time
<b>Council's Financial Regulations</b>	means the Council's financial regulations which contain all financial accountabilities in relation to the running of the Council, including the Council budget and Council policy framework

<b>Dynamic Purchasing System or DPS</b>	means the system referred to in regulation 34 of the Public Contracts Regulations 2015. A DPS is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time.
<b>E-Procurement System</b>	means Bravo Solutions or successor system approved by the Procurement Service.
<b>EU Regulations</b>	means the the Public Contracts Regulations 2015 (as amended) or the Concession Contracts Regulations 2016 (as applicable) as amended from time to time;
<b>EU Threshold</b>	means the value in pounds sterling above which the EU Regulations apply to a proposed public contract
<b>Framework Agreement</b>	means an agreement between one or more contracting authorities and one or more suppliers which fixes the terms and conditions under which the supplier will enter into one or more specific contracts with an authority during the term of the framework agreement, which should be no more than 4 years;
<b>Full Regime</b>	means the rules and procedures under Public Contracts Regulations 2015 other than those for the Light Touch Regime
<b>Goods</b>	see Supplies contract
<b>Light Touch Regime</b>	means the rules and procedures for the Light Touch Regime Services set out in Chapter 3 of the Public Contracts Regulations 2015 (as amended)
<b>Light Touch Regime Services</b>	Means those services listed in Annex 1 of the CPRs
<b>Members of staff</b>	means individuals who carry out the day to day work of the Council, either on a permanent or a temporary basis, and includes officers, interim post-holders and agency staff but not consultants or suppliers;
<b>Monitoring Officer</b>	means the officer designated under section 5 of the Local Government and Housing Act 1989 to monitor the Council's compliance with the law and rules of administration.
<b>Officer</b>	means an individual who holds a post on the Council's establishment;
<b>OJEU</b>	means the Official Journal of the European Union;

<b>Public procurement legislation</b>	includes the Public Contracts Regulations 2006, Public Contracts Regulations 2015 (as amended), Concession Contracts Regulations 2016, the Treaty on the Functioning of the European Union (TFEU), EU Directives relating to public contracts, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them;
<b>Purchase order</b>	means the Council's official order form for the purchase of Works, Goods or Services;
<b>Quotation</b>	means an offer by a Supplier to undertake a contract of £5,000 or more but less than £25,000 in value;
<b>Service director</b>	means a Director.
<b>Services contract</b>	means a contract for the provision of services to the Council;
<b>SME</b>	means an enterprise falling within the category of micro, small and medium-sized enterprises
<b>Community Benefit</b>	means activities, approaches and services that help to deliver measurable benefits to local communities' safety, health, prosperity and quality of life, particularly: <ul style="list-style-type: none"> <li>• Sustainability – environmental impact</li> <li>• Local economy</li> <li>• Support of corporate objectives</li> <li>• Beneficial impact on local communities – including furthering equalities and community cohesion.</li> </ul>
<b>Supplier</b>	means a supplier of works, goods or services to the Council;
<b>Supplies contract</b>	means a contract for the sale or hire of goods to the Council and includes, where appropriate, installation of goods;
<b>Tender</b>	means an offer by a supplier to undertake a contract of £75,000 or more in value;
<b>TUPE Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of them.

<b>Voluntary transparency notice</b>	means a notice published in OJEU by Procurement on the request of the service director, which contains the name and contact details of the Council; a description of the object of the contract; a justification of the decision of the Council to award the contract without advertising it in OJEU; the name and contact details of the supplier to be awarded the contract and any other information the Procurement Service considers it useful to include;
<b>Works contract</b>	means a contract for the construction, repair or maintenance of a physical asset e.g. a building or a road;
<b>Writing</b>	Includes information transmitted by electronic means where the context requires it

## Part 2

### All contracts, whatever their value

#### 1. APPLICATION AND SCOPE

These Contract Procedure Rules

Apply to:

- 1.1 **All** contracts for the supply of works, goods or services **to** the Council, regardless of value including Concession Contracts.
- 1.2 Contracts for the engagement of consultants to provide services to the Council that are part of a discrete project e.g. carrying out research, giving advice or managing a project or not part of the day to day work of the Council.

Do not apply to:

- 1.3 Contracts for the purchase or sale of any interest in land (including leasehold interests).
- 1.4 Contracts for the appointment of individual members of staff, including members of staff sourced through employment agencies under a corporate contract.
- 1.5 Grant agreements, either where the Council is giving or receiving a grant (Where the Council carries out a procurement using grant monies received the CPRs will apply unless other provisions are to apply as a requirement of the grant funder).
- 1.6 Contracts for the supply of works, goods or services to schools procuring for themselves **with their own budgets**. Schools are, however, subject to the EU Regulations and Financial Regulations for Schools.
- 1.7 Supply of works, goods and services **by** the Council.
- 1.8 If a contract is being procured in collaboration with other local authorities, the Contract Procedure Rules of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own contract procedure rules. Where EU Regulations apply the Council is jointly responsible with the other local authorities for compliance with EU legislation

#### 2. COMPLIANCE

- 2.1 Every contract entered into on behalf of the Council must comply with
  - these Contract Procedure Rules;
  - the Council's Financial Regulations; and
  - all relevant UK and EU legislation.

- 2.2 Each service director is responsible for ensuring that his/her department complies with these Contract Procedure Rules
- 2.3 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council **must** comply with these Contract Procedure Rules and failure to comply with these Rules may result in disciplinary action and legal proceedings against members of staff and consultants concerned.
- 2.4 Work must not begin under a contract until the contract document has been signed by both parties (or, if the only contract document is a purchase order, until the purchase order has been issued).
- 2.5 If a service director wishes to nominate a particular sub-contractor to a main contractor, the procedures in these Contract Procedure Rules must be followed to select the sub-contractor as well as the main contractor.

### **3. CONFLICTS OF INTEREST**

- 3.1 All members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Code of Conduct, which all employees of the Council have signed and agreed to be bound by and includes:
- not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with;
  - not working for organisations or suppliers that the Council has dealings with;
  - notifying the Chief Executive and relevant service director if an officer has links with (e.g. a family member or close friend works for) an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council.
- 3.2 If an elected member of the Council or a member of staff has an interest, financial or otherwise, in a contract or proposed contract, he/she must declare it in writing to the service director as soon as he/she becomes aware of the interest. An elected member or member of staff who has an interest in a contract must not take part in the procurement or management of that contract.

### **4. PREVENTION OF CORRUPT ACTIVITY**

- 4.1 A contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge):
- offers or promises or gives a financial or other advantage to any elected member of the Council, any member of staff or any consultant in connection with the contract; or

- requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the contract is performed improperly.

A declaration to this effect must be included in all invitations to tender or quote.

- 4.2 Any elected member of the Council, member of staff or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the corrupt acts referred to in CPR 4.1, must report that to the Monitoring Officer and/or the Governance, Risk and Assurance Manager Investigation immediately.
- 4.3 The attention of officers is drawn to the Council's Code of Conduct and Disciplinary Rules and Procedures. **Non-compliance with these Contract Procedure Rules constitutes grounds for disciplinary action and may be considered gross misconduct.**

## 5. DUTIES OF SERVICE DIRECTORS

- 5.1 To ensure that all contracts within his/her department comply with Contract Procedure Rules, Financial Regulations and all applicable public procurement legislation.

To plan the procurement of and manage contracts within his/her department to ensure that contracts

- deliver value for money;
- are operated effectively, efficiently and economically; and
- are operated within the terms of the contracts themselves, so that the Council is not at risk of being in breach of contract.

- 5.2 To ensure all contracts are added to the Council's overall Contracts Register. Contracts for less than £25,000 need not be recorded in the register.

- 5.3 To keep adequate records to show compliance with Contract Procedure Rules, Financial Regulations and all relevant legislation in his/her department.

## 6. VALUATION OF CONTRACTS

- 6.1 The service director responsible for each contract must determine an estimated value for the contract before any offers are sought.

- 6.2 The value of a contract is the **total** amount that the Council expects to pay for the contract, including any contract extension period. This may be a lump sum e.g. £250,000 or a periodic payment e.g. £50,000 per year for a 5 year contract = £250,000. If the contract is for an indefinite term, the value is the amount the Council expects to pay or receive over four years.

The value of a Concession Contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of value

added tax, as estimated by the contracting authority, in consideration for the works and services which are the object of the Concession Contract and for the supplies incidental to such works and services.

- 6.3 The service director must not try to avoid compliance with these Contract Procedure Rules or the EU Regulations by splitting a procurement for the same or similar works, goods or services into smaller, separate contracts except where permitted by the EU Regulations to divide contracts into lots. If it will achieve better value for money, contracts for the same or similar works, goods or services must where reasonably practicable be aggregated into a single procurement of greater value with lots where possible.

## **7. USE OF CORPORATE CONTRACTS AND COLLABORATION**

- 7.1 If there is an existing corporate contract for the supply of any works, goods or services, the service director must buy through that contract, rather than awarding a separate contract for his/her own department. A list of current corporate contracts can be found on the intranet or from the Procurement Service.
- 7.2 Where ever possible and practicable procurements should be done in collaboration with other public authorities and/or other service areas within the Council.

## **8. FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS**

- 8.1 The Procurement Service must be consulted before commencing a tender or joining or buying from a Framework Agreement or a Dynamic Purchasing System set up by an organisation or public authority other than the Council where the expenditure will be more than the EU Threshold except for Works contracts where Legal Services must be consulted if the value is over £1m.
- 8.2 The Procurement Service must be consulted before setting up a Framework Agreement or a Dynamic Purchasing System.
- 8.3 Cabinet authority has been delegated to the Head of Procurement to join consortia, buying groups, Dynamic Purchasing Systems, or Framework Agreements set up by another body, and who must be consulted before joining or buying from those consortia, buying groups, Dynamic Purchasing Systems or Framework Agreements.
- 8.4 A decision at the appropriate level will still be required to award a contract procured through consortia, buying groups, Dynamic Purchasing Systems, Approved Lists or Framework Agreements (see CPR 35.2, 35.3 and 35.4). This applies both to Dynamic Purchasing Systems, or Framework Agreements set up by the Council alone or set up by another public authority.
- 8.5 To select a supplier for a specific contract under a single or multi-supplier Framework Agreement or to conduct a Framework Agreement mini competition or award a contract under a Dynamic Purchasing System the service director, in consultation with the Procurement Service, must follow



the procedure set out in that Framework Agreement or Dynamic Purchasing System.

- 8.6 Successful and unsuccessful suppliers who participated in a Framework Agreement mini-competition or, a Dynamic Purchasing System contract award procedure must be notified of the decision to award the specific contract. The notification letter must be sent via the eProcurement system.
- 8.7 All Framework Agreements, Dynamic Purchasing System agreements, and specific contracts must be executed in accordance with CPR 38.
- 8.8 A Framework Agreement must not be longer than 4 years unless specifically agreed with Legal Services.
- 8.9 For all procurements, the requirements on advertising, notices and reports in the table headed Advertising, Notices and Reports for procurements must be complied with.

## **8A ELECTRONIC TENDERS AND E-PROCUREMENT**

- 8A.1 Tenders may only be invited via the eProcurement System. Any member of staff or consultant acting for the Council who receives a tender by email must delete it without opening it.
- 8A.2 Any tender documents which need to be signed by the bidders must be signed by hand by an authorised representative of the tenderer. Such documents must be submitted as part of the tender in electronic form.

## **8B CONTRACT TERMS**

- 8B.1 **All contracts**, whatever their value, must include:
- a clear and comprehensive description of the works, goods or services to be supplied (the specification);
  - the price to be paid or income or share to be received by the Council under Concession Contracts;
  - appropriate and adequate levels of insurance cover
  - the time or times within which the contract is to be performed;
  - a provision allowing the Council to use information gained from the contract for preventing and detecting fraud;
  - a provision requiring the supplier to comply with requests under the Freedom of Information Act 2000 for information relating to the contract; and
  - a right for the Council to terminate the contract immediately in the event of corrupt activity and for the Council to recover its losses arising from the termination.
- 8B.2 The service director must:
- Require the Supplier to maintain appropriate and adequate levels of insurance cover, in consultation with the Council's Insurance Manager, for employer's liability, public liability, products liability, all risks/contract works and professional indemnity insurance.

Unless otherwise agreed by the Insurance Manager, the minimum levels of cover shall be

- £5 million for employer's liability insurance
- £5m for public liability and products liability insurance
- £2 million for professional indemnity insurance.

All policies must contain an indemnity of principals clause.

- Ensure that the supplier holds the required insurance cover at the start of the contract, renews the policies as necessary during the contract period and, following each renewal, provides details verified by his insurer or broker of his insurance for the Council's records.

## **8C PAYMENTS UNDER THE CONTRACT**

- 8C.1 As a general rule, **all** contracts, whatever their value, must provide for payment by the Council **after** supply of the works, goods or services. Periodic or stage payments under a contract are acceptable, may incentivise performance by the Supplier and in the case of most Works contracts are required by law. Exceptionally, and only with the consent of the Chief Finance Officer, a contract may provide for payment in advance of contract performance.

**Part 3 – BELOW QUOTATION LEVEL**  
**Contracts below £5,000**

**9. COMPETITION**

- 9.1 The service director need not obtain competitive quotations for contracts of less than £5,000 in value, but must be able to demonstrate that the Council is receiving value for money. Where appropriate, relevant consultation must be carried out.

**10. PURCHASE ORDERS & TERMS AND CONDITIONS OF CONTRACT**

- 10.1 All contracts must be in writing and a purchase order must be issued for every contract, unless payment by purchase card.
- 10.2 Refer to CPR 8.B.

**11. AUTHORITY TO ENTER INTO A CONTRACT – below Quotation level**

- 11.1 Service directors have delegated authority to enter into contracts below the Quotation level, provided that a budget has been allocated for that expenditure.

**12. SIGNATURE OF THE CONTRACT – below Quotation level**

- 12.1 Contracts below the Quotation level must be signed for and on behalf of the Council by the service director responsible for the contract or an officer authorised by him/her.

**Part 4 – QUOTATION LEVEL**  
**Contracts from £5,000 to £24,999**

**COMPETITION**

- 13.1 The service director must obtain a minimum of three competitive quotations for contracts over £5,000 but less than £25,000 in value and must maintain an audit trail of the procurement. Where appropriate, relevant consultation must be carried out.

**14. PURCHASE ORDERS & TERMS AND CONDITIONS OF CONTRACT**

- 14.1 All contracts must be in writing and a purchase order must be issued for every contract.
- 14.2 Refer to CPR 8.B.

**15. AUTHORITY TO ENTER INTO A CONTRACT – within Quotation level**

- 15.1 Service directors have delegated authority to enter into contracts within the Quotation level, provided that a budget has been allocated for that expenditure.

**16. SIGNATURE OF THE CONTRACT – within Quotation level**

- 16.1 Contracts within the Quotation level must be signed for and on behalf of the Council by the service director responsible for the contract or an officer authorised by him/her.

**Part 5 - TENDERS**  
**Contracts from £25,000 to the EU Threshold**

**17. COMPETITION**

17.1 Competitive tenders must be sought for contracts £25,000 or more in value.

**18. PRELIMINARY STEPS – Tenders**

18.1 An initial Sustainable Risk Assessment (SRA) must be carried out with the Procurement Service and, if required, a full SRA undertaken.

18.2 Where appropriate, relevant consultation must be carried out.

**19. PURCHASE ORDER**

19.1 All contracts must be in writing and a purchase order must be issued for every contract.

**20. SPECIFICATION – Tenders**

20.1 A clear and comprehensive specification of the Council's requirements must be prepared with regard to the works, goods or services to be supplied.

20.2 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the service director to see whether the Council's requirements are being met by the supplier.

20.3 Consultants who assist in the preparation of a specification must not be invited to tender for the contract where it is likely to distort competition.

**21. TERMS AND CONDITIONS OF CONTRACT – Tenders**

21.1 Refer to CPR 8.B.

**22. AUTHORITY TO INVITE AND EVALUATE TENDERS – Tenders**

22.1 Subject to CPR 22.2, the decision to invite and evaluate tenders for a contract and the decision to delegate the award of the contract can be contained in one report to the portfolio holder.

22.2 Service directors have delegated authority to invite and evaluate tenders and award the following contracts:

- Goods & Services up to £99,999

- Light Touch Services, Works and Concession Contracts up to £499,999

Provided that a budget has been allocated for that expenditure. The decision to invite and evaluate tenders and the decision to award a contract must be recorded on two separate Officer's Decision forms. However, where the call-off is from a single supplier Framework Agreement then it is only necessary to have a decision to award the contract provided that the Framework Agreement has been set up by the Council or approved for use under CPR 8.3.

22.3 A portfolio holder may authorise the invitation and evaluation of tenders and/or the award of the following contracts:

- Goods and Services between £100,000 and £2 million
- Light Touch Services, Works and Concession Contracts between £500,000 and the relevant EU Threshold.

Provided such contracts are within the scope of his/her portfolio and a budget has been allocated for that expenditure.

Portfolio holders may delegate authority to service directors to award contracts for goods and services between £100,000 and the relevant EU Threshold.

## **23. THE TENDER PROCEDURE - Tenders**

23.1 The following tender procedures must be followed when letting contracts from £25,000 to the relevant EU Threshold in value.

23.2a For all Services and Supplies (except Light Touch Regime Services) contracts between £25,000 and the EU Threshold for Services and Supplies an open procedure must be followed and the opportunity must be placed in the National Procurement Website.

23.2b For Works contracts, Light Touch Regime Services contracts or Concession Contracts between £25,000 and the relevant EU Threshold a two stage procedure with a PQQ may be used. The service director may select a shortlist of at least **five** suppliers to be invited to tender.

23.3 A PQQ must not be issued for contracts below the EU Threshold for Services (except Light Touch Regime Services), however one may be used to obtain information or evidence which the Council requires for the purpose of assessing whether tenderers meet requirements or minimum standards of suitability, capability, legal status or financial standing only provided that each such question is relevant to the subject-matter of the procurement and proportionate.

23.4 To ensure genuine competition, the minimum number of Suppliers invited to tender is five or, if there is an in-house bidder, six. If there are fewer than five suitable expressions of interest in being invited to tender, then the minimum number of Suppliers to be invited to tender may be reduced as appropriate subject to ensuring value for money.

23.5 The invitation to tender must be issued by the Procurement Service.

23.6 The instructions to tenderers must state

- the latest date and time for receipt by the Council of tenders.

- tenders must be returned to the Council via the eProcurement System tenders that arrive at the Council after the latest date and time specified, **whatever the circumstances**, will be retained unopened until after the tenders properly received have been opened and recorded, and will be opened and considered by the Council only if the Head of Legal & Committee Services certifies that they are satisfied that the tender has not gained any advantage over other tenders by the delay.;
    - any contract will be terminated immediately, and any losses to the Council arising from the termination recovered from the Supplier, if the Supplier, or anyone acting on his behalf (with or without the Supplier's knowledge) :
      - (1) offers or promises or gives a financial or other advantage to any elected member of the Council, any member of staff or any consultant in connection with the contract; or
      - (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the contract is performed improperly.
    - Such other terms as the Procurement Service may require.
- 23.7 Appropriate time must be allowed for submission of tenders. The minimum is fourteen days from the date of the invitation to tender.
- 23.8 Amendments to invitation to tender documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and sent to all Suppliers who have been invited to tender. One or more amendments must be numbered consecutively. Amendments must be sent out in sufficient time to allow suppliers to adjust their tenders before close of tenders. If necessary, the tender period must be extended to allow for this.
- 23.9 Until the contract has been awarded, the information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Council's Monitoring Officer.
- 23.10. A tender that does not comply with the instructions to tenderers or is conditional must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated unless Procurement advises otherwise.**
- 23.11 Negotiations with suppliers who have tendered for a contract are not permitted by EU law and are therefore unlawful, for contract values below the EU Threshold. After tenders have been opened, **and before the tenders have been scored**, the service director may require one or more tenders to be clarified by the tenderer. Clarification questions and answers must be fully documented and the relevant clarifications incorporated in the contract document. Clarifications must not make any substantive changes to the tender. Tenders must not be scored until clarifications have been completed.
- 23.12 A Supplier's tender is their offer to the Council, which the Council may accept as it stands subject to CPR 32.8. If a tenderer attempts to alter his Tender

after the last date for receipt of tenders, he must be given the opportunity to stand by or withdraw his original Tender. Correction of an obvious arithmetical error may be accepted.

## **24. EVALUATION OF TENDERS**

- 24.1 Tenders should normally be evaluated on the basis of 'most economically advantageous' to the Council. Exceptionally, and only with the permission of the Head of Procurement, tenders may be evaluated on the basis of price only. The basis of evaluation must be stated in the invitation to tender. If the basis of evaluation is 'most economically advantageous', the criteria for evaluation must be set out in the invitation to tender, in descending order of priority, with the weightings to be given to them.
- 24.2 If the basis of evaluation is price only, only the lowest Tender (if payment is to be made **by** the Council) provided that the quality element in the value for money ratio is confirmed or the highest Tender (if payment is to be made **to** the Council) provided that the quality element in the value for money ratio is confirmed may be accepted.
- 24.3 If the basis of evaluation is 'most economically advantageous', the service director must arrange for an appropriate evaluation panel to consider the tenders and evaluate them against the criteria and weightings stated in the invitation to tender. The evaluation panel may (subject to appropriate conflict of interest checks and confidentiality agreements) include service users and/or external consultants but must not include elected members of the Council.
- 24.4 All valid tenders received must be evaluated.
- 24.5 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.
- 24.6 If no suitable tenders are received, Legal Services must be consulted as to how the works, supplies or service concerned may be procured.
- 24.7 A Tender that exceeds the budget allocated must not be accepted. If a tender exceeds the budget allocated, the service director must obtain an additional allocation of funds in accordance with Financial Regulations **before** the tender may be accepted.
- 24.8 If all valid tenders are too high to be accepted and there is no further allocation of additional funds, the service director may delete part of the specification and ask all suppliers invited to tender to re-price their tenders, by submitting a fresh form of tender. In such cases, the service director must set out the deletion in a bill of reductions or other document, to be incorporated into the contract document.
- 24.9 Tenders must not be value-engineered with one or more suppliers except with the specific consent of and in consultation with Legal Services. This is to ensure that no unlawful post-tender negotiations take place.
- 24.10 If the contract will result in the application of the TUPE Regulations, the service director must ensure that the successful tenderer has dealt with all employee matters, including pay, conditions of employment and pension rights and benefits, in his Tender and will give all appropriate indemnities in



the contract. The Council will give appropriate indemnities in respect of employee matters **only** if employees are transferring from Council employment to the successful tenderer and in no other circumstances.

24.11 The service director is responsible for producing a full tender report, which should:

- confirm that the tender procedure has complied with these Contract Procedure Rules;
- list the tenders invited and received;
- list the evaluation criteria and weightings; and
- show the scoring of tenders on evaluation.

The tender report must be sent to the decision-maker before the decision to award the contract is made.

## **25. AWARD OF THE CONTRACT – Tenders**

25.1 Refer to CPR 22.

25.2 As soon as practicable after the decision to award the contract has been made, the service director must write to inform the successful and unsuccessful tenderers of that decision.

25.3 The service director shall ensure that within a reasonable time of the award of the contract, the award is published in the National Procurement Website

25.4 Information may be withheld from publication where its release:

(a) would impede law enforcement or would otherwise be contrary to the public interest,

(b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or

(c) might prejudice fair competition between economic operators.

## **26. SIGNATURE OF CONTRACT – Tenders**

26.1 The Supplier **must not** be allowed to begin work on the contract until the contract documents have been signed or sealed as appropriate by both parties.

26.2 Contracts below the relevant EU Threshold, which are not required to be sealed must be signed for and on behalf of the Council by the service director responsible for the contract personally.

## Part 6 – EU TENDERS

### Contracts over the EU Threshold

#### 27. COMPETITION

27.1 Competitive tenders must be sought for contracts over the EU Threshold.

#### 28. SELECTING THE PROCUREMENT ROUTE – EU Tenders

28.1 A commercial strategy must be agreed with Procurement **before** seeking authority to invite tenders. This must be completed well in advance of beginning the tender process and must be in the format approved by the Procurement Service.

28.2 **At the same time** as submitting the procurement request to engage Procurement in developing a commercial strategy, the service director must give full instructions to the Legal Services to draft or approve terms and conditions of contract in accordance with CPR 30.

28.3 An initial Sustainable Risk Assessment (SRA) must be carried out with the Procurement Service and, if required, a full SRA undertaken.

28.4 Where appropriate, the service director must carry out relevant consultation.

#### 29. SPECIFICATION – EU Tenders

29.1 An appropriate specification must be prepared, which sets out a clear and comprehensive description of the Council's requirements with regard to the works, goods or services to be supplied.

29.2 All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. Named products or manufacturers **must not** be specified.

*Advisory note: Named products can be specified if the words “or equivalent” are added after the named product, but it is better to describe the features that required in the product.*

29.3 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the service director to see whether the Council's requirements are being met by the Supplier.

29.4 All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants who assist in the preparation of a specification must not be invited to tender for the contract. The people who prepare the specification should, as a rule, be part of the panel that evaluates tenders.

## **30. TERMS AND CONDITIONS OF CONTRACT**

- 30.1 For contracts over the EU Threshold for Services and Supplies and for contracts over the value of £1m for Works and Concession Contracts, full instructions must be given at the earliest opportunity and in any event not later than submitting the procurement request to Legal Services to draft the terms and conditions of contract or to approve standard terms and conditions of contract e.g. NEC.
- 30.2 The OJEU contract notice or other advertisement inviting tenders must not be published until all the procurement documents are available electronically with unrestricted and full direct access via the eProcurement System.

## **31. AUTHORITY AND DELEGATION TO INVITE AND EVALUATE TENDERS AND AWARD CONTRACTS**

- 31.1 Subject to CPR 31.2, the decision to invite and evaluate tenders for a contract and the decision to delegate the award of the contract can be contained in one report to either the portfolio holder or Cabinet as appropriate.
- 31.2 A portfolio holder may authorise the invitation and evaluation of tenders and/or the award of the following contracts:
- Goods and Services between £100,000 and £2 million
- Provided that such contracts are within the scope of his/her portfolio and a budget has been allocated for that expenditure.
- 31.4 Only Cabinet may authorise the invitation and evaluation of tenders and/or the award of the following contracts:
- Goods and Services above £2 million
  - Light Touch Services, Works and Concession Contracts above the relevant EU Threshold.
- Cabinet may delegate authority to a portfolio holder or service director to award a contract above the values , provided that a budget has been allocated for that expenditure. The decision will be recorded in Cabinet minutes.
- 31.5 The OJEU contract notice or other advertisement inviting tenders must not be published until the service director, portfolio holder or Cabinet (as appropriate) has made the decision to invite and evaluate tenders and the decision has been recorded in writing on the appropriate decision form.

## **32. THE TENDER PROCEDURE – EU Tenders**

- 32.1 The service director, in consultation with the Procurement Service, must follow the tender procedures set out in the EU Regulations when letting contracts over the relevant EU Threshold.
- 32.2 The service director in consultation with Legal Services must establish whether a contract falls under the Full Regime or the Light Touch Regime.

- When the contract falls under the Full Regime, the service director must use an open or restricted procedure unless Legal Services agree the use of another procedure.
  - Where the contract falls within the Concession Contracts Regulations 2016 or the Light Touch Regime then the service director in consultation with Legal Services may determine the tender procedures that are to be applied.
- 32.3 The OJEU contract notice or other advertisement inviting tenders must not be published until all the procurement documents are available electronically with unrestricted and full direct access via the eProcurement System.
- 32.4 To ensure the best response to an advertisement, the service director may alert appropriate suppliers in advance to the appearance of the advertisement.
- 32.5 The contract opportunity must be advertised in OJEU and published in the National Procurement Website for the Light Touch Regime, the Full Regime and Concession Contracts. OJEU contract notices must be placed by the Procurement Service only, in consultation with the Legal Services. Service directors or consultants must not place OJEU contract notices themselves.
- 32.6 A sufficient number of Suppliers must be invited to tender to ensure genuine competition. The minimum number is five or, if there may be an in-house bidder, six. If there are fewer than five expressions of interest in being invited to tender or fewer than five satisfactory PQQs, then the minimum number of Suppliers to be invited to tender may be reduced, with the approval of the Procurement Service.
- 32.7 As soon as possible after the selection of the shortlist of Suppliers to be invited to tender, any Suppliers not selected should be informed in writing of the reasons why they were not selected. If a Supplier who was not selected asks for further information on why he was unsuccessful, the service director must promptly make arrangements for the de-briefing.
- 32.8A Service directors shall ensure that the progress of all procurement procedures are documented.
- 32.8B Service directors shall ensure that they keep sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on:
- (a) communications with bidders and internal deliberations,
  - (b) preparation of the procurement documents,
  - (c) dialogue or negotiation if any,
  - (d) selection and award of the contract.
- 32.8C Service directors shall ensure that the documentation shall be kept for a period of at least six years after the contract end date.
- 32.9 The invitation to tender must be issued by the Procurement Service.
- 32.10 The instructions to tenderers must state
- the latest date and time for receipt by the Council of tenders.

- tenders must be returned via the eProcurement System tenders that arrive at the Council after the latest date and time specified, **whatever the circumstances**, will be retained unopened until after the tenders properly received have been opened and recorded, and will be opened and considered by the Council only if the Head of Legal & Committee Services certifies that they are satisfied that the tender has not gained any advantage over other tenders by the delay;
- Any tender that does not comply with the instructions to tenderers or is conditional must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated unless Procurement advises otherwise** and
- any contract will be terminated immediately, and any losses to the Council arising from the termination recovered from the supplier, if the supplier, or anyone acting on his behalf (with or without the supplier's knowledge) :
  - (1) offers or promises or gives a financial or other advantage to any elected member of the Council, any member of staff or any consultant in connection with the contract; or
  - (2) requests, agrees to receive or accepts a financial or other advantage so that some action in relation to the contract is performed improperly.
- Such other terms as the Procurement Service may require.

32.11 The service director must allow sufficient time for submission of tenders. The time allowed must comply with that the relevant EU Regulations. legislation.

32.12 Amendments by the service director to invitation to tender documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and sent to all suppliers who have been invited to tender. If there is more than one amendment, they must be numbered consecutively. Amendments must be sent out in sufficient time to allow suppliers to adjust their tenders and in any event no later than five clear working days before close of tenders. If necessary, the tender period must be extended to allow for this.

32.13 Until the contract has been awarded, the information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Council's Monitoring Officer.

32.14 Tenders must be opened via the Council's eProcurement system by the Procurement Service member of staff authorised to be the verifier for that tender.

### **33. CLARIFICATION OF TENDERS – EU Tenders**

33.1 Negotiations with suppliers who have tendered for a contract are not permitted by EU law and are therefore unlawful except in accordance with the Concession Contracts Regulations 2016 and the negotiated procedure or the competitive procedure with negotiation under the Public Contracts

Regulations 2015 (as amended). After tenders have been opened, **and before the tenders have been scored**, the service director **must** discuss with Procurement and Legal Services whether they require one or more tenders to be clarified by the tenderer.

- 33.2 Clarifications must be designed to ensure that the Council has fully understood the tender submitted. Clarifications must not make any substantive changes to the tender.
- 33.3 Clarification questions and answers must be fully documented in a form approved by Legal Services and the relevant clarifications incorporated in the contract document.
- 33.4 Tenders must not be evaluated and scored until clarifications have been completed.

#### **34. EVALUATION OF TENDERS – EU Tenders**

- 34.1 Tenders should normally be evaluated on the basis of which is the most economically advantageous to the Council. Exceptionally, and only with the permission of the Procurement Service, tenders may be evaluated on the basis of price only provided that the quality element in the value for money ratio is confirmed. The basis of evaluation must be stated in the contract notice published in OJEU and in any other advertisement. The basis of evaluation must also be stated in the invitation to tender. If the basis of evaluation is 'most economically advantageous', the criteria for evaluation must be set out in the invitation to tender, in descending order of priority, with the weightings to be given to them and the method of scoring.

*Advisory note: Criteria for evaluation may include quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales services, technical assistance, delivery date, delivery period, and period of completion.*

- 34.2 If the basis of evaluation is price only provided that the quality element in the value for money ratio is confirmed, only the lowest tender (if payment is to be made **by** the Council) or the highest tender (if payment is to be made **to** the Council) may be accepted.
- 34.3 If the basis of evaluation is 'most economically advantageous', the service director must arrange for an appropriate evaluation panel to consider the tenders and evaluate them against the criteria and weightings stated in the invitation to tender. The evaluation panel may include service users and/or external consultants (subject to appropriate conflict of interest checks and confidentiality agreements) but may not include elected members of the Council. The evaluation panel should, as a rule, comprise those people who have had significant input into drawing up the specification.
- 34.4 All valid tenders received must be evaluated.
- 34.5 Tenders must be accepted in accordance with the outcome of the evaluation or not at all.

- 34.6 If no suitable tenders or abnormally low tenders are received, the service director must consult Legal Services as to how the works, supplies or service concerned may be procured.
- 34.7 A tender that exceeds the budget allocated must not be accepted. If a tender exceeds the budget allocated, the service director must obtain an additional allocation of funds in accordance with Financial Regulations **before** the tender may be accepted.
- 34.8 If all valid tenders are too high to be accepted and there is no further allocation of additional funds, the service director may delete part of the specification and ask all suppliers invited to tender to re-price their tenders, by submitting a fresh form of tender. In such cases, the service director must set out the deletion in a bill of reductions or other document, to be incorporated into the contract document.
- 34.9 Tenders must not be value-engineered with one or more suppliers except with the specific consent of and in consultation with Procurement and Legal Services. This is to ensure that no post-tender negotiations take place.
- 34.10 If the contract will result in the application of the TUPE Regulations, the service director must ensure that the successful tenderer has dealt with all employee matters, including pay, conditions of employment and pension rights and benefits, in his tender and will give all appropriate indemnities in the contract. The Council will give appropriate indemnities in respect of employee matters **only** if employees are transferring from Council employment to the successful tenderer and in no other circumstances.

## **35. AMENDMENTS AND ALTERATIONS TO TENDERS – EU Tenders**

- 35.1 Subject to Regulations 34.8 and 34.9 a Supplier's tender is his offer to the Council, which the Council may accept as it stands. Once he has submitted his Tender and it has been clarified if necessary, a tenderer is not permitted to make any alteration to the amount of the tender or any of his tender proposals.
- 35.2 If a tenderer attempts to alter his offer after the last date for receipt of tenders, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error in a fixed price Tender, may be accepted.
- 35.3 A Tender that is qualified or expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract must be treated as non-compliant and rejected. **Non-compliant tenders must not be evaluated.** This does not prevent the Council inviting variant bids. If variant bids are invited, tenderers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender, so that all bids may be compared fairly.
- 35.4 Before a Tender has been accepted, a service director may ask all tenderers to hold their tenders open for a longer period. Tenders should in any event remain open for acceptance for a period of ninety days from the latest date

for receipt of tenders, or such other period as the service director considers appropriate, and the form of tender must make this clear.

### **36. AWARD OF THE CONTRACT – EU Tenders**

- 36.1 Refer to CPR 31 in respect of authority to award a contract.
- 36.2 A full, confidential tender report must be produced in a format approved by the Procurement Service, (the report is not required for call off contracts from a Framework Agreement, or Dynamic Purchasing Systems unless specifically requested by the Procurement Service).
- 36.3 The tender report must be sent to Procurement and the decision-maker before the decision to award the contract is made. The tender report must be marked “NOT FOR PUBLICATION”.
- 36.4 The recommendation to the decision-maker to award the contract must include the name of the successful tenderer, the length of the contract and any options for extension and the price or estimated price of the contract.
- 36.5 As soon as possible after the decision to award the contract has been made and taking call-in procedures into account, the service director must write to inform the successful tenderer of that decision. The letter **must** state that award of the contract is subject to signature by both parties of the contract document, which will be sent to the tenderer by Procurement. The letter must be via the Council’s eProcurement system.
- 36.6 At the same time as the notification in CPR 36.5, the service director must write to each unsuccessful tenderer, informing them of:
- the name of the successful tenderer;
  - the number of PQQs received;
  - the number of invitations to tender issued;
  - the number of tenders received;
  - the reasons for the decision to award, including the characteristics and relative advantages of the successful tender;
  - the award criteria, any sub-criteria, the weightings applied to them and the scoring methodology;
  - the score obtained by the successful tenderer in the evaluation;
  - the score obtained by the unsuccessful tenderer being notified (but no others);
  - the date the decision to award was made;
  - the effect of the standstill period and the date before which the Council will not enter into the contract; and
  - the date the letter is being sent.

The notification letter to the unsuccessful tenderers must be sent via the Council’s eProcurement system.



- 36.7. At the same time as the notification in CPR 36.5, the service director must write to each supplier who was invited to tender but who did not submit a tender, informing him of:
- the name of the successful tenderer;
  - the number of PQQs received;
  - the number of invitations to tender issued;
  - the number of tenders received;
  - the reasons for the decision to award, including the characteristics of the successful tender;
  - the award criteria, any sub-criteria, the weightings applied to them and the scoring methodology;
  - the score obtained by the successful tenderer in the evaluation;
  - the date the decision to award was made;
  - the effect of the standstill period and the date before which the Council will not enter into the contract; and
  - the date the letter is being sent.

The notification letter to the suppliers who were invited but who did not submit a tender must be sent via the Council's eProcurement system.

- 36.8 The notifications in CPR 36.6 and CPR 36.7 must be approved by the Procurement Service before being issued.
- 36.9 If an unsuccessful tenderer asks for further information on why he was unsuccessful, the service director must promptly arrange for the de-briefing.
- 36.10 The contract document must not be signed or sealed (as appropriate) before the expiry of ten days (the standstill period) following the date the notification of the decision to award the contract was sent.
- 36.11 A voluntary transparency notice (other than for an extension or modification as defined in CPRs 40 and 41) may be published in OJEU only with the prior permission of the Head of Legal & Committee Services. If a voluntary transparency notice is published, the contract document must not be signed or sealed (as appropriate) before the expiry of ten days (the standstill period) after the date on which the notice was published in OJEU.
- 36.12 The service director must, in consultation with the Procurement Service, arrange for publication of a contract award notice in OJEU, within 30 days of the award of the contract or the conclusion of a Framework Agreement or a Dynamic Purchasing System (There is no requirement to publish an OJEU notice for a call off contract from a Framework Agreement).
- 36.13 The service director shall ensure that within a reasonable time of the award of the contract, the award is published in the National Procurement Website with at least the following information:
- (a) the name of the contractor;
  - (b) the date on which the contract was entered into;
  - (c) the value of the contract;

(d) whether the contractor is a SME.

36.14 Information may be withheld from publication where its release:

(a) would impede law enforcement or would otherwise be contrary to the public interest,

(b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or

(c) might prejudice fair competition between economic operators.

### **37. BONDS AND PARENT COMPANY GUARANTEES**

37.1 For every contract of £5m or more in value, the service director must decide, taking appropriate advice, whether the circumstances justify the Council requiring the supplier to provide a parent company guarantee. If the supplier does not have a parent company or the parent company is not approved under CPR 37.2, the supplier may in those circumstances be required to provide a bond. If a bond is required, the amount of the bond must be not less than ten per cent of the total contract value or the whole of the annual contract value, unless otherwise agreed by the Chief Finance Officer.

37.2 The parent company or the surety for a bond must be approved by the Chief Finance Officer.

37.3 All parent company guarantees and bonds must be in a form approved by Legal Services. A specimen of the parent company guarantee and bond must be included in the invitation to tender documentation.

### **38. SIGNATURE OF THE CONTRACT – EU Tenders**

38.1 All contracts, bonds, guarantees, agreements or transactions

(i) in respect of which there is no consideration; or

(ii) that exceed £500,000 in value over the life of the contract

must be executed as a deed under seal in accordance with these Contract Procedure Rules.

However this will not apply to contracts for insurance where the contract is brought into effect by the issue of a schedule of insurance and policy documents to the Council by the insurer.

Legal Services may direct that other contracts must be executed as deeds.

38.2 All contracts executed as deeds must have the Council's Common Seal impressed on them and witnessed by an officer of the Council authorised by the Head of Legal and Committee Services

38.3 All contracts which are not within the scope of CPR 38.1 must be signed for and on behalf of the Council by one officers of the Council.

## Part 7

### For contracts that have commenced

#### 39. CONTRACT MANAGEMENT

39.1 A contract **must not** start until the contract documents have been signed or sealed and dated. Service directors must allow time for this in the contract programme.

39.2 Within ten days of the date of the contract, if the contract is worth £25,000 or more, the service director must add the details of the contract onto the Council's contracts register and record the following:

- the works, goods or services to be supplied;
- the name of the supplier,
- the contract value;
- the commencement and completion dates;
- any extension options
- The current status of the contract

These details must be maintained and updated.

39.3 The service director shall be the contract manager for the contracts for which he/she is responsible up to the EU Threshold, but he/she may authorise another officer to have day-to-day responsibility for managing the contract. For contracts over the EU Threshold, the service director must appoint a contract manager with appropriate skills and experience.

39.4 The contract manager is responsible for:

- managing the contract and ensuring that it is carried out in accordance with its terms and conditions;
- monitoring the supplier's performance and carrying out mid-contract reviews to determine ongoing value for money;
- making the Supplier aware that they are expected to comply with the Council's equal opportunities, counter-fraud and corruption, welsh language standards, whistle-blowing and anti-money laundering policies;
- ensuring that the Supplier maintains the insurance policies required by the contract;
- agreeing any minor changes to the contract (but not changes to prices) before they are carried out;
- keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the contract;
- deducting liquidated damages, if appropriate;

- Liaise with the Procurement Service to update the status of their contract on the Council's Contracts Register;
- in consultation with Legal Services and the appropriate finance manager, consenting to sub-contracts, assignments to new suppliers and novations to new suppliers; and
- managing the transition between the ending of one contract and the beginning of another

*Advisory note: It is recommended that decisions authorising changes to a contract or sub-contracts, assignments or novations are recorded on an officer decision form.*

- 39.5 The service director **must** consult Legal Services for consideration of the Council's legal position:
- before any contract is to be terminated or suspended;
  - in the event of a claim for payment not clearly within the terms and conditions of contract;
  - before making any deduction from payments due to a Supplier or withholding payment from a Supplier;
  - subject to Regulations 40 and 41, before making any extension to a contract or variation of the scope of a contract.
- 39.6 If the final expenditure under a contract exceeds the budgeted sum by 10% or more, the service director, in consultation with the Chief Finance Officer, must prepare and submit a report to the appropriate portfolio holder and to the chairman of Overview and Scrutiny Committee.
- 39.7 To ensure value for money and competition, contracts for an indefinite or rolling term must be terminated at the end of ten years in any event and a new contract procured.

#### **40. EXTENSIONS TO CONTRACTS**

- 40.1 An extension to a contract is an additional period at the end of the contract, during which the works or the services to be carried out are a repetition of the works or services under the original contract. Contracts for supplies must not be extended.
- 40.2 Unless a contract specifically includes an option to extend its term, or the extension falls within the parameters of a modification under CPR 41, that contract may not be extended. The contract will cease to exist at the end of its term.
- 40.3 If a contract specifically includes an option to extend its term **and**:
- the OJEU notice or other advertisements for the contract stated that an extension contract may be awarded; and
  - the estimated value of the contract in the OJEU notice or other advertisements took account of the potential extended contract; and

- the extension represents good value for money for the Council,

then the service director may make a decision to award the extension contract if the value of the extension is below £500,000 per annum. If the value of the extension is between £500,000 per annum and £1m per annum or is £1m or more per annum, the decision to award the extension contract must be made by the portfolio holder or Cabinet respectively.

Once the extension has expired, that contract will cease to exist.

- 40.4 If the contract is above the EU threshold then the extension should be approved by the Head of Legal & Committee Services in consultation with the Head of Procurement.
- 40.5 All extensions must be evidenced in writing in accordance with the contract in consultation with the Procurement Service.

#### **41. MODIFICATION OR VARIATION OF CONTRACTS DURING THEIR TERM**

- 41.1 Provided that a budget has been allocated for the expenditure, value for money can be demonstrated and authority has been obtained from the appropriate decision maker, contracts and Framework Agreements may be modified or varied without a new procurement procedure in accordance with the following provisions:

41.1.1 for contracts and Framework Agreements within the scope of the EU Regulations, in accordance with the terms of the relevant EU Regulations; and

41.1.2 for contracts and Framework Agreements falling outside of the scope of the EU Regulations, in the following cases:

41.1.2.1 where the change in value is relatively small - under 10% of the contract value for services & supplies or under 15% of the contract value for works and does not alter the overall nature of the contract (NB the contract value to be used is the updated value if the contract contains an indexation clause. Where several successive modifications are made the change value shall be cumulative); or

41.1.2.2 where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses:

- (i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and
- (ii) do not provide for modifications or options that would alter the overall nature of the contract or the Framework Agreement; or

41.1.2.3 where additional works, services or supplies are necessary from the existing contractor (and the contract does not provide a mechanism for this) and a change in contractor cannot be made for economic or technical reasons such as interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement; and where changing the contractor would cause significant inconvenience or duplication of costs, provided that the price increase does not exceed 50%; or

41.1.2.4 where there is a need for a modification (and the contract does not provide a mechanism) due to unforeseen circumstances, the change does not alter the overall nature of contract and the price increase is not greater than 50%; or

41.1.2.5 where a new contractor replaces the one to which the Council had initially awarded the contract as a consequence of an unequivocal review clause or option or following a corporate restructuring, insolvency or merger, and the new contractor still meets the original selection criteria. This exemption is only available where there is no other substantial modification to the contract; or

41.1.2.6 otherwise where the modification is not substantial and is only made following consultation with Legal Services.

412 All modifications must be evidenced in writing in accordance with the contract in consultation with Legal Services.

## Part 8

### Exceptions to Contract Procedure Rules

- 42.1 An exception to Contract Procedure Rules is a permission to let a contract without complying with one or more of the Contract Procedure Rules. An exception to Contract Procedure Rules may be granted subject to conditions. **Authority to award a contract will be required in addition to the exception to Contract Procedure Rules.**
- 42.2 Only the Director of Resources, or his authorised deputy, in consultation with the Procurement Service, are delegated by Cabinet to grant an exception to these Contract Procedure Rules. Applications for exceptions must follow the process set out by the Procurement Service, be made in writing and signed by the service director, and must include the exception that is requested and the justification for the exception. Exceptions to Contract Procedure Rules will **never** be given retrospectively and exceptions for extensions are unlikely to be granted if there is less than six months left on the contract and so must be submitted well in advance of the decision needing to be made
- 42.3 The Procurement Service will keep a register of all exceptions to Contract Procedure Rules.
- 42.4 An application for an exception to Contract Procedure Rules, to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to Contract Procedure Rules. If an application to let a contract without genuine competition is granted, the service director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.
- 42.5 An exception to Contract Procedure Rules is not required in the following circumstances:
- placing an order under an existing corporate contract or Framework Agreement;
  - as part of a partnering contract that contemplates a series of contracts with a single supplier, provided the entire series has been duly authorised as appropriate for its value;
  - legislation requires the Council to let a contract differently from these Contract Procedure Rules;
  - placing an order under an arrangement, of which the Council is an affiliate, which has gone through an EU compliant competitive process; or
  - following completion of a quotation procedure, some or all of the quotations exceed £25,000, provided all quotations are below £30,000.

## ANNEX 1

### LIGHT TOUCH REGIME SERVICES

Schedule 3 Services (PCR 2015)  
(Light Touch Regime for contracts exceeding £625,050 in total)

Overarching Description	Areas included
Health, social and related services	<ul style="list-style-type: none"> <li>* Supply services of domestic help personnel</li> <li>* Supply services of nursing personnel</li> <li>* Supply services of medical personnel</li> <li>* Private households with employed persons</li> <li>* Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services</li> <li>Social Care</li> <li>Nursing Care</li> </ul>
Administrative social, educational, healthcare and cultural services	<ul style="list-style-type: none"> <li>* Administration, defence and social security services</li> <li>* Education and training services</li> <li>* Exhibition, fair and congress organisation services</li> <li>* Seminar organisation services</li> <li>* Event services</li> <li>* Cultural event organisation services</li> <li>* Festival organisation services</li> <li>* Party organisation services</li> <li>* Fashion shows organisation services</li> <li>* Fair and exhibition organisation services</li> </ul>
Compulsory social security services	
Benefit services	
Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services	
Religious services	
Hotel and restaurant services	<ul style="list-style-type: none"> <li>* Catering services for private households</li> <li>* Meals-on-wheels services</li> <li>* Meal delivery services</li> <li>* Catering services</li> <li>* Catering services for transport enterprises</li> <li>* Catering services for other enterprises or institutions</li> <li>* School catering services</li> </ul>



	<ul style="list-style-type: none"> <li>* Canteen services</li> <li>* Canteen and other restricted-clientele cafeteria services</li> <li>* Canteen management services</li> <li>* School meal services</li> </ul>
Legal services (to extent not excluded by reg: 10(1)(d))	
Other administrative services and government services	
Provision of services to the community	
Provision of related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)	
Investigation and security services	<ul style="list-style-type: none"> <li>* Investigation and security services</li> <li>* Security services</li> <li>* Alarm-monitoring services</li> <li>* Guard services</li> <li>* Surveillance services</li> <li>* Tracing system services</li> <li>* Absconder-tracing services</li> <li>* Patrol services</li> <li>* Identification badge release services</li> <li>* Investigation services and detective agency services</li> <li>* Graphology services</li> <li>* Waste analysis services</li> </ul>
International services	<ul style="list-style-type: none"> <li>* Services provided by extra-territorial organisations and bodies</li> <li>* Services specific to international organisations and bodies</li> </ul>
Postal services	<ul style="list-style-type: none"> <li>* Postal and telecommunications services</li> <li>* Post and courier services</li> <li>* Postal services</li> <li>* Postal services related to newspapers and periodicals</li> <li>* Postal services related to letters</li> <li>* Postal services related to parcels</li> <li>* Post office counter services</li> <li>* Mailbox rental</li> <li>* Post-restante services</li> <li>* Internal office mail and messenger services</li> </ul>
Miscellaneous services	<ul style="list-style-type: none"> <li>* Tyre-remoulding services</li> <li>* Blacksmith services</li> </ul>