

Contract Procedure Rules (CPRs)

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Application

1. Background

- 1.1 The purpose of these Contract Procedure Rules (CPRs) is to ensure that all Council contracts are demonstrably made:
- a) in compliance with the law and best practice;
 - b) maximising fairness, transparency and competition;
 - c) to improve quality and value for money;
 - d) to enable the Council to develop and deliver its Commercial Strategy; and
 - e) in compliance with the Council's Financial Regulations.

2. Scope

- 2.1 These Contract Procedure Rules apply to all relevant contracts made (including all orders placed) by, for or on behalf of the Council, or where the Council is acting on behalf of other public bodies. Relevant contracts include arrangements for:
- a) the supply or disposal of goods
 - b) the hire, rental or lease of goods or equipment
 - c) the provision of works and the supply of works materials
 - d) the provision of services, including consultancy services
 - e) the granting of works concessions or services concessions
 - f) the selection of sub-contractors by the Council, where these are nominated under a main/prime contract.
- 2.2 Relevant contracts include contracts between the Council and any other contracting party, including:
- a) Other public bodies, including other local authorities
 - b) Voluntary and community sector organisations acting as suppliers to the Council
 - c) Private sector suppliers to the Council.
- 2.3 Relevant contracts do not include:
- a) agreements regarding the acquisition, disposal, or transfer of land, pre-existing property leases, and licenses; or
 - b) the award of grants by the Council
- The rules governing these are covered by separate procedural guidelines approved (from time to time) by the Cabinet, Leader of the Council or a Cabinet Member.
- 2.4 These Contract Procedure Rules apply to Council Maintained Schools except where the Council Scheme for Financing Schools (from time to time under Section 48 of the School Standards and Framework Act 1998) applies.

3. Accountability & Responsibility

- 3.1 These Contract Procedure Rules apply to all Officers of the Council. Officers must ensure that any agents, consultants and contractual partners acting as procurement agents on behalf of the Council also comply with these Contract Procedure Rules.
- 3.2 It is a disciplinary offence for Officers not to comply with these Contract Procedure Rules.
- 3.3 Directors must ensure that their staff comply with these Contract Procedure Rules.
- 3.4 An Officer must not seek or accept technical advice on the preparation of a request for quotation or an Invitation to Tender from any party which may have a commercial interest in the procurement if this may prejudice the equal treatment of all potential suppliers or distort competition.
- 3.5 Directors must ensure that appropriate Officers (“Authorised Officers”) have received delegated authority under the Council’s Scheme of Delegation which authorises them to:
 - a) make orders on behalf of the Council for the supply of goods, services and works;
 - b) award contracts on behalf of the Council for the supply of goods, services and works;
 - c) pay invoices received from suppliers in respect of goods, services and works provided to or on behalf of the Council;
 - d) approve tender and quotation procedures and all related documentation;
 - e) approve contract terms and conditions;
 - f) receive, retain and open tender submissions (CPR 12.4);
 - g) manage contracts in accordance with the Council’s Contract Management Framework from time to time.
- 3.6 Authorised Officers may award contracts and place orders and requisitions that comply with these Contract Procedure Rules provided that:
 - a) the financial values and commitments are within approved budgetary estimates and within their delegated responsibility;
 - b) they are within the Council’s legal powers;
 - c) where the contract involves the transfer of Council staff, or former Council staff who have previously been the subject of an outsourcing of service, the Authorised Officer is acting in accordance the Direction made by the Secretary of State under section 102 of the Local Government Act 2003 (pension provision) or any replacement.
- 3.7 Directors must ensure that Authorised Officers have the necessary skills, competencies, and knowledge to undertake procurement and/or contract management related duties of the scope, risk and complexity assigned to them. This should include attendance on appropriate relevant training

courses, both internal and external, on areas such as procurement, finance, risk, business continuity and GDPR.

4. Basic Principles

- 4.1 All purchasing and disposal activities must:
- a) achieve Best Value for public money spent in accordance with the duty on local authorities under Part I of the Local Government Act 1999 to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council
 - b) support the Council's corporate aims and policies
 - c) be consistent with the highest standards of integrity
 - d) ensure fairness and transparency in allocating public contracts
 - e) comply with all legal requirements
 - f) produce and maintain adequate records and a clear audit trail
 - g) be consistent with any procedures or guidance set out in accounting instructions and any procedures or guidance issued by the Assistant Director of Strategic Procurement.

5. Exemptions to these Contract Procedure Rules

- 5.1 No Direct Contract Awards (where competition is not undertaken) over £25,000 ex VAT can be made unless authorised in writing by the Director of Policy, Performance and Governance after considering a written report approved by the appropriate Director.
- 5.2 A register of all Direct Contract Awards over £25,000 ex VAT will be maintained by the Director of Policy, Performance and Governance and will be reported to the Audit and Governance Committee on an annual basis.
- 5.3 These Contract Procedure Rules do not apply where the Council Scheme for Financing Schools (from time to time under Section 48 of the School Standards and Framework Act 1998) applies.

6. Requirements to consult the Director of Policy, Performance and Governance and the Assistant Director of Legal Services

CPR 6 identifies occasions where the Contract Procedure Rules create a mandatory obligation to consult with the Director of Policy, Performance and Governance and the Assistant Director of Legal Services.

- 6.1 Subject to CPR 12.4, all quotations, expressions of interest and tenders must be received by the date and time given in the original advertisement.

- 6.2 Authorised Officers must obtain the agreement of the Director of Policy, Performance and Governance before using any third party to conduct any procurement exercise on the Council's behalf.
- 6.3 Authorised Officers shall consult with the Assistant Director of Legal Services immediately they become aware that any significant dispute or claim may arise in relation to a contract or procurement exercise or during the life of a contract.
- 6.4 Minor contract variations that have regard to small administrative changes can be undertaken by an Authorised Officer such as contact name changes, address changes, small service or specification changes. All major contract variations (i.e. anything beyond a minor change) that have regard to changes in price, term or terms and conditions must be referred to the Director of Policy, Performance and Governance.

7. Procuring via Frameworks, Collaborative Procurements, and Dynamic Purchasing Systems

- 7.1 Before carrying out a procurement process, Authorised Officers shall establish whether there is a suitable framework agreement, dynamic purchasing system or existing contract to which the Council is a party that provides a mechanism for ordering goods, services and works and, if so, consider whether the use of such framework agreement, dynamic purchasing system or existing contract is appropriate and adheres to the principles of Best Value.
- 7.2 Without prejudice to CPR 7.3, where a collaborative contract, dynamic purchasing system or framework agreement has been let by another public authority or central buying organisation through competition, and in accordance with its own contract procedure rules and legal requirements, such contractual agreement shall be deemed to comply with the Council's Contract Procedure Rules.
- 7.3 Before using any collaborative contract, an Authorised Officer must first verify that:
- a) the contract was procured in accordance with all relevant UK law; and
 - b) the contract was advertised appropriately, and specifically that the scope of the advert allowed the contract's use by the Council; and
 - c) the contract has been let on appropriate conditions of contract; and
 - d) the contract offers, or is reasonably likely to offer, better overall value for money, or benefit to the Council, than the Council could achieve through independent procurement.

The Contracting Process

8. Competition Requirements

Goods, Services and /or Works

- 8.1 Calculating the Estimated Total Contract Value of any contract for goods, services and/or works (the “Estimated Total Contract Value”). The Estimated Total Contract Value shall be calculated as follows:
- a) the Estimated Total Contract Value excluding VAT shall include the estimated value of any options (including extension options), lots or renewals under the relevant contract;
 - b) the Estimated Total Contract Value of a framework agreement or dynamic purchasing system shall be the total value, exclusive of VAT, of all of the call-off contracts that may be awarded under that framework agreement or dynamic purchasing system; and
 - c) the Estimated Total Contract Value of a works concession contract or a services concession contract shall be the total estimated turnover of the supplier generated over the duration of the contract, net of VAT, in consideration of the works and services which are the object of a works concession contract or (as appropriate) a services concession contract and for the supplies incidental to such works and services.
- 8.2 The rules when calculating the Estimated Total Contract Value are:
- a) purchases of the same or similar type of goods, services and/or works must be aggregated and the Estimated Total Contract Value shall not be calculated with the intention of excluding it from the scope of these Contract Procedure Rules;
 - b) where there is a common requirement for goods, services and/or works across the Council, the Estimated Total Contract Value shall be the aggregate of all purchases across the whole Council in respect of such goods, services and/or works;
 - c) a contract for goods, services and/or works shall not be sub-divided or its Estimated Total Contract Value artificially under estimated or disaggregated into two or more separate contracts with the intention of avoiding the scope of these Contract Procedure Rules and/or relevant legislation; and
 - d) the Estimated Total Contract Value of a contract for goods, services and/or works shall be the value as determined when the advertisement in respect of that contract is issued or when the Council commences its procurement procedure, in respect thereof, whichever is earlier;

- e) the Estimated Total Contract Value of a works concession contract or a services concession contract shall be determined when the advertisement is issued or when the Council commences its procurement procedure, whichever is earlier unless it is a Regulated Procurement, in which case the Estimated Total Contract Value shall be calculated in accordance with the provisions of The Concession Contracts Regulations 2016.
- 8.3 All contracts for goods, services and/or works that have an Estimated Total Contract Value equal to or in excess of the relevant threshold prescribed by UK public procurement legislation and the provisions of these Contract Procedure Rules shall be procured in accordance with such legislation.
- 8.4 All contracts for goods, services, and/or works that have an Estimated Total Contract Value that is less than the relevant threshold prescribed by UK public procurement legislation shall be procured in accordance with the provisions of these Contract Procedure Rules.
- 8.5 Contracts for goods and/or services that have an Estimated Total Contract Value ex VAT:
- a) less than £5,000 the Authorised Officer should obtain at least one quotation from a suitable supplier (email is sufficient) or on the basis of a pre-quoted price (such as in a supplier's catalogue);
 - b) at £5,000 and over but less than £25,000 may be procured after obtaining a single written quotation which must be obtained using the Council's e-procurement system.
 - c) at £25,000 and over but less than £100,000 may be procured after obtaining three written quotations which must be obtained using the Council's e-procurement system;
 - d) at £100,000 and over but less than the relevant threshold prescribed by UK public procurement legislation must be procured after having undertaken a competitive tender process using the Council's e-procurement system;
 - e) which is equal to or exceeds the relevant threshold prescribed by UK public procurement legislation must be procured after having undertaken a competitive tender process using the Council's e-procurement system.
- 8.6 Contracts for works that have an Estimated Total Contract Value:
- a) less than £250,000 may be procured after obtaining three written quotations which must be obtained using the Council's e-procurement system.
 - b) at £250,000 and up to the relevant threshold prescribed by UK public procurement legislation may be procured after having undertaken a competitive tender procurement process using the council's e-procurement system.
 - c) which is equal to or exceeds the relevant threshold prescribed by UK public procurement legislation must be procured after having undertaken a

competitive tender procurement process using the Council's e-procurement system.

- 8.7 Contract extensions may only be considered if the relevant contract contains an extension option or if there are legitimate grounds for an extension as provided by UK public procurement legislation. Any such extension must be authorised in accordance with the Council's Scheme of Delegation.
- 8.8 A Direct Contract Award must only be considered as a last resort when all other procurement strategies have been excluded and provided such contract award would not give rise to a breach of UK public procurement law. A Direct Contract Award whose Estimated Total Contract Value ex VAT is less than the relevant threshold prescribed by UK public procurement law is permissible provided that:
- a) it has been determined through market analysis/engagement that only one particular supplier is capable of providing the required goods, services or works; or
 - b) for reasons of extreme urgency brought about by events unforeseeable by the Council there is insufficient time to conduct a competitive procurement process (provided the reason for such urgency is not attributable to the Council); or
 - c) in limited cases, to protect intellectual property rights that an incumbent supplier holds.

9. Localism

- 9.1 When seeking quotes for goods and services with an Estimated Total Contract Value ex VAT at £25,000 and over, Authorised Officers should use reasonable endeavours to seek at least one quote from a Gloucestershire based supplier. For goods and services less than £25,000, Authorised Officers may consider obtaining two quotes one of which is from a Gloucestershire based supplier.

10. Framework Agreements and Dynamic Purchasing Systems

- 10.1 Framework agreements may be procured by the Council, or by other public bodies or public sector buying consortia as arrangements under which named public bodies (including the Council) may award call-off contracts.
- 10.2 The procurement by the Council of a new framework agreement must be in accordance with any guidance issued by the Assistant Director of Strategic Procurement.
- 10.3 The term of a framework agreement must not exceed 4 years.
- 10.4 Dynamic purchasing systems (DPSs) may be procured by the Council, or by other public bodies, or public sector buying consortia, as arrangements under

which named public bodies (including the Council) may award call-off contracts.

- 10.5 A DPS must be operated as a completely electronic process and requires a new competitive procurement procedure to be carried out before awarding any call-off contract under it. Direct contract awards under a DPS are not permissible.
- 10.6 Additional suppliers may be admitted to a DPS throughout its term.
- 10.7 The term of a DPS shall be a period that is proportionate to the nature of the goods, services or works to be procured under it.
- 10.8 The procurement by the Council of a new DPS must be in accordance with any guidance issued by the Assistant Director of Strategic Procurement.

11. The Quotation Process

- 11.1 Save in respect of quotations sought by or on behalf of any Council Maintained School in respect of goods and/or services (in relation to which the Council Scheme for Financing Maintained Schools shall apply), the quotation process described in this CPR 11 and CPRs 8.5(a), 8.5(b) and 8.6(a) shall be complied with when:
 - a) the Estimated Total Contract Value for goods and/or services is less than £100,000, or
 - b) the Estimated Total Contract Value for works is £250,000 or less.
- 11.2 Save in respect of quotations sought by the Council in respect of contracts for goods and/or services of the value described in CPR 8.5(a), requests for a quotation must be carried out using the Council's e-procurement system in accordance with guidance from the Assistant Director of Strategic Procurement.

12. Tendering Exercises

- 12.1 All competitive tender procurement exercises must be conducted electronically through the Council's e-procurement system unless the use of an alternative process has been previously approved in writing by the Director of Policy, Performance and Governance.
- 12.2 Receiving Expressions of Interest
All expressions of interest must be received by the date and time given in the original advertisement. An Authorised Officer may consider exceptions to this CPR in situations where the late submission is genuinely outside the control of the supplier concerned, but only with the agreement of the Assistant Director of Legal Services.

12.3 Issuing Invitations to Tender

- a) Where a tendering process involves a process of qualification and selection before the award phase, an Authorised Officer shall only issue an invitation to tender to those suppliers that have met the required selection criteria, including any minimum standards set. Suppliers may be shortlisted to be invited to tender on the basis of marks awarded against the selection criteria
- b) An Authorised Officer shall ensure that an invitation to tender is based on a robust procurement strategy based on model instructions for tendering approved by the Assistant Director of Strategic Procurement.
- c) Suppliers shall be allowed sufficient time to complete their tenders, taking into account the complexity of the requirement and the contract, and the time required for them to prepare their response. A minimum of ten working days must be allowed from the date on which the invitation was sent.
- d) All suppliers being invited to tender by the Council must be issued with the same information at the same time and subject to the same conditions. Any clarification, supplementary information, or changes to the content or detail of the invitation, must be given on the same basis.
- e) All communications with the suppliers must be through the Council's e-procurement system.

12.4 Receiving Tenders

- a) Where in accordance with CPR 12.1 tenders are to be submitted electronically, Authorised Officers shall ensure that they are stored securely in the Council's e-procurement system and remain un-opened until the specified date and time, after which they shall be opened by an officer who has been authorised to do so by the Assistant Director of Legal Services in accordance with a procedure agreed by the Director of Policy, Performance and Governance.
- b) If any tenderer has not followed the instructions issued within an invitation to tender detailing how their tenders should be delivered, packaged, marked and referenced, such tenders must normally be excluded from further participation in the tender process to which such instructions related. However, in exceptional circumstances, the Assistant Director of Legal Services may permit an occurrence of non-minor compliance with such instructions provided that the principle of equal treatment of tenderers and the integrity and confidentiality of the tendering process would not be infringed.
- c) Any tender that does not comply with the instructions set out in the relevant invitation to tender (save for incidences of minor non-compliance of the type described in CPR 12.4(b)), shall be rejected and returned to the tendering supplier together with an explanation for its rejection.

d) Any tender received by the Council after the published tender submission deadline shall not be opened or considered unless, in the opinion of Assistant Director of Legal Services or Principal Lawyer or Legal Services Business Partner, considering relevant evidence provided by the Authorised Officer, the failure to meet the deadline was due to:

- (i) the Council's fault;
- (ii) an act of God, flood, drought, earthquake or other natural disaster;
- (iii) epidemic or pandemic;
- (iv) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (v) nuclear, chemical or biological contamination or sonic boom;
- (vi) any law or action by government;
- (vii) the collapse of buildings, fire, explosion or accident; or
- (viii) an interruption or failure of utility service in circumstances which are beyond the control of the tenderer (but only in circumstances where such tender was submitted electronically).

12.5 Award

- a) Any contract(s) advertised via the Council's e-procurement system shall be awarded to the supplier(s) whose tender(s) is/are the most economically advantageous, (assessed from the point of view of the Council) as determined with reference to the published award criteria.
- b) Such contract awards may be made only on the basis of:
 - i) price;
 - ii) cost; or
 - iii) best price-quality ratio
- c) If awarding a contract on the basis of the 'best price-quality ratio', an Authorised Officer shall apply criteria linked to the subject matter of the contract.
- d) If, having completed a tender evaluation exercise, a tenderer has been identified by the Council as offering the most economically advantageous tender, a contract may be awarded to them.
- d) When awarding any contract for goods, services or works whose aggregate value exceeds the relevant threshold prescribed under the Public Contracts Regulations 2015, an Authorised Officer shall adhere to a minimum ten (10) day Standstill Period before entering into such contract and issue a Standstill Notice at the outset of such period to all tenderers and candidates which explains the Council's full reasons for its award decision, and which also includes details of the characteristics and relative advantages of the successful tender.

13. Contracts Register

- 13.1 In accordance with The Local Government Transparency Code 2015, Authorised Officers must:

“Publish details of any contract awards, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value that exceeds £5,000 ex VAT”

which must comply with the requirements set out in any guidance issued by the Director of Policy, Performance and Governance.

14. Conditions of Contract & Contract Formalities

- 14.1 All contracts must be formally concluded in writing before the supply, service or work begins.
- 14.2 Contracts shall be written in plain language and shall adopt either:
- a) conditions of contract produced by professional bodies and agreed by the Assistant Director of Legal Services; or
 - b) conditions of contract developed by or agreed by the Assistant Director of Legal Services for specific types of procurement or specific procurement projects; or
 - c) conditions of contract within collaborative contracts let by other public contracting authorities; or
 - d) exceptionally, and where unavoidable, conditions of contract requested by suppliers; but only where the use of these conditions has been agreed in advance by the Assistant Director of Legal Services.
- 14.3 CPRs 14.1 and 14.2 do not apply to low value, one-off retail purchases where a purchasing card is used.
- 14.4 All contracts, irrespective of value, shall as a minimum clearly specify:
- a) a full description of what is to be supplied (i.e. the works, materials, services, matters or things to be furnished, received or completed)
 - b) the quantities to be provided
 - c) the provisions for payment (i.e. the price to be paid and when)
 - d) the time(s) and location(s) for delivery or performance
 - e) the provisions for the Council to terminate the contract
 - f) the provisions for indemnity and insurance for service contracts
 - g) the contract term or, as appropriate, the required timeframe for delivering milestone deliverables
 - h) such other conditions and terms as may be agreed between the parties which shall include, where relevant, a reference to continuous improvement in accordance with the Best Value legislation.
- 14.5 Where contracts are awarded which involve the transfer of Council staff, or of former Council staff who were previously the subject of an outsourcing of service, they shall include provisions to ensure that the relevant regulations

are complied with and that the Council is appropriately indemnified. Where the Council is a third party to any transfer, the contract shall in addition ensure that the Council has access to staff and employee information on request

- 14.6 Every relevant contract must provide for the Council to cancel the contract and recover any resulting losses if the supplier or his or her employees or agents, with or without his or her knowledge:
- a) does, or has done, anything improper to influence the Council to give him or her the contract;
 - b) commits an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972.
- 14.7 In appropriate cases, after consultation with the Assistant Director of Legal Services, the supplier shall be required to give sufficient security for the due performance of his or her contract.
- 14.8 Where a relevant contract value exceeds:
- a) £100,000 in total but is less than £500,000 it must be signed by at least two Officers of the Council, being the relevant Authorised Officer and one other Officer above salary scale point 33; or
 - b) £500,000 in total it shall be executed under the common seal of the Council.
- 14.9 Unless otherwise agreed by the Assistant Director of Legal Services, a contract must be executed under the common seal of the Council where:
- a) the Council wishes to reserve the right to enforce the contract more than six years after its end; or
 - b) there is any doubt as to whether valid consideration is being created under the contract.
- 14.10 Contract sealing shall be carried out by the Assistant Director of Legal Services or those persons who have been given authority to do so from time to time.

Other Requirements

15. Prevention of Corruption & Declaration of Interests

- 15.1 Officers shall comply with the Council's Code of Conduct for Employees and the Anti-Fraud and Corruption Policy Statement and Strategy. In particular:
- a) no Officer shall use or be seen to use their position to obtain any personal or private benefit (including benefit accruing to connected third parties) from any contract entered into by the Council;
 - b) Officers' attention is drawn to the provisions of the Code of Conduct relating to the separation of roles during tendering.
- 15.2 With regards to any contract that has been proposed or entered into by the Council, Officers must disclose in writing to their Director any instances:

- a) where they have any relationship with a supplier; or
- b) where they have any personal interest (financial or non-financial) which could reasonably be considered to conflict with the Council's interests.

16. Procurement Guidance

- 16.1 In support of these Contract Procedure Rules, the Assistant Director of Strategic Procurement may issue guidance, procedures and standard documents as Procurement Guidance. Authorised Officers shall comply with such guidance when undertaking procurement activities and contract management.