
SUPPLEMENTARY AGENDA

GOVERNANCE & AUDIT & STANDARDS COMMITTEE

WEDNESDAY, 25 JANUARY 2023 AT 10.00 AM

COUNCIL CHAMBER - THE GUILDHALL, PORTSMOUTH

Telephone enquiries to James Harris on 023 9260 6065

Email: james.harris@portsmouthcc.gov.uk

Membership

Councillor Leo Madden (Chair)

Councillor Dave Ashmore

Councillor Stuart Brown

Councillor Judith Smyth

Councillor Benedict Swann

Councillor Daniel Wemyss

Standing Deputies

Councillor Simon Boshier

Councillor Graham Heaney

Councillor Ian Holder

Councillor Mark Jeffery

Councillor Abdul Kadir

Councillor Scott Payter-Harris

Councillor John Smith

(NB This supplementary agenda should be retained for future reference with the main agenda and minutes of this meeting).

SUPPLEMENTARY AGENDA

4 Contract Procedure Rules (Pages 3 - 44)

Purpose

The purpose of this report is to seek approval to replace the Council's current Contract Procedure Rules ("CPRs").

Adopting the revised rules will help ensure that the Council is able to more effectively and proportionally discharge its procurement function in readiness for the forthcoming legislative procurement reforms. The revised rules will also provide a dynamic platform from which to implement existing and future locally led policy within the Council's procurement practices.

Recommendations

- (i) To endorse the revised CPRs as attached at Appendix A and:**
- (ii) To RECOMMEND that Full Council resolves to approve those revised CPRs as an amendment to Part 3A of the Council's Constitution, to be fully implemented and take effect from 01 July 2023.**

Agenda Item 4



Portsmouth
CITY COUNCIL

Title of meeting:	Governance and Audit and Standards Committee
Date of meeting:	25 January 2023
Subject:	Contract Procedure Rules
Report by:	Peter Baulf - City Solicitor & Richard Lock - Assistant Director, Procurement
Wards affected:	All
Key decision:	No
Full Council decision:	Yes

1. Purpose of report

- 1.1. The purpose of this report is to seek approval to replace the Council's current Contract Procedure Rules ("**CPRs**") with those attached at Appendix A. Adopting the revised rules will help ensure that the Council is able to more effectively and proportionally discharge its procurement function in readiness for the forthcoming legislative procurement reforms. The revised rules will also provide a dynamic platform from which to implement existing and future locally led policy within the Council's procurement practices.

2. Recommendations

- 2.1. To endorse the revised CPRs as attached at Appendix A and:
- 2.2. To RECOMMEND that Full Council resolves to approve those revised CPRs as an amendment to Part 3A of the Council's Constitution, to be fully implemented and take effect from 01 July 2023.

3. Background

Legal position

- 3.1. The Local Government Act 1972 requires the Council to have rules in place about "*the manner in which the Council buys goods or materials, services and works*" which shall include "*provision for securing competition*".



- 3.2. As a 'Best Value' authority, the Council "*must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*" (Local Government Act 1999)
- 3.3. As a "Contracting Authority" for the purpose of the Public Contracts Regulations 2015 ("**PCR 2015**"), the Council must procure goods, works and services in compliance with those rules.
- 3.4. The CPRs meet the legislative requirement under the LGA 1972 and should enable the Council to meet its best value obligations and procure lawfully.
- 3.5. CPRs are 'owned' for constitutional purposes by the City Solicitor.

Current rules

- 3.6. The current CPRs were drafted in late 2015, approved by the Council on the 10 November 2015 under Council minute 2015/93 and came into effect on 01 January 2016.
- 3.7. CPRs were last reviewed in late 2019 when a report was taken to this committee with recommendations for amendment, which were endorsed by this committee on the 20 September 2019 and approved by Council on 15 October 2019.
- 3.8. Since early 2021, Legal Services, Procurement Services and Finance have undertaken a detailed review of the effectiveness and proportionality of the CPRs and have noted a number of issues within the existing CPRs;
 - the structure of current CPRs does not reflect the typical sequencing of the procurement life cycle which can make them difficult to navigate ;
 - the current rules are not fully up to date with existing policy and practice which can create confusion and ambiguity;
 - the current rules include areas of duplication and contradiction with other areas of the constitution, particularly in relation to Financial Rules;
 - the current rules are overly prescriptive in places and can compromise the Council's ability to act dynamically within the constraints of the wider regulatory procurement framework, this will only be exacerbated when the wider regulatory reforms come into place unless action is taken in advance;

4. Reasons for recommendations

- 4.1. The new CPRs have been drafted to be a more coherent, legally correct and practical document than the current CPRs. Procurement activity is a fundamental part of the Council's activity as it is the means through which the Council spends a significant amount of taxpayer money.
- 4.2. The new CPRs have been reviewed in parallel against other existing related constitution / policy to ensure that the Council benefits from maximised synergy and co-ordination.



- 4.3. The new CPRs have been developed in conjunction with a review of procurement governance processes and associated value / risk thresholds which will allow for proportionate focusing of valuable professional resources onto higher risk / value procurement activities, improve efficiency and address risk on a relevant and proportionate basis.
- 4.4. The new CPRs remove locally imposed value thresholds. This will give greater flexibility to the Council to make commissioning decisions and focus more upon local needs, communities and businesses within the broader constraints of the wider regulatory framework.
- 4.5. Whilst the language used within the new CPRs must retain an element of 'legalese', the ambition with the new CPRs is for them to be seen as a useful, practical and easy to read document which will help an officer, irrespective of their level of expertise in procurement, to understand where they are in the procurement process and what they need to take into account.
- 4.6. Through focusing on providing a summary framework rather than detailed process requirements the new CPRs will provide a flexible platform and allow for the dynamic implementation of regulatory requirements, local policy, process re-design and adoption of best practice on a continuous improvement basis.
- 4.7. To achieve the ambitions outlined above, the structure has been an important focus of the redraft with it split into 8 separate parts reflecting the key procurement responsibilities. This structure largely replicates the structure suggested by the Chartered Institute of Public Finance and Accountancy (**CIPFA**). The key points are as follows;

Part 1 - The Rules and Key Responsibilities

Sets out why the Council needs these rules; the legal basis of the rules; the roles and responsibilities across the council for compliance with them; and a simplified process through which all procurement activity will have an appropriate level of assurance

Part 2 - Activity Before a Procurement

An area that the current CPRs does not address e.g. the need for early and appropriate engagement with support services (legal, procurement and finance); the requirement to consider alternative options to procurement (make or buy, shared service arrangements, etc.); the ability to reserve procurements to local business or certain categories of business; highlighting the regulated nature of pre-procurement activity (i.e. market engagement and testing); and the requirement to set out clearly what it is the Council wants (specification). Generally the biggest contributor to the achievement of best value lies in effectively planned and executed pre-procurement activity which the revised rules will focus on to a much greater extent.

Part 3 - Selecting a Sourcing Process

This part better reflects the legal obligations on the Council under PCR 2015, recognising the numerous legal ways of meeting those obligations in a proportionate



way. The legal method to 'reserve' contracts to local businesses or Small and Medium sized Enterprises (SMEs) /Voluntary, Community and Social Enterprises (VCSEs) is reflected and supports the Council's Social Value Policy objectives. A process has been set out for oversight of the 'emergency' procurement process under regulation 32 of PCR (negotiated procedure without prior publication).

Part 4 - The Form of Contract

This Part sets out the responsibilities of Directors for agreeing contract terms below a certain value with minimum requirements on those terms based on statutory requirements (e.g. 30 days payment terms, mandatory termination provisions) as well as simply good practice (the VAT position, the management of contracts and insurance provisions). The rules also address the increasing use of electronic signatures and provide clear instructions as to how these should be used.

Part 5 - The Procurement Process

Here the draft revised CPRs focus on how the Council lawfully selects its contractors - the need to ensure contractors are suitable both in delivering services and their economic and financial standing. Ensuring that the legal obligations to set fair, transparent, proportionate and appropriate award criteria and the process for managing the procurement process (e.g. administration of bids, clarifications, corrections etc)

Part 6 - After the Commencement of the Contract

The principles for on-going contract management responsibility and the oversight of strategic contracts to the Council.

Part 7 - Transparency and Record Keeping

This section is focused on the legal obligations of the council in relation to confidentiality duties owed to suppliers; the publication of contract award notices; debriefing tenderers; the contents of the statutory procurement report under regulation 84 and the responsibilities in relation to the maintenance of the Council's contract register.

Part 8 - Variations and Extensions

This refers to the legal principles that apply when the Council wishes to vary a contract and the relevant level of engagement with the support services required. It also deals with the process for the extension of contracts, and where an extension is proposed that is not provided for within the terms of the contract, that it be treated as a new contract for the purpose of procurement legislation and internal sign-off.

Part 9 - Waivers

This sets out a simpler process for sign-off of waivers based on the value of the contract.

5. Implementation

- 5.1. On the assumption that the Committee endorses the recommendations set out within this report and the revised CPRs are formally approved at Full Council on 14 March 2023 the new rules will come into effect from 01 July 2023.



- 5.2. Any procurement activity which is in the process of being completed and was formally instigated prior to the launch date for the new rules will need to comply with the existing rules.
- 5.3. During the approximately 3 month implementation period, Procurement and Legal will engage with services at all levels to provide information and, as appropriate, training on the new rules. Communications will be engaged to ensure that all staff email communications and other means of raising awareness of the forthcoming changes can be utilised.
- 5.4. Information and training materials will be developed which can be flexibly communicated via meetings, in-person training courses, e-learning and revised web page content.
- 5.5. In order to gain maximum benefit from the revised CPRs procurement skills will need to be developed across all Council services.
- 5.6. Procurement, in consultation with Legal and other services as relevant, will develop and deliver wider corporate training which covers all key procurement life cycle activities - establishing need, soft market testing, specification writing, bid evaluation through to contract management and benefits realisation. This training is currently being scoped with the target that it will be ready for delivery prior to April 2023.
- 5.7. Similarly, a review of procurement governance processes and associated procurement documentation will also be undertaken to ensure that when the new rules come into effect the Council will be able to immediately benefit from improved flexibility, efficiency and effectiveness.
- 5.8. No further additional Procurement and Legal resource capacity is envisaged to be required to support the implementation of the new rules, although there may be some impact on the capacity of these services to support other development of further policy initiatives during the implementation period.
- 5.9. Sufficient budget is currently in place to develop the training materials mentioned above which will be developed within the 22/23 financial year and no on-going budget allocation is being sought in order to effectively deliver the recommendations set out within this report.

6. Integrated impact assessment

6.1. An integrated impact assessment is not required as the recommendation does not have a negative impact on any of the protected characteristics as described in the Equality Act 2010.

7. Legal implications

7.1. This report is written by the City Solicitor and contains the legal implications within the body of the report.

8. Director of Finance's comments

8.1. The revised CPR framework including appropriate financial thresholds and limits have been formulated in consultation with the Director of Finance.

.....
Signed by: Richard Lock - Assistant Director, Procurement

Appendices

Appendix A: Draft: Contract and Procedure Rules.

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

Portsmouth City Council
Contract and Procurement Rules

Approved by Full Council with effect from [date] and containing all subsequent approved amendments up to [date].

Content

Part 1) The Rules and key responsibilities.....	3
1. Purpose.....	3
2. Councillor Responsibilities	4
3. Director responsibilities	4
4. Responsible Officer.....	5
5. The City Solicitor and Assistant Director of Procurement	6
6. Council Gateway process	6
7. Application of the Rules	7
8. Conflict of Interest	8
Part 2) Activity before a procurement.....	10
9. Initial assessment.....	10
10. Options Appraisal	10
11. Preparation (market testing and engagement).....	11
12. The Requirement (Specifications)	11
13. Valuation of the Contract	11
14. Lots.....	12
Part 3) Selecting a sourcing process.....	13
15. Contracts with a value of under £5,000 in value.....	13
16. Contracts with a value between £5,000 and £30,000.....	13
17. Contracts with a value of over £30,000 and under the relevant Threshold	13
18. Contracts with a value over the relevant Threshold	14
19. Requirement to advertise	14
20. Negotiated procedure without prior publication	15
21. Reserved contracts.....	15
22. Consultancy Contracts	15
23. Framework Agreements and Dynamic Purchasing Agreements (DPS).....	16
Part 4) The form of contract.....	17
24. Form of Contract.....	17
25. General Clauses	17
26. Insurance.....	17
27. Mandatory clauses	18
28. Signing (executing) the contract.....	19

29.	Certification of the contract.....	20
30.	Contract Management.....	20
Part 5)	The procurement process	22
31.	Testing Suitability of Suppliers	22
32.	Eligibility to Bid	22
33.	Assessing Economic and Financial Standing.....	22
34.	Award Criteria.....	22
35.	Administration of Tenders and quotes.....	23
36.	Clarifications Raised by Suppliers	23
37.	Correction of Errors, Late Tenders and seeking post tender clarification.....	23
38.	Evaluation.....	24
39.	Contract award	24
Part 6)	After the commencement of the contract	25
40.	Contract management.....	25
41.	Strategic Contract Management Board	25
Part 7)	Transparency and record keeping.....	26
42.	Duty of confidentiality owed to suppliers	26
43.	Contract Award Notice - OJEU or FTS.....	26
44.	Contract Award Notice - Contracts Finder.....	26
45.	Debriefing Tenderers.....	26
46.	Procurement Report	27
47.	Contracts Register and storage of contracts	28
Part 8)	Variations and extensions	29
48.	Variations permitted by law	29
49.	Contract Extensions	29
Part 9)	Waivers.....	30
50.	Authority to Waive Contract and Procurement Rules.....	30
Appendix 1 -	Glossary.....	31

Part 1) The Rules and key responsibilities

1. Purpose

- 1.1. These Contract and Procurement Rules ("**the Rules**") are made in accordance with section 135 of the Local Government Act 1972. They set out the manner in which the Council buys goods or materials, services and works and how it ultimately contracts with outside parties ("**Procurement**").
- 1.2. The over-riding public procurement policy requirement is that all public procurement must be based on Value for Money, defined as "*the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought*". This should be achieved through competition, unless there are compelling reasons to the contrary.
- 1.3. Public procurement is subject to a legal framework which encourages free and open competition and Value for Money, in line with internationally and nationally agreed obligations and regulations. As part of its strategy, the Council aligns its procurement policies within this legal framework as well as its own wider policy objectives.
- 1.4. UK public procurement applicable to the Council is primarily governed by the Public Contract Regulations 2015 ("**PCR 2015**") and the Concession Contract Regulations 2016 ("**CCR 2016**") and on certain specific occasions when it concerns the Port, the Utilities Contract Regulations 2016 ("**UCR 2016**"). The key "**Procurement Principles**" that apply to all public sector procurements are;
 - 1.4.1. **non-discrimination** - decision making and actions must be unbiased
 - 1.4.2. **equal treatment** - comparable situations are not treated differently and that different situations are not treated in the same way unless such treatment can be objectively justified
 - 1.4.3. **transparency** - open and available to all tenderers
 - 1.4.4. **proportionality** - measure is appropriate for attaining the objective pursued
- 1.5. As well as the procurement regulations referred to in paragraph 1.4, the Council must also adhere to other domestic legislation and guidance which affects procurement policy, which includes (but is not limited to);
 - 1.5.1. The Local Government Act 1999 which requires the Council (as a 'best value authority' to make arrangements to secure the continuous improvement in the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
 - 1.5.2. The Late Payment of Commercial Debts Regulations 2013 - which aims to make pursuing payment a simpler process, reducing the culture of paying late and making payment on time the norm;
 - 1.5.3. Equality Act 2010 - the Council must always comply with the Public Sector Equality Duty when conducting public procurement;
 - 1.5.4. Public Services (Social Value) Act 2012 - at the pre-procurement

stage, the Council must consider how what it is procuring may improve the social, environmental and economic well-being of the area in which the contract will be applied, how it might secure any such improvements and to consider the need to consult.

- 1.5.5. The Local Government (Transparency Requirements) (England) Regulations 2015 - which requires the Council to publish certain information about public contracts
- 1.5.6. Procurement Policy Notes (PPNs) published by the Cabinet Officer which provide guidance for procurement for public sector organisations;
- 1.5.7. Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") - which protects employees and may be relevant where the Council is changing contractor or outsourcing/insourcing services.

2. Councillor Responsibilities

- 2.1. The Council is composed of its elected Councillors who provide democratic accountability on behalf of the whole community of Portsmouth. The Councillors, meeting as "the Council" will set the policy and budgetary framework for the Council as a whole. The Cabinet, as the part of the Council which is responsible for most day-to-day decisions, will be responsible for making decisions which are in line with this framework.
- 2.2. Individual Cabinet Members have public accountability for the budget and contracting framework within their portfolio and will be informed by the key Council officers who are responsible for advising, implementing and managing the day-to-day delivery of services by officers.
- 2.3. Cabinet Members will be asked to approve certain "Key Decision". These Key Decisions (as defined in the Constitution) are decisions which are likely to;
 - 2.3.1. Result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - 2.3.2. Be significant in terms of its effects on communities living or working in an area comprising 2 or more wards in the Council's administrative area.
- 2.4. Officer accountability for procurement will be with its Chief Officers (in accordance with the Constitution). Those Chief Officers (referred to in these Rules as "**Directors**"), have responsibility for procurement in accordance with the Council's Scheme of Delegation.

3. Director responsibilities

- 3.1. All Directors are responsible for ensuring that the Rules are correctly applied and understood in accordance with the areas for which they are responsible including for any emerging relevant best practice, policy and statutory obligations, in regular consultation with Procurement, Legal and Finance.
- 3.2. Directors must not commence or permit the commencement of a

procurement process without a specific delegated authority to act under the scheme of delegation or from the relevant Cabinet Member, through a published decision or as otherwise authorised in accordance with the Council's Constitution.

- 3.3. Directors shall;
- 3.3.1. be responsible and provide strategic direction for all procurements undertaken in their directorate;
 - 3.3.2. ensure that all procurement and delegated decision making adheres to the scheme of delegation;
 - 3.3.3. comply with the Financial Rules as set out in the Council's Constitution;
 - 3.3.4. ensure that all sourcing decisions represent Value for Money and are within approved budgets;
 - 3.3.5. ensure that they delegate to appropriately skilled and qualified Responsible Officers to undertake procurement activity;
 - 3.3.6. engage with Procurement, Finance and Legal Services;
 - 3.3.7. provide for appropriate and effect contract and supplier management for all contracts they are responsible for (see [Part 6](#) of these Rules);
 - 3.3.8. ensure sufficient funds are available in their budget for relevant procurement and contracting activities; and
 - 3.3.9. ensure that they update their directorate risk register to include any identified procurement risks.

4. Responsible Officer.

- 4.1. The Responsible Officer will be the person nominated by their Director to conduct a compliant procurement process or to participate in or lead a team of officers assembled for that purpose.
- 4.2. The Responsible Officer shall;
- 4.2.1. ensure compliance the Council's Financial Rules;
 - 4.2.2. ensure that they are suitably confident in their duties in relation to procurement activity;
 - 4.2.3. ensure that they have sufficient information to support and justify all commissioning and procurement activity;
 - 4.2.4. ensure that an options appraisal has been undertaken in relation to the activity they are undertaken (see Rule 9).
 - 4.2.5. manage the procurement process in compliance with the Rules, PCR 2015 (or CCR 2016 if applicable) and any other relevant Council policy or process for commissioning and procurement including the Gateway Process as advised by Procurement;
 - 4.2.6. seek appropriate advice and support from their Director, Procurement, Legal Services, and Finance departments.
 - 4.2.7. plan an appropriate and proportionate timetable for any procurement

- exercise, taking into account any advice from Procurement, Finance and Legal Services as necessary;
- 4.2.8. devise a procurement plan which is efficient and suitable for the requirement and the market concerned which considers any other relevant sourcing options such as the use of existing contracts or Framework Agreements or DPS Agreements taking into account any advice from Procurement, Finance and Legal Services;
 - 4.2.9. ensure that all procurement activity follows Procurement Principles (see 1.4);
 - 4.2.10. maintain a full record and audit trail of all procurement activity ("**the Procurement File**" see [Part 7](#) of the Rules), including decisions made and communications with suppliers; and
 - 4.2.11. ensure contracts are recorded as out in [Part 7](#) of the Rules.
- 4.3. The Responsible Officer shall take advice from the City Solicitor or officer acting with delegated authority from the City Solicitor;
- 4.3.1. On all legal, regulatory and constitutional aspects of the procurement process; and
 - 4.3.2. as set out in Rule 24, concerning the content and form of any contract before it is made available to bidders (irrespective of procurement process) and/or before it is entered into on behalf of the Council.

5. The City Solicitor and Assistant Director of Procurement

- 5.1. The City Solicitor is responsible for updating and maintaining these Rules.
- 5.2. If an issue arises upon which the Rules are silent or incomplete, the matter shall be referred to the City Solicitor for determination. The Contracts, Commercial and Procurement Legal Team within Legal Services (for simplicity referred to as "**Legal Services**" in these rules) will be responsible, on behalf of the City Solicitor, for the provision of such advice and guidance.
- 5.3. The Director of Finance and Resources & section 151 Officer has delegated authority under the Council's constitution for the Council's procurement function and undertaking such processes as may be required to ensure the most effective procurement of services, goods, works and all other contractual arrangements required by the Council. This responsibility has been onward delegated to the Assistant Director for Procurement.
- 5.4. The Assistant Director of Procurement and the City Solicitor shall jointly be responsible for ensuring the compliance of the Council with these Rules.
- 5.5. Officers shall seek and comply with any advice from the City Solicitor (Legal Services), the Assistant Director of Procurement and the s151 Officer.

6. Council Gateway process

- 6.1. The Assistant Director of Procurement, in consultation with the City Solicitor and s151 Officer, shall be responsible for setting out an assurance process (known as "**Gateway**") which will take into account such matters as financial, legal and reputational risks to the Council.

- 6.2. The key functions of the Council's Gateway process will be to ensure that that the Council;
 - 6.2.1. Is able to proportionally manage the risks of its procurement activity;
 - 6.2.2. acts lawfully in accordance with legislation, the Council's constitution and these Rules;
 - 6.2.3. acts consistently across all procurement and sourcing activity;
 - 6.2.4. provides support and advice to maximises Best Value to the Council at all stages of the procurement cycle; and
 - 6.2.5. follows emerging best practice and support the delivery of national and Council policy and strategies;
- 6.3. The Gateway will be assessed by a board ("**Gateway Board**") which will include the Assistant Director of Procurement, City Solicitor and s151 Officer (or their respective delegates).
- 6.4. Gateway Board shall consider;
 - 6.4.1. Contracts with an annual value of £5 million or more; or
 - 6.4.2. Any contract considered higher risk, as decided by the Assistant Director of Procurement and City Solicitor (or their respective delegates).

7. **Application of the Rules**

- 7.1. The Rules shall apply to all spend by the Council with external suppliers (except as listed at Rule 7.3) regardless of the source of funding. They apply to contracts let by the Council on its own behalf or when acting as a purchasing authority on behalf of others.
- 7.2. These Rules shall also apply to all spend by Maintained Schools with external suppliers (except as listed at Rule 7.3) regardless of the source of funding **except** where any Rule requires them to do anything incompatible with any of the provisions of the Council's Schools Scheme for Financing Schools.
- 7.3. The Rules do not apply to;
 - 7.3.1. Grants to local and voluntary organisations (which are dealt with in the Council's Financial Rules);
 - 7.3.2. Contracts solely for the acquisition or disposal of an interest in land;
 - 7.3.3. arbitration or conciliation services
 - 7.3.4. legal services connected with litigation or the exercise of official authority (see regulation 10(1)(d) of PCR 2015);
 - 7.3.5. certain financial services related to the issue, sale, purchase or transfer of securities or other financial instruments;
 - 7.3.6. for loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;
 - 7.3.7. Contracts for permanent or fixed term employment (consultants are dealt with at Rule 21);

- 7.3.8. Works or orders placed with utility companies;
 - 7.3.9. Services delivered by a Portsmouth City Council in-house service (save for where the services are delivered by any PCC owned private company);
 - 7.3.10. Direct payments to customers following care assessment (e.g. direct payments or a personal budget);
 - 7.3.11. Non-trade payments to third parties, such as insurance claims, pension payments, court judgments, and statutory payments to public bodies; or
 - 7.3.12. Grant of a licence (unless a licence involves the letting of a Concession Contract).
- 7.4. Where the proposed contracts is subject to the Public Contract Regulations 2015 ("**PCR 2015**"), the Concession Contracts Regulations 2016 ("**CCR 2016**") or the Utilities Contracts Regulations 2016 ("**UCR 2016**"), then those regulations apply in addition to the Rules. Where there is a conflict, then PCR 2015, CCR 2016 or UCR 2016 (as applicable) take precedence.
- 7.5. The Council is legally obliged to comply with these rules. Failure to comply with the Rules may result in the Council being subject to judicial review and legal, financial and reputational damage to the Council.
- 7.6. Failure to adhere to the Rules is a disciplinary offence.
- 8. Conflict of Interest**
- 8.1. All Directors shall ensure that officers involved in procurement processes in their directorates are familiar with the Employees' Code of Conduct, part of the Council's constitution.
- 8.2. Officers who are also directors of Council owned companies maybe involved in procurement processes of the Council but must ensure their interests in the companies are declared in accordance with rule 8.3 and such interests must also be made clear in the tender documents in accordance with rule 8.6.3.
- 8.3. Any officer involved in a procurement shall:
- 8.3.1. comply with the Employees' Code of Conduct; and
 - 8.3.2. disclose in writing to their Director or the City Solicitor any direct or indirect, financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a procurement procedure.
- 8.4. Where an officer discloses such a conflict of interest the Director shall, in consultation with the City Solicitor, make arrangements to allocate the role to another person and shall consider whether any changes to the procurement process should be made to address any issues arising from the conflict.
- 8.5. Any officer involved in a procurement shall take appropriate measures to ensure competition is not distorted where a Candidate or Tenderer, or an undertaking related to that Candidate or Tenderer, has advised the Council on the procurement in question or been involved in the preparation of the procurement.

- 8.6. Where the Responsible Officer engages any external party to evaluate any tenders on behalf of the Council, the Responsible Officer shall ensure:
- 8.6.1. compliance with these Rules;
 - 8.6.2. that the party has received appropriate training and guidance, following advice from Procurement;
 - 8.6.3. that the invitation to tender includes relevant details of the party who will be involved in evaluation of tenders;
 - 8.6.4. that the external party is required to sign a confidentiality/non-disclosure agreement and declaration confirming they do not have any conflict of interest and will notify the Council immediately should a potential or actual conflict arise at any time during the procurement process.

DRAFT

Part 2) Activity before a procurement

9. Initial assessment

- 9.1. The contract must be valued in accordance with Rule 13.
- 9.2. If the contract is;
 - 9.2.1. a contract;
 - 9.2.1.1. over 5 years in duration (including extensions); or
 - 9.2.1.2. a High Risk Contract, with a value of £30,000 or more; or
 - 9.2.2. is of a value of £150,000 or more; or
 - 9.2.3. it is proposed to advertise the contract opportunity on Contract Finder; or

Then Procurement Services and Legal Services must be engaged.

- 9.3. If the contract does not meet the requirements of Rule 9.2, then it will be subject to 'self-service', meaning that it is not expected that the Responsible Officer will instruct Procurement Services and Legal Service to support the procurement of the contract. The Responsible Officer must then procure the contract in accordance with Rule 15, 16 or 17 depending on value.

10. Options Appraisal

- 10.1. The Responsible Officer will ensure that the sourcing approach adopted (which shall include but will not be limited to the review of any existing contractual arrangement and the decision as to whether or not the goods/works/services shall be procured or provided in-house or through collaboration with other public bodies etc) is appropriate to the particular requirements taking into account the budget, the requirements of the Council, its service users and residents, the relevant market and any other relevant commercial considerations.
- 10.2. The sourcing approach must comply with the requirements of the Public Services (Social Value) Act 2012 which requires the Council to consider;
 - 10.2.1. How what is being proposed to be procured might improve the economic, social and environmental well-being of the relevant area; and
 - 10.2.2. How, in conducting the process of procurement, it might act with a view to securing that improvement; and
 - 10.2.3. Whether to undertake a consultation on the potential improvements or how they might be secured.

The Council's Social Value policy, maintained by procurement, sets out how the Council will comply with this requirement.

- 10.3. The Responsible Officer will in particular give due consideration to any relevant PCC policy which affects procurement activity as advised by procurement services, which may include (but are not limited to) those on the Real Living Wage, the Armed Forces Covenant and Environmental Policy.

10.4. The Responsible Officer will ensure a record is kept of the sourcing decision with the Procurement File and that the decision is referenced in any decision to approve the commencement of the procurement.

11. Preparation (market testing and engagement)

11.1. The Responsible Officer shall determine the sourcing approach based on;

11.1.1. The views of service users, residents and other stakeholders;

11.1.2. Consultation or testing with the relevant market and peer review

11.1.3. Current performance and future objectives of the product, works or service

11.1.4. Budgetary constraints; and

11.1.5. The existence of other public contracts, Framework Agreements or DPS Agreements which might be suitable for the Council to use

11.2. Market consultation, as a regulated activity in accordance with regulations 40 and 41 of the PCR 2015, shall be conducted in consultation with Procurement. The Responsible Officer must comply with any guidance or advice provided.

11.3. Any proposals to sell or trade in services, supplies, or assets or to enter into collaboration or partnership agreement (such as under section 75 of the National Health Service Act 2006) must be referred to Legal Services.

11.4. Where the Council proposes to procure a Contract jointly with one or more other Contracting Authorities then advice must be sought from the Assistant Director of Procurement in consultation with Legal Services.

12. The Requirement (Specifications)

12.1. The Responsible Officer shall ensure that the specification for the contract

12.1.1. Complies with the requirements of PCR 2015 in respect of technical specifications and any internal guidance and Council policies;

12.1.2. Clearly and effectively sets out the obligations on the supplier to deliver to the Council's requirements;

12.1.3. Is legally enforceable, taking advice from Legal Services where necessary;

12.1.4. Contains suitable and appropriate service levels and/or key performance indicators/monitoring arrangements.

13. Valuation of the Contract

13.1. The value or estimated value of all contracts to be procured must be properly assessed to determine whether or not they meet particular thresholds as set out in the Rules and under PCR 2015 and CCR 2016. The Responsible Officer shall follow advice from Procurement Services and Legal Services.

13.2. Contracts subject to PCR 2015 must be valued in accordance with regulation 6 of the PCR 2015; Contracts subject to CCR 2016 must be valued in accordance with Regulation 9 of CCR 2016.

13.3. The value of all other contracts shall be the value;

- 13.3.1. including VAT;
 - 13.3.2. Including all possible extensions and renewals;
 - 13.3.3. In the case of a Framework Agreements or DPS Agreements, the maximum estimated value of all the contracts to be awarded during the total term of the Framework Agreements or DPS Agreements; and
 - 13.3.4. Inclusive of any potential spend through the contract concerned by other contracting authorities
- 13.4. Notwithstanding Rule 14, contracts shall not be subdivided with the effect of preventing it from falling within the scope of the Rules, PCR 2015 or CCR 2016.
- 13.5. Where a supply or service contract is regular in nature or is intended to be renewed or re-procured on or shortly after its expiry, the calculation of the contract value shall be based on the total value of the successive contracts being planned including those of the same type awarded during the preceding 12 months or previous financial year..
- 13.6. Where a supply or service contract does not indicate a total price, the basis for calculating the estimated contract value shall;
- 13.6.1. In the case of fixed-term contracts where that term is less than or equal to 48 months, the total value for their full term;
 - 13.6.2. In the case of contracts without a fixed term or with a term greater than 48 months, the monthly value multiplied by 48
- 14. Lots**
- 14.1. For every procurement relating to a contract which exceeds the Threshold, the Responsible Officer must, in consultation with Procurement;
- 14.1.1. Review whether the contract should be sub-divided into and procured in lots;
 - 14.1.2. Provide reasons for any decision not to subdivide into lots, which shall be included in the Procurement Report; and
 - 14.1.3. Where a contract is to be divided into lots, comply with the requirements in Regulation 46 of PCR 2015.

Part 3) Selecting a sourcing process

15. Contracts with a value of under £5,000 in value

- 15.1. The Responsible Officer must, in relation to any contract with a value of less than £5,000, demonstrate and record that the contract represents Value for Money. In doing so, the Responsible Officer should consider whether the contract relates to services that maybe purchased by another Council department or other corporate arrangements (e.g. frameworks, e-catalogues etc)
- 15.2. The form of contract shall comply with the requirements of Rule 25.1.

16. Contracts with a value between £5,000 and £30,000

- 16.1. The Responsible Officer shall, in relation to any contract with a value between £5,000 and £30,000:
- 16.1.1. without advertising the opportunity, obtain a minimum of three quotations from suppliers, where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit bids representing Value for Money and can evidence this; or
- 16.1.2. use of a contract, Framework Agreement or Dynamic Purchasing System procured by another contracting authority in compliance with the PCR 2015 or CCR 2016 (as applicable); or
- 16.1.3. obtain a single tender or quote from reputable supplier where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit a quote representing Value for Money and can, if required, provide evidence this. The format for such request and written approval shall be in the Council's standard form available from Procurement Services.
- 16.2. The form of contract shall comply with the requirements of Rule 25.1.

17. Contracts with a value of over £30,000 and under the relevant Threshold

- 17.1. The Responsible Officer shall use one of the following procurement routes to award a contract valued over £30,000 but below the relevant Threshold:
- 17.1.1. a competitive procurement process advertised on Contracts Finder and the Council's own website using the Council's e-sourcing solution (contact Procurement Services);
- 17.1.2. use of a contract, Framework Agreement or Dynamic Purchasing System procured by another contracting authority in compliance with the PCR 2015 or CCR 2016 (as applicable) using the Council's e-sourcing solution (contact Procurement Services); or
- 17.1.3. obtain a minimum of three quotations from suppliers using the Council's e-sourcing solution (contact Procurement Services), where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit bids representing Value for Money and can evidence this; or

- 17.1.4. only if all other routes at Rule 17.1.1 to 17.1.3 are unavailable, without advertising the opportunity and with the prior written approval of the relevant Director or Assistant Director (as applicable per the Scheme of Delegation), obtain a single tender or quote from a reputable supplier where the Responsible Officer has sufficient knowledge of the market to be reasonably certain such an approach would elicit a quote representing Value for Money and can, if required, provide evidence this. The format for such request and written approval shall be in the Council's standard form available from Procurement Services.
- 17.2. The form of contract shall comply with the requirements of Rule 25.1.
- 18. Contracts with a value over the relevant Threshold**
- 18.1. Contracts which equal or exceed the Threshold shall use one of the following procurement routes;
- 18.1.1. By advertisement on FTS or by using one of the procurement routes mandated by the PCR 2015 or CCR 2016 (as applicable); or
- 18.1.2. where appropriate and lawful, by using an existing contract, Framework Agreement or Dynamic Purchasing System which was procured in compliance with the PCR 2015 or CCR 2016 (as applicable); or
- 18.1.3. Contracts subject to the 'Light Touch' regime (social care, education services and other services listed in Schedule 3 of the PCR 2015) must comply with the principles of regulation 76 of PCR 2015 or regulation 19 of CCR 2016 (as applicable).
- 18.2. The form of contract shall be as advised by Legal Services.
- 19. Requirement to advertise**
- 19.1. Contracts which exceed the Threshold must be advertised on FTS by publishing a Contract Notice or, where advised by Procurement, a Prior Information Notice ("**PIN**") as a call for competition.
- 19.2. The Council may use a PIN as a call for competition when using the restricted or competitive procedure with negotiation.
- 19.3. All contracts which are advertised on FTS must also be advertised on Contract Finder within 24 hours of the time the Council becomes entitled to post it, that is either after;
- 19.3.1. It appears on FTS;
- 19.3.2. It has not appeared by 48 hours have elapsed from the time that FTS has confirmed receipt of notice to the Council.
- 19.4. All Procurement Documents must be available from the time the Contract Notice is published on FTS. Therefore no advertisement must be placed until the Procurement Documents are complete. The Contract Notice must include a specified location where interested parties can electronically access all Procurement Documents.
- 19.5. The Responsible Officer or Procurement, as is appropriate, is responsible for ensuring all Contract Notices and publications on Contracts Finder are

published in accordance with the Rules.

20. Negotiated procedure without prior publication

- 20.1. Where the Responsible Officer proposes to dispense with a Contract Notice and engage in negotiations with a single supplier under the negotiated procedure in regulation 32 of PCR 2015 or regulation 31(6) of CCR 2016, then the Responsible Officer must receive the written authorisation from the City Solicitor and Assistant Director of Procurement before using these procedures.

Other Considerations

21. Reserved contracts

- 21.1. The Responsible Officer may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors in accordance with regulation 77 of PCR 2015. The maximum duration of contracts awarded under this power is three years.
- 21.2. The Responsible Officer may, for below Threshold contracts, reserve the procurement:
- 21.2.1. in relation to services contract only by supplier location - this means being able to run a competition and specify that only suppliers located in a geographical area can bid; and/or
- 21.2.2. for Small and Medium sized Enterprises (SMEs) /Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.
- 21.3. The Responsible Officer must be able to demonstrate that reserving a procurement as described in rule 21 will represent Value for Money and must obtain written approval from the Assistant Director of Procurement before commencing a procurement in reliance on rule 21.1.

22. Consultancy Contracts

- 22.1. A Consultant is an individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement.
- 22.2. Where a Consultant is engaged, the Responsible Officer will need to consider the rules for 'off-payroll workers'. The off-payroll working legislation is likely to apply to consultancy engagement if;
- 22.2.1. The Consultant personally performs services for the Council;
- 22.2.2. The Consultant is not contracting personally but chooses to contract via their own company / personal service company: or
- 22.2.3. The nature of the contract and working practices means that the consultant is working in a similar way to an employee and would be considered 'employed' for tax purposes were they not engaged via their own company / personal services company

- 22.3. To establish the off-payroll status of a Consultant, the Responsible Officer must complete the IR35 Toolkit "Check Employment Status for Tax" (CEST) to establish whether or not an individual consultant is in scope for PAYE (tax and national insurance) contributions. Any queries on the CEST test following its completion must be referred to the Payroll and Pensions manager.
- 22.4. The CEST test will also enable the Responsible Officer to determine whether the engagement will derive employment rights to the Consultant (i.e. the rights to paid leave, pensions etc). Any queries on the employment status of the Consultant must be referred to the HR Business Partner.
- 22.5. The result of the CEST test must be kept on the Procurement File. No payment will be made by accounts payable until the CEST test and payroll status has been confirmed.
- 22.6. Failure to comply with the rules for off-payroll workers can result in financial penalties (as well as the back-payment of unpaid taxes) from HM Revenue and Customs. Failure to properly account for the employment status of the Consultant may result in the back-payment of paid leave, pensions contributions etc. Such financial penalties will be the liabilities of the relevant Council department.
- 22.7. Further guidance can be found on the Council's intranet site. Notwithstanding any other rule, advice maybe sought from Legal, Finance and Procurement on consultancy agreements.

23. Framework Agreements and Dynamic Purchasing Agreements (DPS)

- 23.1. Where the Council is procuring (i.e. setting up) a Framework Agreement or a Dynamic Purchasing Agreement with a value above the relevant Threshold, then they shall be awarded in accordance with PCR 2015 or CCR 2016 (as applicable).
- 23.2. Where the Council is procuring a Framework Agreement or a Dynamic Purchasing Agreement (or pseudo-framework agreement) with a value below the relevant Threshold, then they shall be awarded in accordance with these Rules.
- 23.3. The Responsible Officer must consult Procurement before using a Framework Agreement or Dynamic Purchasing System set up by another contracting authority and the validity of the Framework or Dynamic Purchasing System and its contractual terms must be approved by Legal Services in advance of the Council carrying out any "call-off" procedure or awarding any contract under such Framework Agreement or Dynamic Purchasing System.

Part 4) The form of contract

24. Form of Contract

24.1. For contracts;

24.1.1. less than £150,000, the relevant Director should use a standard form contract as approved by Legal Services but can choose to accept the supplier's standard terms, provided that such terms are fair and reasonable in the circumstances. The form of contract must be recorded in its final agreed form and shall contain as a minimum the requirements set out in Rule 25.1.

24.1.2. more than £150,000, Legal Services is responsible for providing or approving all forms of contract. The Responsible Officer shall follow any advice or guidance from Legal Services on the appropriate form of contract.

24.2. All contracts must be written or in an electronic form capable of providing a permanent record of the intentions of the parties to the contract.

24.3. Where contract terms are to be published by the Council in connection with any competitive tender or single tender process, the Responsible Officer must ensure that the proposed form of contract has been approved by Legal Services before it is made accessible to Tenderers or any other external interested party.

24.4. The Responsible Officer shall ensure there is a record of the contract kept in accordance with Rule 47.

25. General Clauses

25.1. Every contract must clearly specify;

25.1.1. The services, goods or works to be provided in accordance with Rule 12;

25.1.2. The price to be paid, with a statement of discounts and other deductions, including any Value Added Tax (VAT) payable and any provisions for price variation, whether by indexation or other means;

25.1.3. The duration of the contract including any specific dates by which any aspects are to be performed, together with any possible extensions of the contract term. Contracts should not normally exceed five years (including extensions) but contracts may be set for longer periods where the relevant industry practice, mobilisation and financing or partnership arrangements to be entered into, make it in the interests of the Council to do so. Contracts should not be for an ongoing rolling period. The Assistant Director of Procurement must be consulted on any business case for proposing a contract term longer than 5 years and the reasons for doing so must be recorded in the Procurement File.

26. Insurance

26.1. Every contract must clearly specify that the supplier shall hold and maintain for the duration of the term of the contract sufficient insurance considering the likely risk under the contract.

- 26.2. Where the relevant type of cover is applicable and subject to a proper evaluation of risk, the following levels of insurance cover should be set out as the minimum amount in the contract for each single incident.

Insurance	Minimum level	
Public Liability (where the contractor interacts with the public or with third parties) and Product Liability (where the work, service or goods is for the design, manufacture or supply of a physical product)	For all services	No less than £5,000,000
	Social care	No less than £10,000,000
	Construction	As advised by Insurance Officer based on the activity undertaken and the contractor
Employer's Liability (where the contractor employs staff)	£5,000,000	
Professional Indemnity (where the council will be relying on advice, offers a professional service or handles client data or intellectual property. This includes design and architecture work)	No less than £1,000,000 but as advised by the Insurance Officer based on the activity undertaken and the contractor	

- 26.3. These amounts may only be lowered on the written advice of the Council's Insurance Officer whose advice shall be sought on any other insurances required. The Responsible Officer must provide an account for the reasons for the lower level of cover and include an assessment of risk associated with the contract.

27. Mandatory clauses

27.1. Bribery and corruption

- 27.1.1. Every contract shall include provision for termination if the supplier, their employees or anyone acting on the supplier's behalf;
- 27.1.1.1. Corruptly offers, gives or agrees to give anyone an inducement or reward in respect of any contract with the Council;
 - 27.1.1.2. Commits an offence under the Bribery Act 2010; or
 - 27.1.1.3. Commits any of the offences listed in regulation 57(1) of the PCR 2015 or regulation 38(8) of CCR 2016 (as applicable).

27.2. Termination of Contracts

- 27.2.1. Every contract over the relevant Threshold shall include a provision for the Council to terminate the contract in any of the provisions of

regulation 73(1) of PCR 2015 or regulation 44 of the CCR 2016 (as applicable) apply. This is that;

- 27.2.1.1. the contract has been subject to a substantial modification which required a new procurement procedure to be started;
- 27.2.1.2. at the time of contract award, one of the mandatory exclusion criteria in regulation 57 PCR 2015 or regulation 38(8) of CCR 2016 (as applicable) applied and the supplier should therefore have been excluded from the procurement procedure; or
- 27.2.1.3. any competent court or authority has held that the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the PCR 2015 and any retained EC Treaty

27.3. Payment terms

- 27.3.1. Every contract shall provide that the Council shall pay its supplier, in arrears of the services/works/supplies being delivered to the Council, no later than 30 days from receipt of a valid and undisputed invoice.
- 27.3.2. Payment must not be made in advance except as permitted by the Council's Financial Rules. Payments in advance must be approved by the s151 Officer.
- 27.3.3. The Responsible Officer must ensure that any purchase order raised makes reference to the specific and relevant Council contract that the purchase order relates to and that the purchase order clearly states that the terms and conditions in the contract take precedence/priority over any other terms and conditions stated on the purchase order and/or which the supplier may include on their invoice.
- 27.3.4. The contract shall also provide that the Council's suppliers shall pay their sub-contractors within a maximum of 30 days of receipt of an undisputed invoice.
- 27.3.5. Where the Responsible Officer proposes to deviate from the standard payment terms as set out in this Rule 27.3, they must;
 - 27.3.5.1. obtain the agreement of the s151 Officer, such agreement to be recorded in writing as a "Payment Exception" and a copy provided to Procurement; and
 - 27.3.5.2. engage with Legal to ensure the contractual terms reflect the Payment Exception.

28. Signing (executing) the contract

- 28.1. All contracts shall be signed but not sealed unless they must be signed under seal in accordance with Rule 28.2.
- 28.2. The following contracts shall be signed under seal:
 - 28.2.1. Contracts involving land transactions;

28.2.2. Contracts with a value of £150,000 or more; and

28.2.3. Any contract as advised by Legal Services.

- 28.3. The City Solicitor shall have the discretion to dis-apply Rule 28.2 where appropriate, having considered the risks of the particular matter.
- 28.4. The relevant Director (as per the scheme of delegation) shall be authorised to sign all contracts up to the value of £150,000.
- 28.5. The City Solicitor shall execute all contracts which are required to be executed by the Council as a deed under seal and may execute all simple contracts not required to be sealed.

Electronic execution

- 28.6. Signing (but not sealing) of all contracts under £150,000 may be effected by a signature being affixed to a Contract either using physical handwritten means or an Electronic Signature.
- 28.7. An Electronic Signature must be affixed by the signatory themselves (for example it cannot be their PA on their behalf) and a copy of the executed contract must be kept in accordance with [Part 7](#).
- 28.8. The use of Electronic Signatures is not permitted where;
- 28.8.1. the contract is to be signed under seal;
- 28.8.2. a physical, handwritten signature needs to be filed;
- 28.8.3. there is a condition in the contract which prevents it;
- 28.8.4. the contract may need to be enforced in a jurisdiction where the method is not accepted;
- 28.8.5. the contract needs to be notarised.

29. Certification of the contract

- 29.1. The City Solicitor shall be responsible for determining whether any contract should be certified under the Local Government (Contracts) Act 1997. This Act empowers local authorities to agree terms that will survive the main contract being set aside in the event of a finding that the Council has exceeded its statutory powers in entering into the contract. In these circumstances, the certification process ensures that the private sector party is compensated. All such certificates shall be in a form approved by and executed by the City Solicitor.

30. Contract Management

- 30.1. The Director (as per the Scheme of Delegation) shall ensure that there are in place arrangements that will monitor and actively address any concerns with:
- 30.1.1. the performance of the contract against the specification and any key performance indicators or other performance monitoring regime;
- 30.1.2. costs and Value for Money; and
- 30.1.3. service user or end user satisfaction.
- 30.2. The Director (as per the Scheme of Delegation) shall ensure the Responsible Officers comply with guidance issued by the Council, including

from Procurement, from time to time on effective contract and supplier relationship management.

DRAFT

Part 5) The procurement process

Selection and Award Criteria

31. Testing Suitability of Suppliers

- 31.1. The Responsible Officer shall apply minimum standards of experience, relevant accreditations and economic standing to suppliers to test their suitability to bid for Council contracts in accordance with Procurement Guidance.

32. Eligibility to Bid

- 32.1. Suppliers who fail to meet all of the Council's minimum standards of reputation, technical ability, experience or economic and financial standing as specified in the Selection Questionnaire and accompanying documents used for that particular procurement shall be excluded from the procurement process.
- 32.2. Where the supplier is being excluded (including due to previous poor performance) because one of the exclusion grounds in regulation 57 of PCR 2015 or regulation 38 of CCR 2016 (as applicable) applies, but provides evidence in support of its reliability despite the existence of a relevant exclusion ground, the Responsible Officer must consider that evidence and determine whether to exclude that supplier.
- 32.3. The Responsible Officer shall consult with the City Solicitor before reaching any decision under paragraph 32.2.

33. Assessing Economic and Financial Standing

- 33.1. All assessments of the supplier's economic and financial standing must be conducted by Finance and Procurement and in accordance with Procurement Guidance.
- 33.2. Only those suppliers who meet the Council's minimum requirements of economic and financial standing (as well as technical and professional ability) used for that particular procurement shall be invited to participate in a tender process or be awarded the contract.
- 33.3. The Responsible Officer, in consultation with Procurement, Legal Services and Finance, shall decide;
- 33.3.1. whether any form of security (such as a performance bond or parent company guarantee) is required before entering into the contract.
- 33.3.2. the amount of, and form of security having carried out an appropriate financial risk assessment.
- 33.3.3. such security must be effected with a reputable body authorised to effect such security or by way of a parent company guarantee if appropriate.
- 33.3.4. where appropriate, a sum for liquidated damages shall be included in the contract prior to any award to a supplier.

34. Award Criteria

- 34.1. The Responsible Officer shall adopt award criteria, which are fair,

transparent, proportionate and appropriate to the subject matter of the contract, and which shall meet the Council's policy priorities as noted in 10.2.

- 34.2. The Responsible Officer shall follow Procurement Guidance on award criteria for all contracts, irrespective of value, unless otherwise approved in writing by the Assistant Director of Procurement.
- 34.3. The award criteria for any contract with a value at or above the relevant Threshold shall be in compliance with regulation 67 of the PCR 2015, save for any contract to which regulation 74 of the PCR 2015 applies (namely "Light Touch" services) in which case the award of the contract shall be in compliance with regulation 76 of the PCR 2015.
- 34.4. The Responsible Officer shall adopt evaluation methodologies that are robust, have been tested to ensure they are appropriate for the relevant procurement, and which are transparent.

The Tendering Procedure

35. Administration of Tenders and quotes

- 35.1. All tenders and quotations of a value equal to or in excess of £30,000 must be conducted through the Council's e-tendering portal except as permitted in these Rules or with the prior written approval of the Assistant Director of Procurement.
- 35.2. Tenders and quotations for contracts valued at less than £30,000 may be conducted outside the Council's e-tendering portal.

36. Clarifications Raised by Suppliers

- 36.1. The Responsible Officer shall maintain a clarification log containing a list of questions/clarifications raised by suppliers during the course of a procurement process, with the Council's responses, to which all candidates or tenderers shall have unrestricted access (a "**Clarification Log**"). Where Procurement is involved with the conduct of a particular procurement process, it may maintain the Clarification Log itself and will notify the Responsible Officer of that approach.
- 36.2. Where a clarification leads to the amendment of one of the Procurement Documents, the Responsible Officer through advice from Procurement shall consider whether the deadline for submission of tender responses should be extended, or the procurement process otherwise revised to ensure equal treatment of suppliers, and take action accordingly.

37. Correction of Errors, Late Tenders and seeking post tender clarification

- 37.1. All tenders must comply with the rules and conditions set out in the Procurement Documents. Tenderers should be advised that any failure to adhere to the rules and conditions applicable to the tender in question could result in their tender being rejected.
- 37.2. The Responsible Officer may reserve the right in the Procurement Documents to accept late submissions of documents forming part of the tender at the Council's discretion, for example, where:
 - 37.2.1. the delay was caused by a mistake or failure of the Council; or

- 37.2.2. the document or submission in question clearly pre-dated the deadline for receipt of tenders and the decision not to exclude the tenderer would not unduly favour any or disadvantage the other Candidates.
- 37.3. In all cases, the Responsible Officer shall adhere to the rules it established in the Procurement Documents and document any decision to permit a late or corrected tender.
- 37.4. The following authorisation must be obtained before the Responsible Officer can accept either a late or corrected tender, or seek a post tender clarification:
- 37.4.1. for contracts valued at £150,000 or less: the Director (as per the Scheme of Delegation); and
- 37.4.2. for contracts valued at £150,000 or more, the Assistant Director of Procurement as well as the Director (as per the Scheme of Delegation).
- 38. Evaluation**
- 38.1. The Director (as per the Scheme of Delegation) shall appoint evaluators in consultation with Procurement, who have the necessary skills, expertise and experience to undertake the role.
- 38.2. The Procurement Guidance shall provide appropriate guidance, advice and support on all aspects of tender evaluation and the Responsible Officer shall have regard to all such guidance.
- 39. Contract award**
- 39.1. The Responsible Officer shall ensure the award of the contract to the most economically advantageous tender, being the tender that represents best Value for Money applying the award criteria. Authority to award the contract shall be by the officer with appropriate delegation in accordance with the Council's Scheme of Delegation (or that officer's onward scheme).
- 39.2. All contracts shall be awarded in accordance with the criteria set out in the Procurement Documents.
- 39.3. For contracts with a value at or above their relevant Threshold, the Responsible Officer shall adhere to the contract award procedures set out in PCR 2015 or CCR 2016 (as applicable) and observe a standstill period before entering into the contract. The standstill period will normally end at midnight at the end of the tenth day after the date the Council sends notice to the tenderers, electronically, that it has made an award decision.

Part 6) After the commencement of the contract

40. Contract management

- 40.1. Contract management should be proportionate to the total value, risk, duration and complexity of the contract. There should be a clearly nominated Contract Manager for each contract, who has responsibility for contractual management, review and liaison with the contractor.

41. Strategic Contract Management Board

- 41.1. The Strategic Contract Management Board shall be responsible for oversight of Strategic Contracts as defined in rule **Error! Reference source not found.**
- 41.2. A Strategic Contract is a contract that;
- 41.2.1. Is 5 years in duration or longer, and has an annual value of over £5 million or a lifetime value of over £20 million; or
- 41.2.2. Is a contract critical to the ongoing effective operation of the Council (for example corporate utility contracts or those contracts essential to the operation to the Council); or
- 41.2.3. Has been declared as such by the Assistant Director of Procurement, the City Solicitor and the s151 Officer.

Where there is any uncertainty as to the identification of a Strategic Contract, the Assistant Director of Procurement, in consultation with the City Solicitor and the s151 Officer shall be responsible for deciding whether a contract is a Strategic Contract, which for the avoidance of doubt may include a contract that does not strictly meet the above definition.

- 41.3. The membership of the Strategic Contract Management Board shall as a minimum consist of the Assistant Director of Procurement, the City Solicitor and the s151 Officer (or their respective delegates).

Part 7) Transparency and record keeping

42. Duty of confidentiality owed to suppliers

- 42.1. The Responsible Officer shall, in compliance with regulation 21 of PCR 2015, not disclose information which has been forwarded by a supplier and designated by that supplier as confidential or commercially sensitive (including technical or trade secrets and the confidential aspects of tenders), without express authorisation from the City Solicitor who shall balance the duty of confidentiality owed to suppliers against the Council's obligations under the Freedom of Information Act 2000 and any other disclosure obligations.
- 42.2. The Procurement Documents should inform interested parties of the Council's duties of disclosure and invite potential suppliers to designate information as confidential or commercially sensitive. However, the Council cannot guarantee that all information so designated will be withheld

43. Contract Award Notice - OJEU or FTS

- 43.1. Procurement shall ensure that a Contract Award Notice is published in accordance with the PCR 2015 or CCR 2015 (as applicable) and;
- 43.1.1. on FTS (and subsequently Contracts Finder);
- 43.1.2. where the notice is in respect of a contract let under a framework agreement or dynamic purchasing system:
- 43.1.2.1. if the procurement procedure for the framework agreement or dynamic purchasing system was launched and concluded or was launched but not yet concluded by 23:00 on 31 December 2020, on OJEU and FTS (such notice must be published first to OJEU before FTS and subsequently Contracts Finder); or
- 43.1.2.2. if the procurement procedure commences after 23:00 on 31 December 2020, on FTS (and subsequently Contracts Finder).

44. Contract Award Notice - Contracts Finder

- 44.1. The Responsible Officer shall ensure that a Contract Award Notice is published on Contract Finder for all contracts with a value of £30,000 or more.
- 44.2. Where a Contract Award Notice is required to be published on OJEU and/or FTS, such notice must be published on OJEU and/or FTS before appearing elsewhere. OJEU/FTS must be published on Contracts Finder within 24 hours of them appearing in OJEU/FTS.
- 44.3. This Rule 44 applies to all contracts including contracts let under Framework Agreements, whether or not that Framework Agreement was itself advertised on Contracts Finder or anywhere else. In respect of contracts let under a DPS which have a value of £30,000 or more, publication of a Contract Award Notice on Contracts Finder shall be within no more than 90 days.

45. Debriefing Tenderers

- 45.1. For contracts valued at or above the Threshold, the Responsible Officer shall ensure that all suppliers are offered debrief information;
 - 45.1.1. during the procurement process, in accordance with regulation 55 of the PCR 2015 or regulation 40 of CCR 2016 (as applicable); and
 - 45.1.2. at contract award, in accordance with regulation 86 of PCR 2015 or regulation 47 of CCR 2016 (as applicable).

46. Procurement Report

- 46.1. For all procurements irrespective of value, the Responsible Officer shall keep a copy of all Procurement Documents in accordance with the Council's records retention policy.
- 46.2. For contracts valued at or above the Threshold, the Responsible Officer shall prepare a written report in accordance with regulation 84 of PCR 2015 (the "**Procurement Report**") in relation to each procurement containing the following information (unless such information is contained in the Contract Award Notice);
 - 46.2.1. The subject matter and value of the contract, Framework Agreement or Dynamic Purchasing System;
 - 46.2.2. Where applicable, the results of the qualitative selection and reduction of numbers under regulations 65 and 66 of PCR 2015 which shall include;
 - 46.2.2.1. the names of the selected Candidates or Tenderers and the reasons for their selection;
 - 46.2.2.2. the names of the rejected Candidates or Tenderers and the reasons for their rejection;
 - 46.2.2.3. the reasons for the rejection of tenders found to be abnormally low;
 - 46.2.2.4. the name of the successful Tenderer and the reasons why its tender was selected and, where known the share (if any) of the contract or Framework Agreement which the successful Tenderer intends to subcontract to third parties, and the names of the main contractor's subcontractors (if any);
 - 46.2.2.5. for competitive procedures with negotiation and competitive dialogues, the circumstances as laid down in regulation 26 of PCR 2015 which justify the use of those procedures;
 - 46.2.2.6. for negotiated procedures without prior publication, the circumstances referred to in regulation 32 of PCR 2015 or regulation 31(6) of CCR 2016 (as applicable) which justify the use of this procedure;
 - 46.2.2.7. where applicable, the reasons why the Council has decided not to award a contract or Framework Agreement or to establish a Dynamic Purchasing System;
 - 46.2.2.8. where applicable, the reasons why means of

communication other than electronic means have been used for the submission of tenders; and

46.2.2.9. where applicable, conflicts of interests detected and subsequent measures taken.

- 46.3. The Responsible Officer shall maintain a Procurement File containing sufficient information to justify decisions taken at all stages of the procurement as advised by Procurement and Legal.
- 46.4. Procurement shall prepare a report containing such information as the Cabinet Office may request in respect of the procurement at or above the relevant Threshold.

47. Contracts Register and storage of contracts

- 47.1. For all procurements, the Responsible Officer shall ensure that an entry is made onto the Council's Contract Register and details of any contract, commissioned activity, purchase order, framework agreement and any other legally enforceable agreement with a value of £5,000 or greater is provided to Procurement in order to ensure compliance with the Local Government Transparency Code 2015.
- 47.2. The Responsible Officer shall be responsible for ensuring appropriate arrangements are made for the safe storage of the original contract documents with the Council's Records team. The Responsible Officer may seek advice from Legal Services on the storage of original contract documents if required.

Part 8) Variations and extensions

48. Variations permitted by law

- 48.1. Contract subject to the PCR 2015 or CCR 2016 (as applicable) shall not be varied other than in accordance with the provisions of regulation 72 of PCR 2015 or regulation 43 of CCR 2016 (as applicable). The Responsible Officer shall request advice from Legal Services in relation to any variation subject to the PCR 2015 or CCR 2016.
- 48.2. Contracts not subject to the PCR 2015 or CCR 2016 shall be considered by the Director (as per the Scheme of Delegation) on a case by case basis in accordance with the terms of the contract and the obligations to ensure Value for Money.
- 48.3. The Responsible Officer must engage with Legal Services for any variations to an existing contract where the value of that contract is £150,000 or more or will increase the value of the contract to £150,000 or more.

49. Contract Extensions

- 49.1. Contracts;
 - 49.1.1. above the relevant Threshold can only be extended where it is expressly provided for in their terms, or as otherwise permitted by the PCR 2015 or CCR 2016 (as applicable).
 - 49.1.2. below the relevant Threshold can only be extended where it is expressly provided for in their terms.
- 49.2. Where the proposed extension is not expressly provided for in the terms of the Contract, then the Responsible Officer must follow the relevant process in Part 3 of the Rules (as the extension will in effect be a new procurement).
- 49.3. All contract extensions must include a report into its performance and shall be approved by;
 - 49.3.1. If the value of the extension is less than £150,000, by the Director (as per the scheme of delegation); or
 - 49.3.2. If the value of the extension is £150,000 or more by the Director (as per the scheme of delegation) and;
 - 49.3.2.1. The Assistant Director of Procurement; and
 - 49.3.2.2. The City Solicitor
- 49.4. In determining how a contract extension or renewal shall be approved in accordance with Rule 49.3, the Responsible Officer shall not disaggregate or otherwise sub-divide any known spend during the period of any such extension or renewal with a view to avoiding obtaining the approvals referred to in Rule 49.3.2.

Part 9) Waivers

50. Authority to Waive Contract and Procurement Rules

- 50.1. Where the Responsible Officer seeks to deviate from the requirements of these Rules, a Waiver Form must be completed.
- 50.2. Authority to waive these Rules will be authorised by the signing of the Waiver Form as follows;
- 50.2.1. Where the contract value is under £150,000 - the Director of Service, having taken advice from the City Solicitor and Assistant Director of Procurement where appropriate;
- 50.2.2. Where the contract value is £150,000 or over, the Director of Service, the City Solicitor, s151 Officer and the Assistant Director of Procurement;
- 50.3. The Responsible Officer shall ensure that all Waiver Forms are kept with the relevant Procurement File.

DRAFT

Appendix 1 - Glossary

CCR 2016	means the Concession Contract Regulations 2016 as amended and in force from time to time;
Concessions Contract	<p>is either:</p> <p>A Works concession contract. A contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or utilities entrust the execution of works to one or more economic operators, the consideration for which consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; or</p> <p>A Services concession contract. A contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or utilities entrust the provision and the management of services (other than the execution of works) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment.</p>
Constitution	means the Council's rules as to how it operates, how decisions are made and the procedures that are followed to ensure efficiency, transparency and accountability to local people and which is published on the Council's website;
Consultant	means an individual or company commissioned to do a short term, and clearly defined piece of specialised work, with clear outcomes where the work is project based, outside business as usual and there is a defined end point for the Consultant's involvement;
Contract Award Notice	means a notice containing the information set out in regulation 86 of the PCR 2015, for above Threshold contracts, and regulation 112 for below Threshold contracts or regulation 47 of CCR 2016.
Contract Finder	means a Government website on which all public contracts over a minimum threshold must be advertised. https://www.gov.uk/contracts-finder ;
Contract Manager	means the Council officer responsible for the on-going management of the contract as described in Rule 40;
Contract Notice	means a notice advertising a public contract on OJEU or FTS as applicable;
Dynamic Purchasing System/DPS	means a system referred to in Regulation 34 of PCR 2015 and which can be described as an electronic system which allows pre-qualified suppliers to participate in mini-

	competitions for in scope services, similar to a framework agreement except that suppliers can join the DPS as any time and it is to be run as a completely electronic process;
Electronic Signature	Means; <ul style="list-style-type: none"> a) a person typing their name into a contract or into an email containing the terms of a contract b) a person electronically pasting their signature (for example, in the form of an image) into an electronic (soft copy) version of the contract in the appropriate place (for example, next to the relevant party's signature block) c) a person accessing a contract through a web-based e-signature platform and clicking to have their name in a typed or handwriting font automatically inserted into the contract in the appropriate place (for example, next to the relevant party's signature block); and d) a person using a finger, light pen or stylus and a touchscreen to write their name electronically in the appropriate place (for example, next to the relevant party's signature block) in the contract;
Financial Rules	means those financial rules of the Council as contained in Part 3, Section 3 of the Council's Constitution;
Find a Tender Service / FTS	means the UK e-notification service, Find a Tender (FTS): https://www.find-tender.service.gov.uk where notices for new procurements (for contracts valued at or above the Threshold) launched after 23:00 on 31 December 2020 are required to be published in place of the Official Journal of the European Union's Tenders Electronic Daily (OJEU/TED);
Framework Agreement	means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded in a given period, in particular with regard to price and, where appropriate, the quality envisaged (regulation 33(2), PCR 2015);
Gateway	means the Council's assurance process for certain contracts as defined in Rule 6
High Risk Contract	means a higher risk contract in accordance with guidance published by Procurement;
Light Touch	means social and other specific services (including healthcare, cultural, educational and legal services) which are listed in Schedule 3 PCR 2015 and which are subject to a light touch regime at Regulation 74-76 PCR 2015;

OJEU	means the Official Journal of the European Union, where prior to 23:00 on 31 December 2020 all public contracts which exceed the EU Thresholds were required to be advertised and where a procurement has been launched but not yet concluded at this time, the Contract Award Notice is to be published;
PCR 2015	means the Public Contract Regulations 2015 as amended and in force from time to time;
Procurement Documents	means any document produced or referred to by the Council to describe or determine elements of the procurement or the procedure, which may include the: <ul style="list-style-type: none"> • Contract Notice (or PIN where it has been used as a call for competition) • Technical specifications • Descriptive document • Proposed form of contract • Formats for the presentation of documents by Candidates and Tenderers • Information on generally applicable obligations • Any additional documents;
Procurement File	means the record of each procurement, to be kept for a period of at least 3 years, that the Council must maintain in accordance with regulation 84(7)-(9) of the PCR 2015 namely; <ul style="list-style-type: none"> • The progress of all procurement procedures, whether or not they are conducted electronically • Sufficient documentation to justify decisions taken in all stages of the procurement procedure, such as documentation on; <ul style="list-style-type: none"> ○ Communication with economic operators and internal deliberations; ○ Preparation of the procurement documents; ○ Dialogue or negotiations if any; ○ Selection and award of the contract.
Procurement Guidance	The guidance published and maintained by Procurement and Legal which provides practical guidance on the Council's procurement activity.
Procurement Principles	means as defined in Rule 1.4;
Procurement Report	means the report that the Council is obliged to maintain in respect of each procurement of a contract valued at or

	above the relevant Threshold under regulation 84(1) of the PCR 2015 (see Rule 46);
Responsible Officer	means the person or persons charged by the Director to conduct a procurement process, or to participate in or lead a team of officers assembled for that purpose or dealing with a variation to a contract as the context requires
Scheme of Delegation	means the Council's formal written scheme of delegation in force and as amended from time to time and can be found in Part 2 of the Council's Constitution;
Strategic Contract Management Board	means the Board that oversees the management of strategic contracts as described in Rule 41;
Threshold	<p>means the total estimated financial value of a contract which determines which rules of PCR 2015 or CCR 2016 apply to the procurement of the contract, as is provided for in the PCR 2015 or CCR 2016 and set by the Cabinet Office.</p> <p>The Thresholds (net of VAT) applicable from 1 January 2022:</p> <p><u>PCR 2015</u></p> <p>Services/supplies - £213,477</p> <p>Light Touch services - £663,540</p> <p>Works - £5,336,937</p> <p><u>CCR 2016 Concession contracts</u></p> <p>£5,336,937</p>
UCR 2016	means the Utilities Contract Regulations 2016 as amended and in force from time to time.
Value for Money	<p>means the optimal use of resources to achieve the intended outcomes taking into account:</p> <p><u>Economy</u>: minimising the cost of resources used or required (inputs), i.e. spending less;</p> <p><u>Efficiency</u>: the relationship between the output from goods or services and the resources to produce them, i.e. spending well; and</p> <p><u>Effectiveness</u>: the relationship between the intended and actual results of public spending (outcomes), i.e. spending wisely.</p>
Waiver Form	means one of the Council's standard template forms which identifies the reason for a waiver of these Rules including justification, financial, legal and risk implications, and must be completed in order to seek authorisation to waive these Rules in accordance with Rule 50.

DRAFT

This page is intentionally left blank