SECTION 18

18. CONTRACTS PROCEDURE RULES

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CONTRACTS PROCEDURE RULES

18.1 Introduction

These Contracts Procedure Rules (CPRs) are made pursuant to Section 135 of the Local Government Act 1972 and include the Procurement Code of Practice (PCoP) and any other procurement notes made thereunder from time to time.

18.2 Chief Officers

In these CPRs "Chief Officer" means the Chief Executive, Directors and Heads of Service and Operational Managers.

18.3 Basic Principles

18.3.1 All procurement procedures must:

(a) Realise value for money by achieving the optimum combination of whole life costs and quality of outcome;

(b) Be consistent with the highest standards of integrity;

(c) Operate in a transparent manner;

(d) Ensure fairness in allocating public contracts;

(e) Comply with all legal requirements;

(f) Support all relevant Council priorities, policies and strategic and financial plans;

(g) Have full regard to the Council's Procurement Policy and Strategy; and

(h) Comply with the Council's PCoP, Financial Procedure Rules (FPRs) and the Buying Responsibly Guides.

N.B. These Rules shall be applied to the contracting activities in respect of which the Council is the accountable body unless the Council expressly agrees otherwise.

18.3.2 Chief Officers have the responsibility for all contracts tendered and let under their control. They are accountable to the Cabinet for the performance of their duties in relation to contract letting and management, which are:

(a) to ensure compliance with English and Welsh legislation and Council Policy;

(b) to ensure Best Value is achieved in all procurement matters;

(c) to maintain a departmental scheme of delegation;

(d) to keep proper records of all contracts, tenders etc., including minutes of tender evaluation panels and other meetings;

(e) Chief Officers shall have particular responsibility to ensure that all relevant procurements are undertaken within the agreed budgets and that Cabinet approval has been obtained where appropriate.

18.3.3 Officer Responsibilities

18.3.3.1 Officers

(a) Officers will comply with these CPRs, FPRs, the Council's Constitution and with all UK legal requirements. Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply.

(b) Officers will:

(i) have regard to the guidance in the PCoP and Buying Responsibly Guides;

(ii) keep the records required by these CPRs;

(iii) take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRs including the PCoP and FPRs;

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

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

(B) An appropriate national, regional or other collaborative contract is already in place:

- where the Council already has an appropriate contract in place, then this must be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with the Ardal Procurement Team and the reasons set out on the Pre-Tender Report Form;

- where an appropriate national, regional or collaborative contract is available, the same is to be used unless such contract does not offer value for money;

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

(c) Failure to comply with any of the provisions of these CPRs, FPRs, the other sections of the Council's Constitution or UK legal requirements may be brought to the attention of the Monitoring Officer, Section 151 Officer, Head of Internal Audit, or relevant Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken;

(d) It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is required to manage a contract on the Council's behalf that, in relation to such contract, they shall comply in all respects with the requirements of these CPRs as if he/she were an employee of the Council.

18.3.3.2 Chief Officers

Chief Officers will:

(a) Ensure their Service complies fully with the requirements of these CPRs;

(b) Ensure contracts are recorded in the Corporate Contracts Register as held and maintained by Corporate Procurement;

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

18.4 **Waiver / Exemption of these Contracts Procedure Rules**

18.4.1 Except where the Procurement Act 2023 and Procurement (Wales) Regulations 2024 apply, Cabinet has the power to waive any requirements within these CPRs for specific projects.

18.4.2 Additionally, in exceptional circumstances, these Rules may be waived or varied in accordance with Schedule 5 of the Procurement Act where the circumstances are certified in advance by the Section 151 Officer (advised as appropriate by the Officer from time to time with operational responsibility for Internal Audit) and subject to any conditions in relation to any such waiver that the Section 151 Officer advised as meeting any of the following criteria:

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

(b) for supplies purchased in a commodity market, public market or auction;

(c) with an organisation which has won a contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme and has previously been identified and originally advertised as such and in accordance with existing rates or indices;

(d) with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement, without exposing the Council to unacceptable risk provided always that there is no breach of any legal requirements and the Procurement Act 2023 and Procurement (Wales) Regulations 2024;

(e) for works, supplies or services which are of a proprietary nature and only available from one organisation;

(f) in the event of extreme and unavoidable urgency, where a contract cannot be awarded on the basis of a competitive tendering procedure. The urgency cannot be as a result of any act or omission of the Council and also could not have been foreseen by the Council;

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

(h) where relevant UK legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed;

(i) with an organisation undergoing insolvency proceedings and the Council can benefit from advantageous terms;

(j) user choice contracts supplied for the benefit of a particular individual – see Schedule 5 of the Procurement Act for further information.

18.4.3 The Chief Officer will follow Waiver / Exceptions Guidance issued by the Procurement Team. Where a Waiver / Exception is being relied on, compliance with the Waiver process must be confirmed on the Pre-Tender Report Form.

18.4.4 Every Waiver form will be recorded on a master register.

18.4.5 These CPRs do not apply to contracts:

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

(b) which have been procured on the Council's behalf:

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

(ii) by a National or Regional contracting authority where the process followed is in line with the Procurement Act 2023 and Procurement (Wales) Regulations 2024 (as amended from time to time); or

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

(c) For an individual care contract. That is a contract for service entered into in pursuance of powers under The Social Services and Well-being (Wales) Act 2014 for the benefit of an individual, where:

(i) the estimated value is below the *Light Touch* Regime under the Procurement Act (and/or is not a Regulated Below Threshold Contract);

(ii) the Council does not have any existing framework or umbrella arrangements in place in respect of the relevant service;

(iii) the individual care contract represents value for money; and

(iv) where the contract is required to honour the preference of the individual service user; or

(v) is required as a matter of emergency in the interest of the welfare of the individual service user.

18.5 **Advertising**

The Chief Officers will ensure that the minimum advertising requirements as outlined in the PCoP, are met.

18.6 **Relevant Contracts**

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

(a) the supply of goods;

(b) the execution of works;

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

(d) the delivery of services, including (but not limited to) those related to:

(i) The recruitment of staff, e.g. agency staff, estate agents, valuers;

(ii) Land transactions;

(iii) Financial and consultancy services;

(iv) Opinions of Counsel obtained by the Head of Legal and Democratic Services.

18.6.2 Relevant Contracts do not include:

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

(b) agreements regarding the acquisition, disposal, or transfer of land (to which the FPRs apply); or

(c) the payment of grants to third parties;

(d) land transactions.

N.B. While grants are not covered by these CPRs, there are rules on the awarding of grants which do need to be observed including obtaining approval from the External Funding Group. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process.

18.6.3 The Procurement Act 2023 and Procurement (Wales) Regulations 2024 require contracting authorities to maintain the following comprehensive records of procurement activities:

(a) contract details including value;

(b) selection decision;

(c) justification for use of the selected procedure;

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

(e) reasons for selection;

(f) reasons for abandoning a procedure.

18.7 **Risk Assessments**

18.7.1 All procurement shall follow the process set out in the Council's Project Management Tool Kit including the approved risk assessment matrix.

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

18.7.3 The risk assessment process will identify where further specialist advice should be sought.

18.8 **Approved Lists and Framework Agreements**

18.8.1 Approved Lists

(a) Approved lists must not be used where they are prohibited under the Procurement Act 2023 and Procurement (Wales) Regulations 2024.

18.8.2 Framework Agreements.

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

(b) The Procurement Team maintain a register of contracts and framework agreements in the Supply Directory and can provide advice on their use and any exceptions granted.

(c) The use of frameworks not listed in the Supply Directory is only permissible once the ***Procurement Team*** has approved its use (including checking that the framework agreement concerned may be relied upon by the Council). The Procurement Team will be able to advise on the use of "non-Welsh" Frameworks and any additional requirements when using these Frameworks.

(d) When using framework agreements, all guidance issued in relation to the use of the Framework concerned must be considered by the Service Area and followed. The award criteria, weightings and the terms and conditions of contract specified in the framework agreement must be used.

18.9 **Procurement Valuation**

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

18.9.2 Based on this value, quotations or tenders must then be invited in line with the financial thresholds detailed in the PCoP.

18.9.3 Where the Procurement Act 2023 and Procurement (Wales) Regulations 2024 apply, the Chief Officer shall consult Corporate Procurement to determine the procedure for conducting the procurement exercise.

18.10 **Preliminary Market Engagement**

18.10.1 Before publishing a Tender Notice, the Council may consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential organisation. Guidance is contained in the PCoP.

18.10.2 When engaging with potential suppliers, the Council must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition.

18.10.3 In undertaking any market testing activities, the Officer responsible should refer to any guidance contained in the PCoP. The Procurement Team will be able to advise on Preliminary Market Engagement Notices.

18.11 **Invitation to Tender (ITT) / Request for Quotations (RFQ)**

Above the single quotation threshold outlined in the PCoP, all Invitations to Tender (ITT) and Requests for Quotation (RFQ) including e-tendering must be undertaken in accordance with the procedures set out in the PCoP.

18.12 **Evaluation Criteria and Standards**

18.12.1 Evaluation Criteria

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

(i) offers the most advantageous tender which is a balance between quality and price or

(ii) offers the lowest price;

The Council will use criteria linked to the subject matter of the contract to determine that an offer is the most advantageous. Criteria may include price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion.

(b) Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids as an element achieving the outcomes set out at 18.12.1 (a) above. The criteria can include, for example sustainability and Future Generation considerations, support for the local economy and community, or the use of sub-contractors. The bidding organisations' approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

(c) Social value must be a tender requirement at £0.250m for works and above threshold for services. All above threshold tenders are required to have social value as a minimum of 10% of the evaluation criteria.

(d) The procurement documentation must clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

(e) In all cases the process that must be followed is set out in the PCoP; reference should be made to the PCoP.

18.12.2 Standards

(a) Relevant British and International Standards which apply to the subject matter of the contract and which are necessary to properly describe the required quality must be included with the contract.

(b) Officers should refer to any further guidance outlined in the PCoP.

18.12.3 Clarification Procedures

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

(b) When requesting clarification, the Chief Officer must follow any guidance contained in the PCoP.

18.13 Submission, Receipt and Opening of Tenders / Quotations

18.13.1 Tenders and Quotations

(a) Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements. Where the Procurement Act 2023 and Procurement (Wales) Regulations 2024 apply, the Regulations lay down specific minimum time periods for tenders.

(b) Where these rules require and even when the rules do not require but it is practicable the Council's electronic procurement system must be used and all tenders submitted by electronic arrangements via the Council's electronic procurement system. After the tender submission deadline has passed tenders submitted electronically must be opened in accordance with guidance issued by the Head of Procurement, and the electronic record kept shall, as a minimum, meet the requirements set out in the guidance document issued by the Head of Procurement on the opening and recording of electronic tender submissions.

(c) Tenders received after the date and time for receipt of tenders will only be opened and considered with the agreement of the Head of Procurement and Head of Legal and Democratic Services (or their nominated officer, who

should be at Operational Manager level or above) if this was the result of an identified system wide failure of the Council's e-procurement system (and not the bidders' ICT system) and notification has been received by the Council in advance of the tender deadline.

(d) Chief Officers shall ensure that their staff complete a Quotation Record Form for quotations above £10,000. Further guidance is set out in PCoP.

(e) For below threshold tenders, the Council shall have power to disqualify from submitting further tenders to the Authority, those tenderers who, in their opinion, have withdrawn tenders unreasonably, who have been in breach of any contract with the Council, or for any reason properly considered as being justifiable and reasonable.

18.13.2 Supplier Selection / Conditions of Participation

Any supplier selection must have regard to the economic, financial and technical standards relevant to the contract and the evaluation criteria stipulated. Special rules apply to contracts covered by the Procurement Act 2023 and Procurement (Wales) Regulations 2024. Officers should refer to any further guidance contained in the PCoP.

18.14 Post-Tender Negotiations

18.14.1 Where an Open procedure is used, no post-tender negotiations are permitted. The responsible Officer may seek clarification from tenderers where appropriate in consultation with Ardal Procurement. Negotiations on price are never permissible except where it has been expressly allowed for within the competitive flexible procedure.

18.14.2 Where procurements do not exceed the Public Procurement thresholds, the agreement of Corporate Procurement to authorise negotiations must be sought. Such actions must not distort competition.

18.15 Evaluation, Award of Contract and Debriefing of Organisations

18.15.1 Evaluation

The procedure for the evaluation of bids is set out at Paragraph 18.12.1.

18.15.2 Award of Contract

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

(b) Where procurement has been subject to the Procurement Act 2023 and Procurement (Wales) Regulations 2024, the Standstill (an eight working day standstill period before a contract can be awarded to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award) will need to be included in the procurement timetable before the

contract can be awarded. Full information regarding the Standstill is contained within the PCoP.

(c) Chief Officers have been granted delegated authority to accept tenders for the supply of goods or materials and services and for the execution of works to £300,000 subject to:

(i) the expenditure being contained within the approved budget;

(ii) compliance with the PCoP;

(iii) for amounts greater than £75,000, the approval of the relevant Cabinet Member being obtained.

(d) A record should be maintained of such acceptance by completion of a Contract Award Report. Compliance with reporting requirements to Cabinet and/or of Cabinet Member approval and within the timescales as set out in the PCoP.

18.15.3 Debriefing

The debriefing of organisations must be carried out in line with the requirements of the Procurement Act 2023 and Procurement (Wales) Regulations 2024 and any guidance detailed in the PCoP.

18.16 Contract Documents

18.16.1 Format of Contract Documents

Appropriate contract documents as advised by the Head of Legal and Democratic Services or conditions issued by a relevant professional body will be used.

18.16.2 Contract Signature

(a) All contracts with a value of £75,000 or greater or as determined by the Head of Legal and Democratic Services shall be in the form of a Deed, made under the Council's seal and attested as required by the Constitution.

(b) Contracts under £75,000 may be executed as a simple agreement and singed by two authorised officers (Director / Head of Service / Operational Manager).

(c) All other contracts shall be in the form of an agreement, (i.e. not a Deed requiring sealing) either:

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

(ii) be formalised by the sending of an award letter confirming that the Agreement will incorporate the Council's terms and conditions and the subsequent issuing of a purchase order.

18.17 **Legal Services Review of Tenders and Contracts**

To ensure the integrity of the procurement process:

(a) all proposed Invitations to Tender, where they are not in compliance with the Council's terms and conditions or standard terms and conditions issued by a relevant professional body, will be reviewed by Legal Services;

(b) any proposed Invitations to Tender, which are subject to the Procurement Act 2023 and Procurement (Wales) Regulations 2024, or which are deemed to be of high risk, in accordance with the Council's Project Management toolkit must be reviewed by Legal Services;

(c) any proposed contract where there is any deviation from the contract terms included in the Invitation to Tender must be reviewed by Legal Services.

18.18 **Prevention of Bribery and Corruption**

Rules and regulations pertaining to the prevention of Bribery and Corruption are outlined in the Council's FPRs, Council's Anti-Fraud and Bribery Policy and Employees' Code of Conduct and must be adhered to.

18.19 **Declarations of Interests / Conflicts of Interest**

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

The Council must undertake a "conflicts assessment" before publishing a tender or transparency notice or a dynamic market notice. If a conflict of interest or potential conflict of interest is identified the Council must set out the steps it has taken or will take to demonstrate that no such conflict of interests exists. The Council must keep any assessment under review, revise as is necessary and when publishing any notice confirm that a conflicts assessment has been prepared and revised in accordance with the Procurement Act (Part 5).

18.20 **Contract Management / Monitoring**

Contract management, monitoring, evaluation and review must be conducted in line with any guidance detailed in the PCoP and Council's Project Management toolkit.

18.21 **Internal Providers**

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

18.22 **External Body Grant Funding**

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

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

18.23 **Review and Amendments of Contracts Procedure Rules**

These CPRs shall be reviewed and updated as necessary as part of the ongoing review of the Constitution.