PART [16]

CONTRACT PROCEDURE RULES PART 1

1. INTRODUCTION

What are Contract Procedure Rules?

1.1 The Contract Procedure Rules (CPRs), the [Financial Procedure Rules] together with the Procurement Act 2023 (PA 2023) and the Procurement Regulations 2024 provide the framework for procurement activity across the Council, setting out how contracts for goods, works and services should be procured and managed, and detailing the record keeping and reporting requirements related to procurement and contract management activity. The CPRs apply to all Officers across the Council.

1.2 The CPRs should not be seen in isolation, but rather as part of the overall regulatory framework of the Council as set out in the Constitution.

Why are CPRs needed?

1.3 The Local Government Act 1972 requires the Council to have standing orders for how it enters into contracts. The Local Government Act 2000 (Constitutions) Direction requires the Council's constitution to include its rules, regulations and procedures in respect of contracts. These CPRs are the standing orders required by the Local Government 1972 Act and The Local Government Act 2000 (Constitutions) Direction. These CPRs form part of the Council's Constitution and are, in effect, the instructions of the Council to Officers when dealing with contracts on behalf of the Council. In acting on behalf of the Council, Officers must also have regard to any guidance and procedures issued to support compliance with the CPRs.

1.4 The Council is under a legal duty to promote Best Value and to consider the Public Services (Social Value) Act 2012 and comply with Public Sector Equality Duty under the Equality Act 2010. Every Officer engaged in the letting of contracts shall have regard to these duties and associated Council policies. Where compliance with these duties contradicts the requirements of any statutory legislation or specific best practice guidance, advice from Legal and Democratic Services must be obtained.

1.5 The CPRs apply to all contracts for the supply of works, goods and services, (including consultancy, utilities and concessions) to the Council, regardless of value

Exemptions

1.6 The following arrangements are exempted contracts under Schedule 2 of the Procurement Act 2023 (PA 2023) and therefore the sections in these CPRs which relate to procurements subject to the PA 2023 do not apply, including, without limitation:

1.6.1 The acquisition (by whatever means) (or the acquisition of an interest in or right over) of land, buildings or any other complete work or a contract

concerning an interest or right over any such things. In this instance, the financial regulations apply except where services or works are required by the Council as part of the land transaction. e.g. development agreements. **Note** that this does not apply to any external professional services linked to the purchase or sale.

1.6.2 Contracts of employment for the appointment of individual members of staff, including members of staff sourced through employment agencies under a corporate contract or contracts with individuals appointed to a public office (which may include the appointment of non-executive directors). Any ambiguity on whether a contract is an employment contract or a consultancy contract covered by these CPRs should be referred to HR.

1.6.3 Grant agreements.

1.6.4 Supply of works, goods and services by the Council to a third party. However, the Assistant Director Legal Democratic and Procurement Services must be consulted where the Council is contemplating this route.

1.6.5 Contacts procured with an entity over which the Council has a form of 'control' as defined in Schedule 2 of the PA 2023.

1.6.6 Contracts procured with another contracting authority (or contracting authorities) with the intention to achieve common goals in the exercise of public functions, solely in the public interest and where no more than 20% of the activities intended to be carried out are for reasons other than for the purpose of public functions.

1.6.7 Contracts procured in collaboration with other local authorities where the Council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the Council). The CPRs of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own contract procedure rules and the PA 2023.

1.6.8 Purchases made at public auction.

1.6.9 Contracts relating to the placement of deposits or raising loans under the Financial Procedure Rules.

Note 1: Exemptions are not waivers. For waivers see Rule 2.16 – 2.22.

Note 2: These CPRs apply to any sponsorship agreement the Council is a party to and/or any arrangements in relation to or in connection with sponsorship.

Authority to conduct procurement activity

1.7 The authority for an Officer who needs to:

1.7.1 Undertake a procurement;

1.7.2 Award a contract;

1.7.3 Extend or vary a contract;

1.7.4 Terminate a contract during a contract period (early contract termination)

1.8 Will emanate from a function of the Council that is delegated to them by either of the following:

1.8.1 The Scheme of Delegation; or,

1.8.2 A bespoke decision taken by members.

Basic principles

Procurements below the WTO/GPA tender threshold

1.9 All procurement procedures below the WTO/GPA tender threshold must:

1.9.1 Support all relevant Council priorities and policies including the Medium Term Financial Plan,

1.9.2 Comply with all legislative requirements including the Human Rights Act 1998 and the Equality Act 2010,

1.9.3 Be funded through the allocation of an appropriately established budget or external grant funding.

1.9.4 Respect confidentiality during all stages of the formal tendering process. Officers must not disclose any information they have about potential suppliers to other persons/suppliers potentially competing for the same contract.

1.9.5 Where the estimated value of the contract exceeds £30,000 including VAT but is below the WTO/GPA tender threshold, comply with the obligations set out Part 6 of the PA 2023.

Procurements above the WTO GPA tender threshold

1.10 In addition to the above, all procurement procedures above the WTO/GPA tender threshold must:

1.10.1 Have regard to the importance of the objectives under the PA 2023 which are as follows:

(a) to deliver value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome/s,

(b) to act, and be seen to act, with integrity,

(c) to maximise public benefit,

(d) to share information for the purpose of allowing suppliers and others to understand the Council's procurement policies and decisions,

(e) to treat suppliers the same unless a difference between the suppliers justifies different treatment. If this is the case, the Council must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage,

(f) to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and consider whether such barriers can be removed or reduced,

1.10.2 Have regard to the national procurement policy statement,

1.11 Ensure that all reasonable steps are taken to identify and keep under review any actual or potential conflicts of interest and where a conflict of interest is identified, ensure that all reasonable steps are taken to ensure the conflict does not put a supplier at an unfair advantage or disadvantage.

1.12 Where the estimated value of a procurement exceeds the WTO/GPA tender threshold, all Authorised Officers must comply with the relevant procurement legislation and have regard to the applicable Cabinet Office guidance. Under the UK Government's transitional arrangements, procurements that commence after the entry into force of the PA 2023 on 24 February 2025 must be conducted by reference to the PA 2023 only (together with the regulations made under the PA 2023 and any guidance published by the UK Government), whilst those that were commenced under the Public Contracts Regulations 2015 must continue to be procured and managed under those regulations. Any contracts awarded under the Public Contracts Regulations 2015 will continue to be managed under the Public Contracts Regulations 2015 until such a time as the contract or commercial tool (i.e. framework, dynamic purchasing system) ceases to exist.

All procurements

1.13 These CPRs shall be applied to the contracting activities of any arrangement for which the Council is the accountable body unless these CPRs state otherwise or the Council expressly agrees otherwise.

1.14 Records of procurement activity must be maintained as required by these CPRs and the award of contract must be published in accordance with the [Access to Information Rules] and the PA 2023

1.15 All contracts over £25,000 are to be entered on the Council's contracts register. This information must be updated if there is a change in the contract value. Contract Managers are responsible for notifying the Procurement Team of any updates and any additional contracts that need to be added to the register as soon as possible after they are awarded.

Authority to act

1.16 Where a new contract is required, or the variation or extension of an existing contract is required, the scheme of delegations in Part 2 of these CPRs provides the authority to take operational, executive and non-executive decisions relating to the area of responsibility.

Service specifications and options appraisal

1.17 At the start of any procurement activity, the Authorised Officer must develop the service specification and/or existing service design together with the requisite business case or service plan that identifies as a minimum:

1.17.1 Why the service is being commissioned; what is the need?

1.17.2 The budget available and the length of the proposed contract;

1.17.3 Assessment of the risks associated with the procurement and how they can be successfully managed;

1.17.4 What is the best form of community or service-user engagement or consultation? Consideration should be given to how service users can actively participate in the designing, delivery and quality-monitoring of their service;

1.17.5 Which, if any, social value outcomes will be achieved from the commissioning exercise, and how they can contribute towards meeting the Council's overall priorities;

1.17.6 Alternative options that have been considered;

1.17.7 Financial implications;

1.17.8 Where the procurement involves a potential change to services provided by the Council, ensures compliance with the Council's duty to consult under Section 3 of the Local Government Act 1999, and the Equality Act 2010;

1.17.9 Ensures that the application of the Transfer of Undertaking Protection of Employment Regulations 2006 (TUPE) is considered and obtain advice from the Procurement Team and Legal and Democratic Services before proceeding with ITT / ITQ;

1.17.10 Identifies the contract to be used for the procurement. Seek advice from the Procurement Team and Legal and Democratic Services at an early stage in the process;

1.17.11 Ensures contract management is considered early and that the mechanisms for monitoring the contract are embedded in the specification and contract.

1.18 The provision of CPR 1.17.5 above may apply to services contracts, or services together with the purchase or hire of goods or the carrying out of works, where it is proportionate and relevant to do so to enable or facilitate compliance with the duty imposed by section 1 of the Public Services (Social Value) Act 2012.

1.19 Decisions taken during the procurement process must be clearly documented and show options considered and recommendations to be taken forward.

Reserving below UK Threshold procurements

1.20 On a case by case basis, procurements below the WTO/GPA tender threshold may be reserved:

1.20.1 By supplier location: This means being able to run a competition and specify that only suppliers located in a geographical area can bid; or

1.20.2 By supplier type: 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.

1.21 Specific considerations and criteria must be met when using the provision of CPR 1.20 above, therefore Authorised Officers must engage with the Procurement Team and /or Legal and Democratic Services. for further guidance and written approval to use this provision. When opting to reserve a procurement by supplier location or supplier type, Authorised Officers are required to record the rationale / approval of their decision and keep with other procurement documents.

2. EVALUATION CRITERIA

Tender/Quotation acceptance

2.1 The Council shall only accept a Tender/Quote and award a contract to the bidder submitting the most advantageous Tender/Quote within budget.

2.2 For procurements of £50,000 and above the Authorised Officer shall produce a procurement evaluation report showing:

2.2.1 The subject matter, value and term (including potential extensions) of the contract;

2.2.2 The procurement route followed and the reason why that procurement route was chosen;

2.2.3 The name of each bidder who submitted a Tender and the result of each assessed Tender (i.e. total score);;

2.2.4 Any conflicts of interest detected and subsequent measures taken;

2.2.5 Details of due diligence checks carried out;

2.2.6 The recommendation on which bidder should be awarded the contract..

2.3 Written notification to successful and unsuccessful bidders of the outcome of a procurement process should be provided as soon as practicable and where applicable, in accordance with the PA 2023.

2.4 For procurements above the WTO/GPA tender threshold or where the relevant legislation provides for a standstill period, the contract cannot be formally awarded until the bidders have been informed and the mandatory standstill period has elapsed.

2.5 The successful bidder will not be allowed to commence provisions of the goods, services or works until a formal written contract has been completed. The Authorised Officer must ensure that a completed copy of the contract is added to the Council's contract register.

2.6 Where necessary the contract award notice and contract details notice must be published on the central digital platform. The contract details notice must be published within 30 days of the contract being entered into.

Authority to procure, award, sign / seal, vary or extend a contract

2.7 Officers are authorised to procure, award, sign or seal, vary or extend a contract pursuant to the delegations set out in Part 2 of these CPRs.

2.8 Authority to award, sign or seal, vary or extend a contract of a value of £200,000 or above (the Key Decision threshold) must be obtained from the Cabinet.

2.9 Contracts must be executed as deeds by affixing the common seal of the Council in the following circumstances:

2.9.1 Contracts of £200,000 or above (the Key Decision threshold) – unless agreed otherwise by Legal and Democratic Services;

2.9.2 Setting up a new framework;

2.9.3 All building and works-related contracts – unless agreed otherwise by Legal and Democratic Services; and

2.9.4 Other high risk contracts (as advised by Legal and Democratic Services) where a longer limitation period of 12 years is required.

2.10 Before a contract can be sealed by the Council, the Authorised Officer must provide the Legal and Democratic Services with the relevant decision to award in writing from the appropriate decision maker. The sealing of the contract by Legal and Democratic Services is simply affixing the common seal and does not indicate that legal advice has been sought or that the Legal and Democratic Services approve the contract.

2.11 Authorised Officers shall ensure that each contract is on one of the Council's standard contract templates or that the terms and conditions or the contract are/is approved by Legal and Democratic Services prior to going out to tender/quote.

Extension or variation of contracts under the Procurement Act 2023

2.12 Any extension or variation of a contract must comply with these CPRs, the PA 2023 and all applicable legislation.

Modifications to Contracts under the Public Contracts Regulations 2015 or Concessions Contract Regulations 2016

2.13 Modification to contracts under the Contracts awarded under the Public Contracts Regulations 2015 or the Concessions Contract Regulations 2016 must comply with these CPRs, the Contracts under the Public Contracts Regulations 2015 or Concessions Contract Regulations 2016 and all applicable legislation and will only be considered where they comply with Regulation 72 of the Public Contracts Regulations 2015 or Regulation 43 of the Concessions Contract Regulations 2016.

Direct Awards

2.14 A direct award is only to be used in exceptional circumstances and where expressly permitted under the PA 2023. Authorised Officers and/or Contract Managers are responsible for ensuring that direct awards are approved in advance of any action undertaken in all instances. As part of the approval process for use of a direct award, the Authorised Officer or Contract Manager must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value.

2.15 Direct awards are governed by Chapter 3 of the PA 2023 which covers situations where a non-exempt contract above the WTO/GPA tender threshold is awarded without a competitive tendering procedure and is awarded directly to a supplier of the Council's choosing. The grounds for direct award under the PA 2023 include, but not limited to:

2.15.1 **Urgency**

(a) An urgent decision is required, for example for the protection of life or property, or to maintain the delivery of a public service, and in the opinion of the Monitoring Officer and the Deputy Chief Executive and Section 151 Officer, the waiver is in the Council's best interests, or necessary to meet the Council's obligations;

(b) The Council must be able to evidence that it is a genuine emergency, that the events causing extreme urgency were unforeseeable, that is impossible to comply with the usual timescales for a procurement including through a framework or accelerated procurement, and that the situation is not attributable to the Council;

(c) Such emergency contracts should be let for as short a period as possible to allow their replacement with a contract that is fully compliant with these CPRs at the earliest practicable opportunity.

2.15.2 **Single suppliers**

(a) Where the suppliers, works or services:

(i) Concerns the creation of acquisition of unique work or art or artistic performance;

(ii) Where a particular supplier s in possession of intellectual property or other exclusive rights and there are no reasonable alternatives, which means only the supplier with those rights can deliver the goods, services or works; or

(iii) Where, due to an absence of competition for technical reasons and provided there are no reasonable alternatives, only a particular supplier can supply the goods, services or works required.

Additional or repeat goods, services or works

2.15.3 Where the Council wishes to award a contract above the WTO/GPA tender threshold to an existing supplier, including:

(a) where the Council wises to buy additional or to partly replace existing goods, services or works which are the same or compatible with existing provisions (both those already supplied or that are contracted to be supplied); or

(b) where a contract has previously been awarded under a competitive tendering procedure and the tender notice or tender documents set out that the intention was to carry out a subsequent procurement of similar goods, services or works by direct award within five years of the original competitively tendered contract being awarded.

Waivers

2.16 A wavier to the CPRs should only be granted in exceptional circumstances.

2.17 A further waiver to the CPRs will generally not be granted where a waiver has previously been granted in respect of a contract.

2.18 A waiver to the CPRs is not required in the circumstances of instructing a barrister to provide specialist legal advice or for professional subscriptions.

2.19 A waiver to the CPRs must be approved in writing by the Deputy CEO S151 Officer Where the contract is £50,000 or above, the relevant Portfolio Holder must also be consulted.

2.20 A “waiver to the CPRs form” must be completed by the Authorised Officer or Contract Manager seeking the waiver and must be signed by the relevant Executive Director. Evidenced reasons as to the legitimate need for the waiver must be provided. The form is available from the Procurement Team.

2.21 The Authorised Officer or Contract Manager must ensure the waiver form is signed by the Monitoring Officer and the Deputy Chief Executive and Section 151 Officer [or the Chief Executive] and returned to the Procurement Team for recording on the waivers register.

2.22 Assistant Directors must monitor the use of waivers relevant to their department.

2.23 No waiver from the CPRs can be granted in respect of contracts above the WTO GPA tender threshold under the PA 2023.

3. RECORD KEEPING

3.1 Where the total value of a contract is up to £49,999 the Authorised Officer must maintain a record of:

3.1.1 ITQs / ITTs and quotations / tenders received;

3.1.2 Any exemption obtained and the reasons for the exemption;

3.1.3 Award criteria [in descending order of importance];

3.1.4 Written communications with the bidders during the procurement process; contractor awarded the contract;

3.1.5 Written communications with the successful contractor during the term of the contract.

3.2 Where the total value of a contract is £50,000 or above, the Authorised Officer must maintain a record of:

3.2.1 The information detailed in the procurement evaluation report produced in accordance with Rule 2.2 above;

3.2.2 The management of the contract;

3.2.3 Any exemption granted and the reasons for the exemption;

3.2.4 An evaluation of the contractor's performance;

3.2.5 Any other information as required under section 98 of the PA 2023 (where the contract is above the WTO/GPA tender threshold).