

APPENDIX E: Contracts Procedure Rules (‘CPR’)

1 Introduction – Purpose of the Contract Procedure Rules (CPR)

1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Procedure Rules is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:

- Furthers its corporate objectives
- Uses its resources efficiently
- Purchases quality goods, services and works
- Acts compliantly according to rules around spending public money
- Safeguards its reputation from any implication of dishonesty or corruption.

1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.

1.3 These CPR are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

1.4 These Contract Procedure Rules do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out minimum requirements to be followed. Further information and guidelines are set out in the Council’s Procurement Manual (2021).

2 General Principles – Application and Compliance with CPR

2.1 These Contract Procedure Rules apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.

2.2 These Contract Procedure Rules apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.

2.3 These Contract Procedure Rules do not apply to:

- Employment contracts or procuring staff*
- Contracts relating solely to the purchase or sale of interests in land
- Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings

- Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.

*The term 'staff' refers to employees who are hired and paid for directly by Sevenoaks District Council. This does not include contracts for consultants, contingent labour, temporary staff etc, which are subject to these CPR.

3 General Principles Applying to All Contracts

- 3.1 All purchases however small shall be in writing, and appropriate record keeping (in line with Council's Retention Policy) shall apply.
- 3.2 Standard contract clauses shall be used in all contracts of a value of £10,000 or more. The standard contract clauses are issued by Legal Services and can be found accompanying the Procurement Manual (details of which will be published on the intranet).
- 3.3 As a minimum, all contracts of a value of £10,000 or more shall include clauses which set out:
- the works, supplies (goods), services, material, matters or things to be carried out or supplied
 - the time within which the contract is to be performed and when the contract shall cease (NB contracts by default should not automatically renew).
 - quality requirements and/or standards which must be met
 - requirements on the contractor to hold and maintain appropriate insurance
 - what happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
 - requirements on the contractor to comply with all relevant equalities and health and safety legislation
 - that the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010 or s117(2) Local Government Act 1972.
- 3.4 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council's Procurement Manual.
- 3.5 All contracts of a value of £10,000 or more or which involve a substantial

risk to the Council must be subject to a written risk assessment, which should be kept on the contract file. See Procurement Manual for more details.

4 Regulatory Context

4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:

- all relevant statutory provisions
- the relevant international rules and treaty principles
- the Council's Constitution including these Contract Procedure Rules, the Council's Financial Procedure Rules and Scheme of Delegation
- the Council's Procurement Strategy, Procurement Manual (and associated Toolkit for Procuring Managers) and other policies and procedures of the Council as appropriate.

4.2 In the event of conflict between the above items, UK legislation will take precedence, then international rules, then the Council's Constitution, the Council's Procurement Manual and policies and procedures.

5 Responsibilities of Chief Officers and Responsible Officers

5.1 Each Chief Officer shall:

- be responsible for the purchasing undertaken by his/her service to be undertaken in accordance with these Contract Procedure Rules (and accompanying policies and guidance),
- be accountable to the Cabinet for the performance of his/her duties in relation to purchasing
- comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
- appoint a Responsible Officer (in line with Council's Scheme of Delegation) in writing who shall be an authorised signatory.
- take immediate action in the event of breach of these Contract Procedure Rules.

5.2 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.

5.3 A Responsible Officer's duties in respect of purchasing are to ensure:

- compliance with all Regulatory Provisions and integrity of the tender

process

- compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest affecting any purchasing process
- that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
- the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
- compliance with the Council's decision-making processes
- that all contracts of a value of £10,000 (ex VAT) or more are included on the Council's Contract Register
- that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £10,000 (ex VAT) or more
- that value for money is achieved
- that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.

5.4 In considering how best to procure works, supplies and services, Chief Officers and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Pre-Competed Frameworks and e-procurement/purchasing methods, and the availability of local authority charging and trading powers.

5.5 It is a disciplinary offence to fail to comply with these Contract Procedure Rules and the Council's Procurement Manual. All employees have a duty to report breaches of Contract Procedure Rules to the Chief Officer for their service.

5.6 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must immediately report that suspicion to the Council's Monitoring Officer and Chief Officer for their service.

6 Scheme of Delegation

6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme(s) of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Chief Officer.

6.2 Officers shall, where appropriate, be informed by their Chief Officer of the extent of any delegated authority and applicable financial thresholds.

7 Financial Thresholds and Procedures

7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.

7.2 Wherever possible (irrespective of size/value) contract opportunities should be advertised by way of a public notice. The Council must consider the potential effect of a contract on interstate trade. If a contract may be of interest to contractors from other states then this may result in a need to advertise in a manner which ensures that potential contractors from other states are aware of the opportunity, even for small value contracts or contracts under the Public Contracts Regulations 2015 (PCR) Threshold levels (as indicated below).

7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals (as appropriate). Any public notice should be made available on the Council's usual portals (as at April 2021 the Kent Business Portal and www.mytenders.co.uk). Any contract above the Public Contracts Regulations threshold level must be published also on the Government's Find a Tender Service (FTS). The Responsible Officer may choose to place one or more public notices in different media.

7.4 Table setting out financial thresholds and procedures

Total Value (excluding VAT)	Type of contract	Procedure to be used
£0 to £10,000	works, supplies and services	At least one written quote in advance
£10,000 to £74,999	works, supplies and services	At least three written quotes in advance
£75,000 to £1 below PCR threshold for supplies and services **	Supplies and services	At least three written tenders in advance, following advertisement by public notice

PCR Threshold and above for supplies and services £189,330 **	Supplies and services	PCR Rules apply - full competitive process following advertisement in the FTS for supplies and Part A* services. For Part B* services reduced requirements apply under the PCR Rules but there is a presumption in favour of advertising and a competitive process.
£75,000 to PCR Threshold for works £4,733,252 **	Works	Full competitive process with tenders following advertisement by public notice
From PCR Threshold for works £4,733,252 **	Works	PCR Rules apply - full competitive process with tenders following FTS advertisement

* For the purposes of the Public Contract Regulations (2015) services are divided in various types which demand different handling. Responsible Officers should act cautiously and seek advice from Legal Services when considering the relevant procedure to be used.

** These figures are correct at June 2021 but officers should check for details of the relevant threshold in force at the time of their procurement.

7.5 Where contracts are of a type and value which means that they are subject to the PCR Rules then there are various procedures available. These are detailed in the Procurement Manual. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of procedure should be sought. Please see the Procurement Manual for more information.

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

8.1 For contracts over the relevant PCR Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Chief Officer in advance.

8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Procedure Rules ensure, in particular, that:

- the appropriate approvals have been obtained to authorise that decision; and
- where appropriate, a standstill period complying with the PCR Rules is incorporated into the final award process.

8.3 Any contracts valued at £75,000 or above shall be executed as a deed. All other contracts may be signed by officers with appropriate delegated authority. £10,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

8.4 Electronic signatures may be used provided the sufficiency of security arrangements has been approved by the relevant service Chief Officer.

9 Calculating the Contract Value

9.1 The starting point for calculating the contract value for the purposes of these Contract Procedure Rules is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions and options).

9.2 By way of an example, whole life cost should be calculated as follows:

- If a contract for services is costing £20,000 per year but it needs to run for 3 years, the whole life cost = £60,000 ex VAT
- All contracts should be awarded ex VAT
- It should be made clear in your pricing section of the contract that VAT is to be applied at the prevailing rate.

9.3 There shall be no artificial splitting of a contract to avoid the application of the provisions of the PCR Rules and/or these Contract Procedure Rules.

9.4 The PCR Rules can cover contracts which are below the stated PCR threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the PCR Rules where they envisage that they may require repeat purchases and/or purchases of a similar type.

10 Principles Underlying Tendering Processes and Tender Evaluation

10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:

- Sufficient time is given to plan and run the process

- Equal opportunity and equal treatment
- Openness and transparency and that our decisions can be evidenced and reported on (should this be necessary)
- Probity and justifiable decision making
- Outcomes which deliver sustainability, efficiency and cost savings (where appropriate).

11 Submission and Opening of Tenders

- 11.1 An Invitation to Tender ('ITT') shall be issued by the Council for all contracts over £75,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender. The templates ITT (alongside others) are available in the Toolkit supplied with the Procurement Manual.
- 11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
- addressed to the Head of Legal & Democratic Services.
 - in a sealed envelope marked "Tender" followed by the subject matter to which it relates
 - kept in a safe place by Democratic Services where restricted access applies only to those who are authorised to have access.
 - retained unopened until the date and time specified for its opening.
- 11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:
- addressed to the e-mail address as notified in the Invitation to Tender or managed via the mytenders.co.uk portal.
 - in the format specified in the Invitation to Tender and kept confidential
 - stored in a secure mailbox, which requires a code or other appropriate security measure, to open it
 - retained unopened until the date and time specified for its opening.
- 11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Head of Legal & Democratic Services/Deputy Chief Executive and Chief Officer Corporate Services is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply, and the other tenders have not been opened.
- 11.5 Tenders shall be opened in the presence of the relevant Chief Officer and an immediate record shall be made of tenders received including names

and addresses and the date and time of opening.

12 Evaluation of Quotes and Tenders

- 12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenderers.
- 12.2 Tenders subject to the PCR Rules shall be evaluated in accordance with the Rules.
- 12.3 Save in exceptional circumstances approved in advance by the appropriate Chief Officer all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price. See the Procurement Manual (and associated Toolkit) for more information.

13 Waivers

- 13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000* may be waived in certain limited circumstances, which include the following
- for contracts which are not subject to the PCR Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
 - the circumstances set out in Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the PCR Rules); or
 - the contract is awarded under a Pre-Competed Framework (where direct award is permitted) of a type where a competition has already been undertaken on behalf of the Council.

*Please note that the waiver process applies to purchases of £10,000 (ex VAT) or more. Below this threshold, Responsible Officers must seek 1 written quote to compliantly meet the Procurement threshold requirements.

- 13.2 A Responsible Officer who seeks a waiver of Contract Procedure Rules, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Procedure Rules and general tender direction is set out in the Council's Procurement Manual.
- 13.3 All waivers from these Contract Procedure Rules must be:
- fully documented
 - subject to a written report in an approved format to be submitted in advance to the relevant Chief Officer which shall include reasons for

the waiver which demonstrate that the waiver is genuinely required

- subject to approval in advance by the Procurement Assurance Group (PAG) who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional.

13.4 All decisions on waivers must take into account:

- probity
- best value/value for money principles.
- Representative of the whole / total contract cost not split to ensure the value of the service (or goods) being waived appears lower.

13.5 For contracts subject to the PCR Rules, any waiver from the requirement for competition must meet the conditions set out in the PCR Rules in addition to the general requirements above.

13.6 A waiver shall not be applied for reasons of poor contract planning and any such attempt to do so shall be escalated to the Chief Officer and / or Procurement Assurance Group (PAG).

14 Extensions to Existing Contracts

14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Procurement Manual.

14.2 Any extension must be:

- fully documented
- subject to a written report in an approved format to be submitted to the relevant Chief Officer; which shall include reasons for the extension which demonstrate that the need for the extension is genuinely exceptional
- subject to approval by the relevant Chief Officer who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely exceptional.

14.3 Any extension must take into account:

- probity
- best value/value for money principles.
- Legality of any extension in line with Government Procurement

Regulations.

- 14.4 For contracts subject to PCR Rules, any extension must meet the conditions set out in these rules in addition to the more general requirements set out above.
- 15 Procurement Frameworks & Other Purchasing Schemes
- 15.1 A Responsible Officer may use Procurement Frameworks subject to the following conditions and the Council's Procurement Manual.
- 15.2 Responsible Officers must check in advance that
- the Council is legally entitled to use the Procurement Framework and that we can adhere to its terms
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 - That any applicable fees which relate to its usage, have been paid by the Council
 - the purchases to be made do properly fall within the coverage of the Procurement Framework
 - the establishment and operation of each Procurement Framework is in compliance with the PCR Rules (where they apply) and meets the Council's own requirements.
- 15.3 Other applicable "Purchasing Schemes" may include:
- contractor prequalification lists/select lists
 - framework arrangements (including those set up by the Crown Commercial Service)
 - purchasing arrangements set up by central purchasing bodies and commercial organisations
 - consortium purchasing
 - collaborative working arrangements
 - formal agency arrangements
 - e-procurement/purchasing schemes and methods
 - other similar arrangements
- 15.4 Where a Procurement Framework is used meaning a pre competition of the relevant supplier's suitability has already taken place, then this shall constitute a compliant route to market in line with the Contract Procedure Rules.
- 16 Review and Changes to these Contract Procedure Rules

- 16.1 These Contract Procedure Rules shall be reviewed and updated on a regular basis (ideally annually). Save in the case of revisions to the PCR Thresholds in Contract Standing Order 7, amended Contract Procedure Rules shall be agreed and adopted by the Audit Committee. Revisions to the PCR Thresholds shall be dealt with in accordance with Scheme of Delegation.