

CONTRACT PROCEDURE RULES OF NEATH PORT TALBOT COUNTY BOROUGH COUNCIL



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1 Introduction

- 1.1 Procurement is the process by which the Council manages the acquisition of all its Goods, Services and Works. It includes the identification of need, consideration of options, the actual procurement process, the subsequent management and review of the contracts. It addresses the requirement of the Council to achieve Value for Money.
- 1.2 The Contract Procedure Rules provide a corporate framework for the procurement of all Goods, Services and Works for the Council. The Contract Procedure Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts let and that all procurement activity is conducted with openness, probity and accountability.
- 1.3 In all its procurements the Council must comply with the Regulations and the EU Treaty based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality and these Rules are designed to ensure compliance with the same.
- 1.4 For the avoidance of doubt the words identified in Capitals are defined terms.

2 Definitions and Interpretation

- 2.1 For the purposes of these Contract Procedure Rules, the following definitions shall apply:

Term	Definition
Authorised Officer	shall mean every Director and Head of Service and any other person specifically delegated by the Council in respect of these Contract Procedure Rules
British Standards Institution	means the standards adopted by British standardisation organisations and made available to the general public
Community Benefits	means targeted recruitment & training, but also equal opportunities, training for the existing workforce, supply-chain initiatives, community consultation, 'considerate contractor'

	schemes, contributions to education, the promotion of social enterprises, and resources for community initiatives
Constitution	shall mean the Constitution of Neath Port Talbot County Borough Council as may be amended from time to time.
Contract	means an agreement with the Council for the supply of Goods or materials, the sale of Goods or materials, the execution of Works, or the provision of Services or, where deemed appropriate by an Authorised Officer in accordance with Rule 28, a Development Agreement
Contract Value	means the total value of the Contract over the whole term of the Contract. All Contract values are exclusive of VAT.
Contractor	means any sole trader, practitioner, partnership, limited liability partnership, business or company whether limited or unlimited and any duly incorporated trade, profession or commercial body or Internal Provider, and, where the context permits, a party to a Contract
Contract Procedure Rules	means these Contract Procedure Rules (Rules) as approved by the Neath Port Talbot County Borough Council
Contract Manager	means the relevant technical officer nominated by the Authorised Officer to undertake contract management
Council	means the Neath Port Talbot County Borough Council , its Cabinet, Cabinet Committees and other Committees/Sub Committees of the Council and its Authorised Officers,

	in the context of the Constitution
Council Grant	means a Grant Agreement where a fund of money is payable to another organisation by the Council for a particular purpose. In determining whether a payment is classed as a Council Grant or Contract then Authorised Officer shall consult with the Head of Legal Services
Council Policies	means any policies of the Council as may be amended from time to time
Data Protection Legislation	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
Day	means any day when the Council is open for public business.
Development Agreement	means an agreement where the Council owns the land to be developed and engages a Contractor to carry out the development on its behalf.
Chief Finance Officer	means the Council's Chief Finance Officer or his nominated representative
Dynamic Purchasing System	means a completely electronic tendering process , which has a limited duration, for making commonly used purchases, as more particularly defined and described in Rule 34 of the Regulations
Electronic/Electronically	means a Tender undertaken utilising the system comprising eTenderwales or any other software as determined by the Head of Legal Services
English and Welsh Law	means all laws and legal obligations

	of England and Wales regulations and codes of practice issued by both the UK and the Welsh Government as it applies in Wales as may be amended from time to time
EU Thresholds	means the financial thresholds that require a competitive tender in accordance with the Regulations
EU Treaty	means the Treaty of the Functioning of the European Union
European Law	means the Treaty on European Union and the Treaty of the Functioning of the European Union and any laws created by the European Union which shall take effect in England and Wales
European Standards	means a standard adopted by a European standardisation organisations and made available to the general public
Financial Procedure Rules	means the Council's Financial Procedure Rules as may be amended from time to time and present within the Constitution
Financial Thresholds	means the thresholds set out in the Regulations for Goods, Services and Works to determine whether a Procurement must be carried out on a European wide basis
Framework Agreement	means agreements with suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement and more particularly described in Rule 33(2) of the Regulations
GDPR	Means the General Data Protection Regulation (<i>Regulation (EU)</i>)

	2016/679)
Goods	means goods or materials, electronic media or intellectual property and shall include the hire and installation and of such goods and/or materials
Grant or Grant Agreement	means an agreement where a fund of money is payable to or by the Council for a particular purpose
Head of Human Resources	means the Council's Head of Human Resources or their nominated representative
Head of Legal Services	means the Council's Head of Legal Services or their nominated representative
In House Services	means services provided by an Internal Provider
Internal Provider	means a Directorate or division of the Council capable of providing the Goods or Services or undertaking the Works
Invitation to Tender	means the document produced or referred to by the Council to describe or determine elements of the Tender exercise, including the Contract Notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents
LED	means Law Enforcement Directive (Directive (EU) 2016/680)
Lots	means the breakdown of a particular Contract into individual subject matters
MEAT	means most economically

	advantageous tender, which can be assessed on the basis of price, price and quality, or quality.
Member	means an elected member of the Council as more particularly described in the Local Government Act 1972
Officer	means a person appointed to or holding a paid office or employment, under the Council or appointed by the Council and references herein include Cabinet Members
Performance Bond	means a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a Contract by a Contractor
Project Bank Account	means a ring-fenced bank account, that shall have trust status, from which payments are made directly and simultaneously to a Contractor and members of the supply chain.
PQQ	means a Pre-Qualification Questionnaire to be issued where required under the appropriate selection process
Procurement	means the acquisition by means of a Contract for Works, Goods or Services by the Council from Tenderers whether or not the Goods, Works or Services are intended for a public purpose
Proper Officer	means the persons named under the Constitution as the persons authorised to execute Contracts on behalf of the Council
Public Body	means state, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law and includes central government authorities
Purchase Order	means a request to supply Goods,

	Services or the execution of Works
Quotation	<p>means an offer to supply Goods or Services or execute Works at a stated price.</p> <p>Where the context so permits, any reference to Quotation/Quotations is/are to include Tender/Tenders and vice versa.</p>
Regulations	means the Public Contract Regulations 2015 as may be amended from time to time
Representative	means any Officer, Agent or Contractor of the Council
Request for Quotation	means the document produced or referred to by the Council to describe or determine elements of the Quotation exercise, including the Contract Notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents
Select List	means Select List, and/or Approved List of Contractors maintained by the Environment Directorate located on the Council intranet specifically for building and civil engineering works only and is not to be considered or used as a general select list by the Council
Services	means the provision of services to the Council
Tender	means an offer to supply Goods or

	<p>Services or execute Works at a stated price.</p> <p>Where the context so permits, any reference to Tender/Tenders is/are to include Quotation/Quotations and vice versa.</p>
Tenderer	<p>means an economic operator involved in a Tender process or has submitted a Tender and shall include any prospective Contractor or Internal Provider</p>
Tender Strategy Document	<p>means the ‘Tender Strategy document and GDPR Schedule of Processing Personal Data Subjects’ held and issued by the Corporate Procurement Unit</p>
Value for Money	<p>Should be considered as the optimum combination of whole-of-life costs in terms of not only generating efficiency savings and good quality outcomes for the organisation, but also benefit to society, the economy, and the environment, both now and in the future.</p>
Variations	<p>means any substitution, omission or postponement of any part of the Contract, the provision of similar additional Services, Goods or Works, the variation of the scope of the Contract or any part, altering the standard of the Contract and imposing any obligations or restrictions in regard to the execution, provision, carrying out and/or completion of the Contract or any part</p>
Works	<p>means construction, repair or maintenance of a physical asset</p>
Writing	<p>means any expression consisting of words or figures which can be read, reproduced and subsequently communicated including information transmitted or stored by electronic</p>

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- 2.2 A reference to any statute or statutory provision shall include any subordinate legislation made under the relevant statute or statutory provision and shall be construed as a reference to such statute, statutory provision or subordinate legislation as it may have been, or may from time to time be, amended, modified or re-enacted (with or without modification)
- 2.3 References to writing shall include any mode of reproducing words in a legible and non-transitory form
- 2.4 The headings to clauses and schedules are for convenience only and shall not affect the construction or interpretation of these Contract Procedure Rules.
- 2.5 Reference to a specific Officer of the Council shall include any Officer, Director or Head of Service exercising their functions regardless of their post.
- 2.6 The documentation stated in Contract Procedure Rules 7.2, 12.1, 12.4, 15.1,18.1,19.3 and 20.5, the tender procedures (Electronic Tender Procedure and Paper Tender Procedure) and the EU Thresholds are located on the Council's Intranet Site.

3 Compliance

- 3.1 These Contract Procedure Rules apply to all Contracts unless otherwise specified in the Contract Procedure Rules. No exception from any of the following provisions shall be made unless otherwise than by direction of the Council.
- 3.2 All Contracts must comply with:
 - 3.2.1 European law;
 - 3.2.2 English and Welsh law as it applies in Wales (including the Council's statutory duties and powers including the Council's fiduciary duty to safeguard public funds);
 - 3.2.3 the Constitution
 - 3.2.4 any relevant Council Policies;

- 3.2.5 any legal requirement stipulated by the Head of Legal Services and any financial requirement stipulated by the Chief Finance Officer.
- 3.2.6 any Grant conditions imposed on the Council by a third party and
- 3.2.7 give due consideration to any relevant guidance
- 3.3 All contracts must comply with the following principles of European law:
 - 3.3.1 free movement of Goods and Services;
 - 3.3.2 non-discrimination;
 - 3.3.3 openness/transparency;
 - 3.3.4 equal treatment for all; and
 - 3.3.5 proportionality.
- 3.4 In the event of any conflict with the principles of clauses 3.2 and 3.3 and these Contract Procedure Rules then clauses 3.2 and 3.3 shall be deemed to take priority
- 3.5 Where the Council is in receipt of any Grant for a Contract then these Contract Procedure Rules must be read in conjunction with the said Grant and in the event of any conflict the Grant shall take priority.
- 3.6 All Council employees shall comply in all aspects with the requirements set out in the Constitution and these Contract Procedure Rules
- 3.7 Prior to undertaking any tendering exercise the Authorised Officer shall ensure that all necessary Council approvals have been obtained together with any necessary consents, permissions or other approvals (including loan or financial approvals) and copies of such approvals and consents shall be retained. For the avoidance of doubt in respect of Contracts for Works, this shall not include any operational consent required for the purposes of such Works (which shall include, but not be limited to planning consents, building regulations consent, consents from statutory bodies etc.)
- 3.8 In relation to any Works and/or maintenance being carried out on land, ownership or a statutory right to enter such land must rest with the Council. Alternatively a right to enter such land to carry out the Works

and/or maintenance must be procured from the owner prior to the contracts being entered into in relation thereto. The aforesaid provisions shall also apply to Works and/or maintenance to be carried out by the Council's Internal Provider.

- 3.9 A Member cannot enter, either orally or in writing, into any Contract on the Council's behalf.
- 3.10 Interpretation of these Contract Procedure Rules shall be the duty of the Authorised Officer in consultation with the Head of Legal Services.
- 3.11 In the event of Authorised Officers requiring guidance on the interpretation they shall consult with the Head of Legal Services.

4 Preliminary Steps

- 4.1 Before any Procurement is considered, Authorised Officers shall give consideration as to whether in-house provision exists for the Goods, Services or Works required. Authorised Officers shall determine whether or not to utilise such in house-provision via an Internal Provider in respect of any Contract. Consideration should also be given to joint provision with another organisation in accordance with the Local Government (Wales) Act 1994.
- 4.2 If it is determined necessary to proceed with an external Procurement, then where available, use must be made of the Council's existing Framework Agreements and/or Dynamic Purchasing System let in accordance with these Contract Procedure Rules unless in exceptional circumstances the Authorised Officer has agreed otherwise in consultation with the Head of Legal Services.
- 4.3 The estimated anticipated value of a Contract shall be the value of the total consideration during the life of the Contract (including any extension offered), net of value added tax, which the Council expects to be payable under the Contract.
- 4.4 No Contract shall be artificially split to avoid undertaking a procurement exercise in accordance with the Regulations or these Contract Procedure Rules.
- 4.5 In determining the value of the total consideration, which the Council expects to pay, the Council shall, where relevant, take account of:-

- 4.5.1 any form of option
 - 4.5.2 the term/period of the proposed Contract
 - 4.5.3 any rights to renew the Contract/extend the Contract period and the period of renewal or extension
 - 4.5.4 any prize, payment, premium, fees, commission, interest or other form of remuneration payable under the proposed Contract
- 4.6 In determining the value of any Contract for the hire of Goods, if the term of the Contract is indefinite or uncertain at the time the Contract is entered into, then the value shall be taken as equating to the expected aggregate spend over a four year period. In the case where there is a Contract term but no total price then the value of the Contract is to be calculated on the expected expenditure over the whole Contract period, in accordance with the Public Contracts Regulations 2015.
- 4.7 In determining the value of any Contract for the provision of Services or carrying out of Works, if the term of the Contract is indefinite or uncertain at the time the Contract is entered into then the value shall be taken as equating to the expected aggregate spend over a four year period. In the case where there is a Contract term but no total price then the value of the Contract is to be calculated on the expected expenditure over the whole Contract period, in accordance with the Public Contracts Regulations 2015.
- 4.8 Where the Council has requirements over a period of time for Goods and Services where the contracts have similar characteristics and the Goods and Services are of the same type, and enters into a series of contracts or a contract which is renewable, then the estimated value shall be calculated by the total spend on such matters over the last 12 months or projected estimated spend for next 12 months, whichever is the greater. In estimating this value the advice of the Head of Legal Services must be sought and regard had to provisions of the Regulations
- 4.9 For Framework Agreements, or similar, without a known annual expenditure but with duration exceeding one year, the number of years duration will be multiplied by the likely annual expenditure based on current market rates and must be determined in consultation with the Head of Legal Services.

4.10 Consideration must be given by the Authorised Officer as to whether to split any proposed Contract into separate Lots to encourage small and local suppliers to take part in the procurement exercise and if Lots are considered applicable must determine the size and subject matter of such Lots. In the event of determination that Lots will not be appropriate, the Authorised Officer shall ensure that in any Invitation to Tender the reasoning for no sub division can be adequately explained to Tenderers.

4A Welsh Language

4A.1 Invitations to Tender for a Contract must state that tenders may be submitted in Welsh.

4A.2 Invitations to Tender for a Contract must be published in Welsh, where the:

4A.2.1 subject matter of the tender for a Contract suggests that it should be produced in Welsh, or

4A.2.2 anticipated audience, and their expectations, suggests that the document should be produced in Welsh.

4A.3 Where a tender or quote has been submitted in Welsh, this must be treated no less favourably than a submission in English (including, amongst other matters, in relation to the closing date for receiving submissions, and in relation to time-scale for informing bidders of decisions.

4A.4 If a tender has been submitted in Welsh, and it is necessary to interview the bidder as part of the assessment process, the following must be complied with:

4A.4.1 offer to provide a translation service from Welsh to English to enable the bidder to use the Welsh language at the interview; and

4A.4.2 if the bidder wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

4A.5 When informing a bidder of the decision in relation to a quotation or tender, this must be done so in Welsh if the quotation or tender was submitted in Welsh.

4A.6 For the avoidance of doubt, there is no requirement to publish an invitation to tender in Welsh in the Official Journal of the European Union.

5 Exclusion from Requirements of Contract Procedure Rules

5.1 These Contract Procedure Rules apply to all Contracts unless otherwise specified in the Contract Procedure Rules.

5.2 Subject to the provisions herein, when an Authorised Officer seeks to exclude the requirements of these Contract Procedure Rules from any proposed Tender or Contract then authority must be sought from the relevant Cabinet or Cabinet Board of the Council with an explanation of the reasoning for the exclusion.

5.3 Authorised Officers are to consult with the Head of Legal Services for any wish to exclude the requirements of these Contract Procedure Rules.

6 Conflict of Interest

6.1 No Officer or Member shall participate in any part of the tendering exercise where he has a conflict of interest. For the avoidance of doubt it shall be the responsibility of the Officer or Member to declare such interest as soon as such interest arises.

7 Exclusions from Competitive Tendering

7.1 Rules 4, 10, 11, 12, 13, and 14 (i.e. the requirements for competitive tendering) shall not apply to the following Contracts:

7.1.1 purchases of proprietary or patented articles which are available, only from one Contractor and where no reasonable satisfactory alternative is available;

7.1.2 the purchase of Goods for which no genuine competition can be obtained;

7.1.3 the purchase of a named product required for compatibility;

7.1.4 the execution of Works or the Provision of Services of a specialised nature which are carried out by only one Contractor

- 7.1.5 the purchase of a work of art or museum specimen;
- 7.1.6 Contracts for the execution of Works or the supply of Goods or Services certified by the Authorised Officer concerned as being required so urgently as not to permit the invitation of tenders;
- 7.1.7 small or urgent purchases and repairs (including the materials or Goods required in connection therewith) necessary for emergency maintenance;
- 7.1.8 Works to be executed or Goods or Services to be supplied which constitute a variation of an existing contract where a variation is made in accordance with Rule 23;
- 7.1.9 where the estimated expenditure is less than £10,000 (or less than £25,000 where the proposed Contract is in relation to building or engineering Works);
- 7.1.10 the joint provision of any service in conjunction with another Public Body in accordance with Rule 25 where the Council is not the lead authority;
- 7.1.11 social care service contracts in respect of the provision of social care services for service users not exceeding the EU Thresholds (for the avoidance of doubt this will be the EU Threshold for the light touch regime);
- 7.1.12 Goods, Works or Services as referred to in protocols approved by the Council;
- 7.1.13 instructions to Counsel, or Solicitors to act on the Council's behalf where the EU Threshold is not exceeded;
- 7.1.14 a contract of employment;
- 7.1.15 the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or which concern interests in or rights over any of them;
- 7.1.16 arbitration or conciliation Services;

- 7.1.17 where a Contractor has an exclusive right to provide any Works, Services or Goods which the Contractor enjoys pursuant to a law, regulation or published administrative provision which is compliant with European Law;
 - 7.1.20 Contracts entered into with other Public Bodies which satisfy the requirements of the Regulations;
 - 7.1.21 a Council Grant to another organisation that contains no Services being performed back to the Council;
 - 7.1.22 where the Council is providing Goods, Works or Services to another organisation. For the avoidance of doubt where this is envisaged advice should be sought from the Head of Legal Services;
 - 7.1.23 purchases made through or on behalf of any consortium, association or similar body of which the Council is a member provided that Tenders are invited and Contracts placed in accordance with the procedures prescribed by such body or bodies
- 7.2 Contracts let under paragraphs 7.1.1 to 7.1.23 above shall be reported to Council for information in accordance with the Report to Council for Information Under Contract Procedure Rule 7.2 promptly or as soon as practicably possible after commitment.
- 7.3 For the avoidance of doubt these Contract Procedure Rules will not apply to any properly procured Framework Agreement or Dynamic Purchasing Agreement of which the Council is a named organisation capable of using that Framework Agreement or Dynamic Purchasing Agreement. Where such agreements are in existence, the Council shall at all times comply with the obligations within that Framework Agreement and Dynamic Purchasing Agreement.

8 Quotations for Estimates of Prime Cost and Provisional Sums

- 8.1 Where preliminary Quotations are required from Contractors or the Internal Provider for the purpose of compiling estimates for the preparation of the prime cost and/or provisional sums for inclusion in the tender documents or where an Authorised Officer requires guide prices to indicate probable cost levels prior to a formal invitation to tender, then

invitations to submit preliminary quotations shall contain a statement to the effect that:

8.1.1 the price is to be used for compiling estimates;

8.1.2 there is no obligation on the part of the Council to award any Contract

8.1.3 in the event of the Contract being proceeded with at a later date, the Contractors will be given the opportunity to submit a formal Tender in accordance with these Contract Procedure Rules.

8.2 The number of Contractors invited to submit preliminary Quotations is at the discretion of the Authorised Officer.

9 Market Testing

9.1 Pre Tender discussion with potential suppliers is allowable especially in order to establish what is available in the market place and to appraise the costs of different possible specifications.

9.2 Authorised Officers shall ensure that information gathered as part of pre Tender discussions does not have the effect of distorting competition and does not result in a violation of the principles identified in Rule 3.3

9.3 Under no circumstances should any representative of the Council visit the premises of a prospective tenderer during the period between the tender invitation and the closing date for returns unless relating to current contract management and/or operational issues that necessitates visits.

9.4 Pre-Tender discussions with local suppliers is encouraged so as to make them aware of prospective opportunities.

10 Tender Process where the EU Thresholds is exceeded

10.1 Authorised Officers should seek guidance from the Head of Legal Services in the event that there is a belief that the Contract could exceed the EU Thresholds.

10.2 Where the Contract exceeds the Values and is for the following:

- 10.2.1 health, social or related services;
- 10.2.2 administrative social, educational, healthcare and cultural services
- 10.2.3 compulsory social security services
- 10.2.4 benefit services
- 10.2.5 other community, social and personal services, including services furnished by trade unions, political organisations, youth associations and other membership organisation services
- 10.2.6 religious services
- 10.2.7 hotel and restaurant services
- 10.2.8 legal services
- 10.2.9 provision of services to the community
- 10.2.10 international services
- 10.2.11 investigation and security services
- 10.2.12 public security and rescue services
- 10.2.13 postal services
- 10.2.14 miscellaneous services

the full extent of the Regulations will not apply and the light touch regime under the Regulations will apply. Authorised Officers shall at all times consult the Head of Legal Services where such Contracts fall within this category.

- 10.3 The Head of Legal Services shall conduct the Tender exercise in accordance with the Regulations and Contract Procedure Rule 3 of these Contract Procedure Rules and the Authorised Officer shall provide such assistance to the Head of Legal Services as deemed necessary.
- 10.4 Any decision making with regard to the Tender exercise shall be the discretion of the Authorised Officer who shall be advised where appropriate by the Head of Legal Services where deemed necessary.
- 10.5 In determining any criteria guidance shall be sought from the Head of Legal Services.

11 Tender Process where the EU Threshold is not exceeded

- 11.1 Subject to the provisions within this Contract Procedure Rule 11, when considering which method of tendering is to be adopted, the Authorised Officer shall satisfy himself that the method proposed affords the Council

the Value for Money in all the circumstances and is in compliance with the provisions identified in Rule 3.

11.2 In the event that the Authorised Officer requires the Head of Legal Services to conduct the Tender exercise on his behalf then the provisions of Rule 12.1 shall apply.

11.3 Where Tenders are sought, the appropriate Internal Provider should also be given the opportunity to be invited to Tender.

11.4 Contracts over £75,000

11.4.1 Tenders over £75,000 shall be invited by giving at least 10 days Public Notice by publishing a notice on Sell2Wales (and in such advertising medium as the Authorised Officer has considered desirable) stating the nature and purpose of the Contract, inviting Tender for its execution and stating the last date and time when Tenders will be accepted.

11.5 Contracts between £25,000 and £75,000

11.5.1 Tenders for amounts between £25,000 and £75,000 shall be run in accordance with the provisions of Rule 11.4.1 above, subject to Rule 11.5.2 below.

11.5.2 Where the Authorised Officer deems it inappropriate in the interests of efficient management to apply Rule 11.5.1 the Authorised Officer shall ensure that Value for Money is obtained for the Council and a record of the reason for the appointment therefor must be kept on file.

11.6. Contracts between £10,000 and £25,000

11.6.1 Where the estimated value of the proposed Contract is between £10,000 and £25,000 the Authorised Officer should invite a minimum of 3 written Quotations from competitive sources and accept the most economically advantageous Quotation for the Council, unless the Authorised Officer considers this is inappropriate in the interests of efficient management.

11.6.2 Where the Authorised Officer deems it inappropriate in the interests of efficient management to obtain 3 written Quotations,

the Authorised Officer shall ensure that Value for Money is obtained for the Council and a record of the reason for the appointment must be kept on file.

11.7 Contracts under £10,000 (or £25,000 in relation to building or engineering Works)

11.7.1 Authorised Officers shall be under no obligation to undertake a Tender/Quotation process for Contracts of this value but at all times shall pay due regard to Rule 3 of these Contract Procurement Rules and the requirement to achieve Value for Money for the Council.

11.8 Select List

Invitations to tender shall be sent to firms contained in the Select List on the basis of rotation as managed by the relevant department, with the three highest tenderers being discounted each time for subsequent Tenders. Regard should be had to a firm's existing commitments with the Council in deciding whether or not to invite that firm to tender.

Where possible, a minimum of four firms (plus when applicable, the Internal Provider) able to undertake the Contract shall be invited to tender.

Where the Authorised Officer considers that a more competitive bid will result, the number of firms to be invited to tender may exceed the number prescribed above.

Prior to tender the Authorised Officer must obtain the identity of the firms to be invited to tender from the appropriate category from the relevant department managing the Select List.

12 Rules applicable to all Tenders and Quotations

12.1 Where the Corporate Procurement Section is required to undertake a procurement exercise, the lead procurement officer will issue a Tender Strategy Document to the Authorised Officer for completion and such document shall be signed by the Authorised Officer and returned to the relevant procurement officer prior to any procurement exercise commencing.

12.2 The Council shall only enter into a Contract with a Contractor if it is satisfied as to the Contractor's competencies. The criteria for qualifying Tenderers may include, but need not be limited to: -

- 12.2.1 Technical or professional competence and experience including qualifications;
- 12.2.2 Health and Safety;
- 12.2.3 Quality including certification by official quality control institutes or agencies of recognised competence and or attesting conformity to quality assurance standards and or measures;
- 12.2.4 Financial and economic standing including appropriate insurance provisions;
- 12.2.5 Sustainability, including environmental management measures and
- 12.2.6 Data Protection,
- 12.2.7 Information security measures,
- 12.2.8 Employment practices and supply chains including but not limited to blacklist/prohibited list, modern slavery and funding of terrorism/extremism
- 12.2.9 All relevant Council policies and procedures
- 12.2.10 MEAT

For the avoidance of doubt any decision not to include any of the above shall be within the sole determination of the Authorised Officer.

12.3 The Council may choose to include such information as part of the Invitation to Tender or Request for Quotation or may carry out a PQQ for the purposes of confirming the above and shortlisting Tenderers

12.4 Authorised Officers shall ensure that:

- 12.4.1 where paper Quotations are undertaken the Paper Quotation Procedure is followed;
- 12.4.2 where paper Tenders are undertaken the Paper Tender Procedure is followed;
- 12.4.3 where electronic procurement exercises are undertaken the Electronic Procurement Procedure is followed;
- 12.4.4 all Tenders/Quotations must include the documentation listed below and that the said documentation is completed by bidders:
- Non-collusion certificate
 - Freedom of Information Act and Environmental Information Regulations Notice
 - Form of Tender/Quotation
 - Declaration
- 12.5 The Authorised Officer shall ensure that Contracts are entered into on the Council's terms and conditions as approved by the Head of Legal Services, which terms shall be included with each Purchase Order or Invitation to Tender. Where this is not appropriate and a Contractor has been asked to submit their terms and conditions, those terms and conditions must be approved by the Head of Legal Services.
- 12.6 When setting any time limits and evaluation criteria, the Authorised Officer shall take into account the complexity of the Contract and the time required for drawing up Tenders, without prejudicing the minimum time scales required by the Regulations and the reasonable timescales required for all other Tenders.

13 Tender Process

- 13.1 All matters connected with Tenders shall be treated as confidential (including the evaluation process as more particularly described in Rule 14) and any information, discussion and correspondence entered into shall be confined to those Officers of the Council who are directly concerned.
- 13.2 Unless the Authorised Officer considers it inappropriate, all Tender exercises must be undertaken electronically. The reasons for considering an electronic Tender exercise to be inappropriate are to be recorded.
- 13.3 In the event that a Tender exercise is to be carried out Electronically, the format for the conducting of this exercise shall be in accordance with the

terms of any software utilised by the Council for the purposes of the Tender exercises and shall be conducted in a manner to be determined by the Head of Legal Services.

- 13.4 Where an Electronic exercise is not deemed appropriate and Authorised Officers wish the Tender format to be dealt with by way of a paper return, the format for conducting this exercise shall be in accordance with the provisions of the Paper Tender Procedure.
- 13.5 A mini competition under a Framework Agreement shall be in accordance with the provisions of the original tender documentation for the Framework Agreement.

14 Assessment of Tenders and/or Quotations

- 14.1 Tenders shall be evaluated in accordance with the evaluation criteria and weightings set out in the Invitation to Tender. All contracts, except contracts where lowest price was predetermined to be the appropriate criteria, shall be awarded on the basis of the offer which represents the MEAT having regard to the evaluation criteria and weightings set. In addition, the criteria and weightings shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure. Guidance and assistance on relevant evaluation criteria can be obtained from the Head of Legal Services
- 14.2 Where one prospective Tenderer has requested additional information or seeks clarification to assist with the preparation of its bid, the same information is to be conveyed in writing to all Tenderers simultaneously (unless the information to be conveyed is deemed by the Council to be unsuitable to be disclosed due to the fact that the information is commercially sensitive and/or confidential and/or personal information).
- 14.3 Under no circumstances should any Representative of the Council visit the premises of a prospective Tenderer during the period between the tender invitation and the Contract award for that particular Tender without the prior approval of the Head of Legal Services unless the visit related to current contract management and/or operational issues that necessitates visits.
- 14.4 Consideration must be given by Authorised Officers as to whether any bid received by a Tenderer is abnormally low. For the purposes of this Rule 14.4 abnormally low shall be taken to mean a Tender whose price is considered significantly lower than most of or the average of all tenders

in the same Tender exercise. In the event an Authorised Officer considers a bid to be abnormally low an explanation shall be sought from Tenderers. In the event of an unsatisfactory explanation, guidance should be sought from the Head of Legal Services whether such Tender should be rejected.

- 14.5 Where examination of Tenders reveals arithmetical or copying errors present in the documents submitted in the Tender, the Authorised Officer shall deal with such errors in accordance with the appropriate professional body code of procedure or where there is no professional body code of procedure in accordance with Rules 14.6 and 14.7
- 14.6 Where examination of Tenders reveals errors or discrepancies which would affect the Tender figure(s) in an otherwise successful Tender, the Tenderer is to be given details of such errors and discrepancies, but no other information, and is to be afforded the opportunity of confirming or withdrawing their offer. If the Tenderer withdraws, the next Tender in competitive order is to be examined and dealt with in the same way.
- 14.7 Any alternations proposed by Tenderers after the specified time for submission shall not be in any way considered other than by the total withdrawal of the Tender.
- 14.8 Post Tender negotiation can take place in exceptional circumstances only with the lowest Tenderer, where the Tender, although the lowest, appears to be unacceptably high and negotiation might allow savings to the Council. Authorised Officers shall consult with the Head of Legal Services where such a process is to be adopted prior to embarking on it. Adequate safeguards on the regularity of the negotiation process are to be put in place including a written record with a clear “audit trail”.
- 14.9 Where pre contract dialogue is permitted under the terms of any Contract or Tender then such dialogue may take place provided that clear records are taken for the purposes of an “audit trail”,

15 Acceptance and Award of Tenders and Quotations

- 15.1 For any Contract entered into by the Council in accordance with Rule 7, 10, 11.4, 11.5 and 11.6 of these Contract Procedure Rules and where the Authorised Officer is exercising delegated powers to accept a Tender or Quotation, a Form F20 in the format prescribed by the Council must be

signed by an Authorised Officer prior to an award of Contract being made.

- 15.2 Where the amount of the lowest most economically advantageous Tender is within an amount already approved by the Council as part of its estimates, the Authorised Officer may accept the Tender on behalf of the Council, though if in excess of £250,000 in value or amount, in consultation with the relevant Cabinet Member.
- 15.3 Where Tenders are invited on the basis of the lowest price and two or more are identical in price Tenders are to be re-invited on a most economically advantageous basis.
- 15.4 The Council is not obliged to accept any Tenders and this shall be conveyed to Contractors in any Tender documents.
- 15.5 All Contract acceptances shall be in writing and no oral communication is to be made to the proposed Contractor as to the intention, or otherwise, to enter into formal Contract.
- 15.6 In the case of tenders subject to the Regulations any award must be subject to a minimum standstill period of 10 calendar days between communication of intention to award decision by email to all Tenderers. Authorised Officers may include a voluntary standstill in all Tender exercises.
- 15.7 Letters of intent shall only be used with the agreement of and in a form approved by the Head of Legal Services. Letters of intent should only be used in exceptional circumstances.
- 15.8 Once the contract award decision has been made, then save for the successful Tenderer, all those expressing an interest will receive a standard regret letter containing details of:
 - 15.8.1 the award criteria and weightings;
 - 15.8.2 the score that the Tenderer obtained against those award criteria and weightings (where relevant);
 - 15.8.3 the score the winning Tenderer obtained;
 - 15.8.4 the name of the winning Tenderer, and;

15.8.5 where the Tender exceeds the EU Threshold feedback and details of the relative characteristics and relative advantages of the successful Tenderer.

15.9 Debriefing may be conducted at the request of the Tenderer and the Authorised Officer shall consider arrangements accordingly.

16 Instructions to Head of Legal Services where Head of Legal Services is to undertake Contract completion

16.1 Where Authorised Officers require the Head of Legal Services to oversee contract completion then on acceptance of a Tender Submission, the Authorised Officer shall deliver to the Head of Legal the following documents:

16.1.1 Instructions to enter into Contract with the subject matter of Contract, Contract amount, Contractor and other Contract particulars

16.1.2 Where the Tender is a paper Tender:

16.1.2.1 Two copies of the Invitation to Tender/Request for Quotation

16.1.2.2 Two copies of the Contractor's Tender/Quotation Submission

16.1.2.3 Two copies of any dialogue between the Council and the Contractor relating to the Invitation to Tender/Request for Quotation

16.1.2.4 Contractor's original Tender Submission

16.1.3 Where the Tender is an Electronic Tender (except where the Electronic Tender relates to Works):

16.1.3.1 The itt and project number relevant to the Electronic Tender

16.1.3.2 Details of all Tender documentation

16.1.4 Where the Tender is an Electronic Tender and it relates to Works, the provisions of Rule 16.1.2 above apply.

16.1.5 Where a Contract, Framework Agreement or Dynamic Purchasing Agreement is entered into in accordance with the

Regulations a copy of the Regulation 84 Contract Report as more particularly described in Rule 29

16.2 Sufficient time shall be allowed for the process of contract completion.

17 Form of Contract

17.1 Contracts up to the value of £75,000 shall be in writing and signed by an Authorised Officer unless such Authorised Officer deems it appropriate that the Contract be signed by a Proper Officer.

17.2 Contracts exceeding the value of £75,000 but below £100,000 shall be in writing and signed by a Proper Officer.

17.3 Contracts exceeding £100,000 shall be in writing and executed under seal.

17.4 Notwithstanding the financial value of the Contract, the Authorised Officer may request that particularly complex or high risk Contracts shall be in writing and/or executed under seal. The formal advice of the Head of Legal Services shall be sought in such cases.

17.5 Every Contract shall specify

17.5.1 the Services, Goods or Works to be supplied or undertaken

17.5.2 the price or rates to be paid, with a statement of discounts or other deductions

17.5.3 where possible, the time or times within which the Contract is to be performed

17.6 All Contracts shall, except to the extent that the Council in a particular case or specified categories of Contract otherwise decides are to be based on definite specifications, which shall include heads of terms to be incorporated in the Contract.

17.7 All Contracts, where a standard issued by the British Standards Institution or equivalent European Standards is current at the date of the Tender and is applicable, shall, as a minimum, require that all Goods and materials used or supplied and all workmanship shall either be in accordance with that Standard or of a higher standard or to such a standard as notified by the Authorised Officer to the Contractor

17.8 Save where the Council is utilising Standard Form Contracts, Framework Agreements or Contractor's own terms and conditions, Authorised

Officers shall ensure that any Contract is subject to these Contract Procedure Rules and Contractual Terms and Conditions, which shall cover the following issues as appropriate:

- 17.8.1 Health and Safety
- 17.8.2 Equal Opportunities
- 17.8.3 Welsh language standards
- 17.8.4 Audit and Record Retention
- 17.8.5 Anti Bribery
- 17.8.6 Termination
- 17.8.7 Assignment and Sub Contracting
- 17.8.8 Assistance in Proceedings
- 17.8.9 Force Majeure
- 17.8.10 Liability and Insurance (Figures to be inserted following decision by Authorised Officer)
- 17.8.11 Variation
- 17.8.12 Confidentiality,
- 17.8.13 Data Protection
- 17.8.14 Freedom of Information
- 17.8.15 Ethical Employment
- 17.8.16 Modern Slavery and Blacklisting

17.9 Every Contract over £100,000 and which is for the execution of Works or for the supply of Goods or materials by a particular date or series of dates shall provide for liquidated damages, unless the Authorised Officer certifies them inappropriate. An Authorised Officer may give consideration to inserting such clauses in a Contract where the value is less than £100,000 and advice shall be taken from the Head of Legal Services in this regard.

18 Associated Contract Documents and Provisions

- 18.1 The Authorised Officer shall have the right to require a Performance Bond where it is felt that circumstances make this prudent. The Surety shall be approved by the Chief Finance Officer and the content of such bond shall be approved by the Head of Legal Services
- 18.2 Any items in Tender documents requiring a Tenderer to price for the provision of a bond shall be included as a provisional sum to enable it to be omitted from the Contract if a bond is not subsequently required
- 18.3 Where a Contractor is a subsidiary of a parent company, and the Authorised Officer deems it appropriate, the Council shall require and take a parent company guarantee approved by the Chief Finance Officer and the content of such parent company guarantee shall be approved by the Head of Legal Services
- 18.4 Any items in Tender documents requiring a Tenderer to price for the provision of a parent company guarantee shall be included as a provisional sum to enable it to be omitted from the Contract if a parent company guarantee is not subsequently required.
- 18.5 Where a Contractor offers a guarantee from an alternative source other than a parent company in accordance with Rule 18.3 and 18.4, and the Authorised Officer deems it appropriate, the Council shall require and take a guarantee approved by the Chief Finance Officer and the content of such guarantee shall be approved by the Head of Legal Services.

19 Community Benefits and Environmental/Sustainability Benefits

Community Benefits

- 19.1 Any Contract with a value exceeding One Million Pounds (£1,000,000) must include provision for community benefits to be achieved in accordance with the Welsh Government Procurement Policy.
- 19.2 For Contracts not exceeding One Million Pounds (£1,000,000), the Authorised Officer shall give consideration to any Contract with a value exceeding One Hundred Thousand Pounds (£100,000) as to whether community benefits shall be incorporated.
- 19.3 For all Contracts, irrespective of value, consideration shall be given to Welsh Government's guidance and advice on community benefits and, in relation to Rule 19.1 above, the relevant documentation (Community Benefits Measurement Tool) must be completed and submitted to Welsh Government in accordance with contract arrangements (e.g. through the

life of the Contract and/or upon completion of the Contract) and a copy thereof shall be sent to the Council's community benefits officer.

- 19.4 Advice and guidance on community benefits is to be obtained from the Council's community benefits officer.

Environmental/Sustainability Benefits

- 19.5 Consideration must be given by the Authorised Officer as to whether provision for environmental and/or sustainability benefits need to be included in the Contract.

20 Contract Management

- 20.1 There shall be a corporate contracts register ('Corporate Contracts Register') held by the Corporate Procurement Unit for all Contracts for the value of £10,000 and above.
- 20.2 Subject to operational need and provided appropriate provisions are put in place a Contract must not start until the Contract has been signed or sealed by both parties and dated. Directorates must allow time for this in their forward work plan.
- 20.3 Once the Contract has been awarded the Authorised Officer must identify the Contract Manager who will manage the day to day aspects of the Contract for its term and if requisite to plan what will happen once the Contract comes to an end (and plan for any new Procurement exercise required).
- 20.4 Within ten calendar days of the start of the Contract, the Contract Manager must populate the Corporate Contracts Register and thereafter maintain and update the same.
- 20.5 The Contract Manager is responsible for as a minimum and as in accordance with the Contract Management Checklist:
- (a) managing the Contract and ensuring it is carried out in accordance with its terms and conditions;
 - (b) monitoring the Contractor's performance and carrying out mid-Contract reviews to determine ongoing value for money;
 - (c) ensuring that the Contractor maintains the insurance policies and all relevant certificates and licences required by the Contract;

- (d) keeping a record of all payments, claims, monitoring, changes and certificates under the Contract.
in accordance with the Contract Management Checklist

20.6 The Contract Manager must consult the Head of Legal Services for consideration of the Council's legal position:

- (a) before any Contract is to be terminated or suspended;
- (b) in the event of a claim for payment not clearly within the terms and conditions of Contract;
- (c) before the service of any notice under the Contract

21 Cost Control and Payment to Contractors

21.1 The Authorised Officer shall ensure that the Council's Financial Procedure Rules are followed for the effective cost control of Contracts. Such procedures shall involve a continual monitoring of the cost position on each Contract with the object of ensuring that the Contract is completed within the authorised cost and that any unavoidable costs are identified as soon as possible so that appropriate action may be taken.

21.2 In the event of a Project Bank Account being required, the Authorised Officer shall discuss the requirement with the Chief Finance Officer or his nominated representative.

22 Sub-Contracting and Assignment

22.1 In every Contract the Authorised Officer shall ensure that a Contractor does not assign, transfer or sub contract any of their obligations without the prior written consent of the Council. The discretion of the Council shall be final and not subject to appeal. Authorised Officers may determine however to restrict assignment, transfer or sub-contracting out rightly.

22.2 In the event of a Contractor wishing to undertake any of the activities referred to in Rule 22.1 above, the Council shall determine whether any supplemental agreements shall be necessary including but not limited to a Deed of Novation and Deed of Collateral Warranty. The Authorised Officer shall consult with the Head of Legal Services accordingly on this Rule 22.

22.3 Where sub-contracting and/or assignment is permitted in any Contract, the use of local suppliers is to be encouraged.

23 Variations and Alterations

- 23.1 All Variations MUST be in the form of written instructions to the Contractor from the Authorised Officer and shall be agreed in writing on behalf of the Council and the Contractor
- 23.2 The likely cost of every Variation shall be assessed by the Authorised Officer in accordance with the Council's Financial Procedure Rules
- 23.3 Authorised Officers shall have in mind whether any variation or alternation to a Contract will have the effect of significantly amending the Contract so that a new Tender exercise should be undertaken.
- 23.4 Variations to Contracts will be permitted without a new Tender process only in the following circumstances and only following consultation with the Head of Legal Services:
- 23.4.1 where Variations are provided for in clear, precise and unequivocal review clauses which for the avoidance of doubt may include provisional sums and risks;
 - 23.4.2 where additional Goods, Services or Works become necessary and a change of contractor cannot be made for technical reasons or without significant inconvenience or cost, provided that any increase does not exceed 50% of the value of the original Contract; or
 - 23.4.3 where Variations are brought about by unforeseen circumstances which do not affect the overall nature of the original Contract and do not exceed 50% of the value of the original Contract; or
 - 23.4.4 where there is change in contractor due to an unequivocal review clause or corporate restructuring; or
 - 23.4.5 where Variations are below the requirements of the Regulations and 10% (for Services and Goods) or 15% (Works) of the initial Contract value.
- 23.5 A decision to extend the contract period may only be made before the original expiry date, where it is in accordance with the terms and conditions of the original Contract and contemplated by the original Procurement exercise and where provision for an option to extend is included in the original Procurement exercise.

23.6 Where the terms of the Contract and or original Procurement exercise do not expressly provide for extension then such Contract may only be extended in exceptional circumstances, where legislation permits and Value for Money issues have been addressed. Such decision shall be made by the Authorised Officer in consultation with the Head of Legal Services.

24 Framework Agreements, Dynamic Purchasing Systems and Electronic Auctions

24.1 The Council may undertake the setting up of a Framework Agreement, Dynamic Purchasing System and Electronic Auctions and Authorised Officers shall at all times consult with the Head of Legal Services for the setting up of such arrangements.

24.2 The Authorised Officer shall ensure that any Framework Agreement, Dynamic Purchasing System and Electronic Auctions are awarded in accordance with the requirements of Rule 3 of these Contract Procedure Rules

25 Joint Procurements

25.1 Where a Joint Procurement is to be undertaken by the Council and another organisation, for example, another Public Body then the Authorised Officer should inform the Head of Legal Services at the earliest possible opportunity.

25.2 Before embarking on any Tender, Authorised Officers shall ensure that all necessary Council approvals have been obtained together with any necessary consents, permissions or other approvals and copies of such approvals and consents shall be retained. Notification shall also be made to the Insurance section of the Council. For the avoidance of doubt in respect of Contracts for Works, this shall not include any operational consent required for the purposes of such Works (which shall include, but not be limited to planning consents, building regulations consent, consents from statutory bodies etc.)

25.3 The Authorised Officer shall liaise with the Head of Legal Services to ensure an appropriate agreement is in place between the Council and such other Public Body (Inter Authority Agreement) for the commencement of the Tender and the administration of the subsequent Contract that will follow.

- 25.4 Where the Council is to be the Lead Authority for the purposes of the Contract, the Authorised Officer shall ensure that any Tender process is undertaken in line with these Contract Procedure Rules.
- 25.5 Where the other Public Body is to be the Lead Authority for the purposes of the Contract, then the Authorised Officer shall ensure that the other Public Body procures the Contract in line with that Public Body's Contract Procedure Rules.

26 Transfer of Undertakings and (Protection of Employees) Regulations 2006 ("TUPE")

- 26.1 Where a proposed Contract contains a potential for a TUPE transfer of Staff from the Council to the proposed Contractor, then Authorised Officers must seek the advice of the Head of Human Resources at the earliest opportunity.
- 26.2 Where a proposed Contract contains a potential for a TUPE transfer of Staff from a Contractor to another Contract, then Authorised Officers must seek the advice of the Head of Legal Services.

27 Disposal of Surplus Goods

- 27.1 The Authorised Officer may dispose of all surplus Goods, stores and equipment in an appropriate manner after consultation with the Chief Finance Officer and Head of Legal Services

28 Disposal in respect of Land

- 28.1 Where a Tender exercise is to be undertaken in respect of the disposal of Land, Authorised Officers shall at all times act in accordance with the disposal policy as developed by the Council's Environment Directorate.
- 28.2 The advice of the Head of Legal shall be sought where the disposal of Land includes an element of Works to be undertaken by a Contractor.
- 28.2 Any requests for a Tender exercise will be carried out in accordance with Rule 13 of these Contract Procedure Rules

29 Reports and Record Keeping

- 29.1 Authorised Officers shall, for the duration of the Contract and six years thereafter or as required by any Grant that the Council is a recipient of; keep copies of all concluded Contracts.
- 29.2 Authorised Officers shall ensure that they retain copies of all correspondence with economic operators and internal deliberations, preparation of Procurement documents, dialogue or negotiation of any Contract and selection and award criteria for all Contracts where applicable for a duration of six years from the completion of the Procurement process or as required by any Grant of which the Council is the recipient.
- 29.3 Where Contracts are executed under seal, the Head of Legal Services shall keep copies of all concluded Contracts for the duration of the Contract and twelve years thereafter or as required by any Grant of which the Council is a recipient.
- 29.4 For every Contract, Framework Agreement or Dynamic Purchasing System which shall be entered into under the requirements of the Regulations, the Head of Legal Services shall draw up a written report which shall include the information required by Regulation 84 of the Regulations. For the avoidance of doubt this Rule will not apply to any Contract based on a Framework Agreement
- 29.5 For above EU Threshold Contracts, a copy of the Report referred to in clause 29.4 above shall be provided to the Head of Legal Services for retention with the Contract.
- 29.6 All instructions to Contractors shall be in writing, or verbal instructions confirmed in writing.
- 29.7 Authorised Officers shall ensure that day work sheets, where applicable, are promptly submitted in duplicate by Contractors and that they are cross referenced to the instructions to which they relate.