

**UPDATE TO CONSTITUTION: PROCUREMENT PROCEDURE RULES AND REVIEW OF FINANCIAL THRESHOLDS****Report of Executive Director of Corporate Services****1. Purpose of the Report**

- 1.1 To seek agreement to recommend to Council proposed changes to the Procurement Procedure Rules (PPRs) and key financial reporting thresholds.

**2. Description of Decision (Recommendations)**

- 2.1 Cabinet is requested to
- recommend Council to approve the proposed revised Procurement Procedure Rules (as contained in Appendix A to this report) and the increases to financial thresholds set out in paragraphs 5.1 to 5.7 of the report, and
  - authorise the Assistant Director of Law and Governance to amend the Constitution accordingly, including the making of any consequential amendments, stylistic or typographical changes, to ensure consistency throughout the Constitution.

**3. Introduction/Background**

- 3.1 The Council spends significant amounts on the procurement of goods, services and works; over £273m in 2020/21. The Council has a strong track record of successful procurement, delivering value for money and securing savings.
- 3.2 The current PPRs were adopted in 2013. They set out the overall governance arrangements with regard to how the Council undertakes its procurement activity in compliance with public procurement law and best practice.
- 3.3 A significant number of changes have taken place since 2013 impacting on the Council's procurement policies and practices including:
- Updates to public procurement law, including the Public Contract Regulations 2015 ("PCR 2015") and the Concession Contracts Regulations 2016;
  - adoption of Community Wealth Building agenda;
  - increased focus on Contract Management, through the Council's Supplier Relationship and Contract Management Framework;
  - the adoption by the Council of the New Procurement Strategy in 2019.
- Whilst day-day operational working practices have been updated to reflect the above, the PPRs have not been updated in line with the above.

#### **4. Proposed changes to the PPRs**

##### **4.1 The key changes proposed to the PPRs include the following:**

- a) Clarification that the new Rules apply to the grant of concession contracts in respect of services and works.
- b) Clarification that the new Rules apply to any proposed funding agreements with third parties whereby the third party is undertaking to provide services, goods or works in accordance with the Council's requirements and in consideration for the Council's funding.
- c) Clarification that contracts awarded to an entity that satisfies the requirements of the "in-house" public procurement exemption under Regulation 12 of the PCR 2015 (the "Teckal test") are exempt from the Rules.
- d) Co-operation agreements between the Council and other Contracting Authorities for the joint provision of public services in the public interest pursuant to Regulation 12 of the PCR 2015 are also exempt from the Rules.
- e) Increased the threshold from £5k to £10k in relation to when a Council directorate must agree the procurement process with Corporate Procurement (to ensure specialist resource is focused on areas of greater spend), and that Corporate Procurement must agree the form and method of any pre-procurement preliminary market engagements to be carried out.
- f) Increased the threshold for approval from Cabinet to procure from £250k to £500k.
- g) Express clarification of the need for Chief Officers to prevent, identify and remedy at the outset any actual or potential conflicts of interest in relation to potential procurement activities and/or third-party contracts and to report these promptly in writing to Corporate Procurement.
- h) Wording updated in line with Public Contract Regulations 2015 with regard to the range of procurement procedures available.
- i) Included the requirement for all contract opportunities to be advertised with a value exceeding £25,000 to also be published in Contracts Finder, the Government national procurement portal, in line with the PCR 2015.
- j) Requiring that all quotes over £10,000 and Tenders shall be submitted through a secure electronic system whereby they are not 'opened' until the deadline has passed for receipt of the quotes/tenders. Tenders being opened at one time and in the presence of an officer designated by the Executive Director of Corporate Services, removing the requirement for a Member to be present.
- k) Incorporating the same rules to the procurement of consultants as to other types of service contracts, and updating the relevant thresholds as follows:
  - the relevant Chief Officer shall engage with Corporate Procurement on all such proposals for consultancy services where the estimated total value is £10,000 or greater;

- where the estimated total value of the proposed contract for consultancy services is equal to or greater than £100,000, the prior written consent of the Executive Director of Corporate Services or the Chief Executive is required to the proposed appointment before the procurement process is undertaken; and
  - where the estimated total value of the proposed contract for consultancy services is equal to or greater than £500,000, Cabinet approval is required to the proposed appointment before the procurement process is undertaken.
- l) Increasing the requirement for all contracts above £75,000 (from £50,000) to be in writing in a form to be approved by the Assistant Director of Law and Governance.
- m) The Rules have been also been re-drafted to make them easier to read / understand.
- 4.2 A copy of the proposed PPRs, as amended in accordance with the proposals outlined in this report, is appended for members' consideration.

## **5 Proposals regarding Financial Thresholds**

- 5.1 In tandem with the review of the PPRs, it is timely to review related financial thresholds set out in the Constitution, regarding the definition of a "key decision" and the level at which capital schemes must be referred to Cabinet for approval.
- 5.2 Article 14.03 of the Constitution defines a key decision as:

*"...an executive decision which is likely-*

- *to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates, or*
- *to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the City".*

Rule 12 of the Access to Information Procedure Rules provides that:

*"“Significant” in terms of expenditure shall be taken to mean either expenditure of £250,000 or more in relation to capital expenditure or £100,000 or 1% of the relevant net revenue budget head whichever is the greater, as set out in paragraph 7 of the Budget and Policy Framework Procedure Rules.”*

The financial threshold in respect of savings is not expressly stated.

- 5.3 The financial threshold for a key decision has not been reviewed since the Constitution was adopted under the Local Government Act 2000 and is low compared to other metropolitan / unitary authorities. Generally speaking, nationally, limits of £1 million capital and £500,000 revenue are not uncommon. In the region, whilst Newcastle Council's revenue threshold for a key decision is £250,000, its capital threshold is £1 million. North Tyneside Council's threshold is £500,000 for both capital and revenue.

It is therefore proposed that the financial threshold for a key decision should be amended to provide that:

*“Significant” in terms of expenditure and savings shall be taken to mean either expenditure or savings of £500,000 or over, whether capital or revenue.”*

It should be noted that a decision which incurs expenditure or makes savings of a lesser amount, may still amount to a “key decision” if it meets the criterion of being *“...significant in terms of its effects on communities living or working in an area comprising two or more wards in the City.”*

- 5.4 Linked with these provisions is the requirement in Rule 2.10 of the Financial Procedure Rules for proposed capital schemes with an estimated value of £250,000 or over to be referred to Cabinet for approval. If the proposals in respect of the PPRs are accepted, it is recommended that this threshold in respect of capital schemes also be increased to £500,000 or over, to align with the threshold for decisions requiring Cabinet approval under the PPRs.
- 5.5 Officers exercising delegated powers under the provisions referred to will remain subject to the requirement in the Constitution to consult the relevant portfolio holder (and Committee Chair in respect of non-executive matters) where the decision has policy or significant financial implications, or where the portfolio holder or chairman has given prior indication that they wish to be consulted on the matter or type of matter. Appropriate consultation must also take place with ward members on matters which impact on their ward.
- 5.6 Cabinet members are free to determine the level of financial decision regarding which they wish to be consulted, and this may vary from time to time and between different types of decisions. However, as a guideline, it is suggested that unless a portfolio holder agrees otherwise, all decisions with a value of £50,000 or above should be made in consultation with the relevant Cabinet member.
- 5.7 Whilst decisions that do not fall within the definition of a “key decision” will not need to be included on the “28-day notice/Forward Plan”, officers are required to record and make available for publication, a record of certain decisions (subject to the application of the provisions regarding confidential and exempt information). The record includes information required by law, including the reason for the decision and any alternative options considered. In line with the proposed changes to the PPRs, it is recommended that a formal record of decision should be made in respect of any contract with a value of £10,000 or above. In respect of contracts below this limit, although a formal record of decision for publication may not be required, officers should, as a minimum, retain an appropriate internal record of the decision to serve as an “audit trail” in the event of any queries.

## **6 Reasons for the Decision**

- 6.1 The changes proposed to the Procurement Procedure Rules are considered appropriate to ensure the Council's internal procurement procedure rules remain fully up to date and are more responsive, in order to maximise the local economic impact, whilst securing the desired outcomes and value for money.
- 6.2 The changes proposed to financial thresholds are considered to reflect an appropriate balance between officers implementing the strategies, policies and plans of the Council at pace, with the need to seek approvals from Cabinet in respect of higher value proposals.

## **7. Alternative Options**

- 7.1 One alternative is not to update the PPRs or financial thresholds, but this is not recommended as it will not achieve the objectives as set out in the report.
- 7.2 Another alternative is to implement some but not all the changes proposed. However, a piecemeal approach is not recommended as this will not deliver the same objectives.

## **8. Other Relevant Considerations / Consultations**

- (i) **Financial Implications** – There are no financial implications of the proposals.
- (ii) **Legal Implications** –The Assistant Director of Law and Governance has been consulted on the proposals and her comments have been incorporated in the proposed changes to the Constitution.

## Part 3: Section 7 – Procurement Procedure Rules

### 1 INTRODUCTION AND SCOPE

- 1.1 These Procurement Procedure Rules (hereafter referred to as these / the Rules) are intended to secure value for money, promote good purchasing practice and public accountability and ensure compliance with public procurement law.
- 1.2 The Rules are mandatory for all **officers**. Following them is the best defence against any allegations that purchases have been made incorrectly or fraudulently. They lay down the minimum requirements for procurement.
- 1.3 All procurement approaches, whether established and traditional or modern and innovative (for example e-procurement tools such as e-tendering) must comply with all elements of these Rules.
- 1.4 The Rules apply to all purchasing, licensing, contracting, commercial partnering and the establishment of frameworks which involve the provision or procurement of works, goods or services by third parties to, or on behalf of, the Council. Further detail regarding the scope of these Rules is provided in Rule 3 (**Relevant Contracts**) below.
- 1.5 All procurement shall comply with the requirements of the Public Contracts Regulations 2015 (as amended from time to time) ("PCR") as applicable and the Constitution, including the Scheme of Delegation and the Employee's Code of Conduct.
- 1.6 Where a new legal entity is to be created by the Council then the Constitution of that new entity must include a scheme of Procurement Procedure Rules as approved by the Executive Director of Corporate Services.
- 1.7 Chief Officers and managers are responsible for ensuring that employees comply with these Rules and that appropriate contractual provisions are in place for compliance by agency workers, interims, consultants and agents who are undertaking procurement activity on behalf of the Council.
- 1.8 Wherever reference or action is to be taken by Corporate Procurement, it is undertaken on behalf of the Executive Director of Corporate Services.
- 1.9 All procurement procedures and the resultant Contracts shall comply with these Rules and, where applicable, the requirements of the PCR and no officer or Member shall seek to avoid them. The only permitted exceptions to these Rules are as expressly set out in Rule 5 below.

### 2 BASIC PRINCIPLES

#### Basic Principles

- 2.1 All procurement procedures and activities must:

- be cost-effective and secure value for money;
- be consistent with the highest standards of integrity;
- ensure fairness and transparency in awarding public contracts;
- comply with all legal requirements; and
- support the Council's corporate and service aims and activities.

#### Officer Responsibilities

- 2.2 Where the Rules refer to an officer of the Council, this shall be deemed to include both that individual and their authorised representative(s) as permitted pursuant to the Council's **Scheme of Delegation** and any Directorate Delegation Schemes.

## Chief Officers

### 2.3 Chief Officers are responsible for:

- ensuring that the relevant **Portfolio Holder(s)** are consulted as appropriate under the Scheme of Delegation prior to advertising a procurement and are provided with progress reports at appropriate intervals;
- ensuring that, where relevant, an appropriate level of engagement with Members and service users is undertaken relating to procurements within their areas of responsibility;
- engaging with Corporate Procurement at the earliest opportunity to identify future commissioning intentions, including the options appraisal stage, of any proposals that may lead to a procurement with an estimated value of £10,000 and over. This does not include call-offs from existing framework agreements where agreed in advance with Corporate Procurement;
- ensuring, where Council contracts exist (including **Framework Agreements and/or Dynamic Purchasing Solutions**) or a commitment has been given for the Council to participate in a consortium contract, those arrangements are utilised, except where otherwise approved in advance by the Executive Director of Corporate Services;
- complying with the corporate Supplier Relationship and Contract Management framework;
- prevent, identify and remedy at the outset any actual or potential conflicts of interest in relation to potential procurement activities and/or third-party contracts and to report these promptly in writing to Corporate Procurement;
- prior to advertising or awarding (as appropriate) any contract:
  - (a) producing a clear written specification of the Council's requirements (outcome based where appropriate) and evaluation criteria;
  - (b) ensuring sufficient approved budget provision is available; and
  - (c) save where Cabinet has expressly authorised the relevant procurement, ensuring a Record of Delegated Decision regarding the decision to procure is completed by or on behalf of the relevant Chief Officer.
- procuring goods, works and services under £10,000, where not covered by an existing Council contract, in accordance with these Rules;
- ordering goods and calling-off services in accordance with the conditions of existing contracts; and
- keeping complete records for procurements where they are the lead.

## Executive Director of Corporate Services

### 2.4 Corporate Procurement, on behalf of the Executive Director of Corporate Services, will:

- agree the procurement process and contract management plans for all procurements valued £10,000 and over;
- agree the form and method of any preliminary pre-procurement market engagements to be carried out;
- consider the case for the potential use of any of the exceptions contained in Rule 5;
- chair procurement evaluation panels;

- organise and manage corporate contracts (including Framework Agreements and Dynamic Purchasing Solutions);
- keep complete records for procurements of £10,000 or over, where such procurements are led by Corporate Procurement;
- maintain a corporate Supplier Relationship and Contract Management framework; and
- support procurements led by Directorates, where appropriate.

### 3 RELEVANT CONTRACTS

3.1 All **Relevant Contracts** must comply with these Rules. A Relevant Contract is any arrangement made by or on behalf of the Council for the carrying out of works or for the supply of goods or services. These include arrangements for:

- (a) the supply of goods;
- (b) the hire, rental or lease of goods or equipment;
- (c) the provision of services including, but not limited to, those relating to:
  - (i) the recruitment of personnel e.g., recruitment consultants and agency staffing;
  - (ii) professional services; or
  - (iii) all other consultancy services;
- (d) the delivery of works for, or in accordance with the requirements of, the Council;
- (e) the letting of concession contracts (whether for works or services); and
- (f) contracts or agreements for services, goods or works where the provider is engaged on a payment by results or success fee basis.

3.2 For the purpose of these Rules, Relevant Contracts do not include:

- (a) delivery of works and services by an in-house Council provider, including, for example: construction, engineering, maintenance, professional services, etc.;
- (b) contracts for the delivery of works or services with a legal entity that satisfies the requirements of the “in-house” public procurement exemption under Regulation 12(1) of The Public Contracts Regulations 2015 (“the Teckal test”) subject to the prior approval of the Executive Director of Corporate Services (in each case) and Cabinet (where the estimated value of the contract exceeds £500,000);
- (c) a co-operation agreement between the Council and one or more other contracting authorities for the joint provision of public services for mutual benefit which satisfies the requirements of Regulation 12(7) of The Public Contracts Regulations 2015, subject to the prior approval of the Executive Director of Corporate Services (in each case) and Cabinet (where the estimated value of the contract exceeds £500,000);
- (d) contracts of employment which make an individual a direct employee of the Council;
- (e) agreements regarding the acquisition, disposal (including rental) or transfer of land or buildings or which concern interests in or rights over any of them;
- (f) arrangements that can properly be regarded as grants only in accordance with Financial Procedure Rules and do not involve the provision of works, services or goods for or on behalf of the Council;
- (g) personal social services contracts commissioned as a result of an expression of choice and control by an individual service user in accordance with the Care Act 2014 (as amended);

- (h) contracts for specialist legal advice and/or representation or other expert professional advice in the context of actual or potential litigation, proceedings or otherwise which the Assistant Director of Law and Governance considers it necessary to obtain.

- 3.3 If there is any doubt over whether a contract is likely to be **Relevant Contract**, Corporate Procurement should be consulted initially and, if doubt still remains, the matter will be determined by the Executive Director of Corporate Services.

#### 4 FINANCIAL THRESHOLDS

- 4.1 All Relevant Contracts are subject to Rule 7 (Steps Prior to Purchase) and must be subject to competition in accordance with these Rules unless there is an exception approved under Rule 5 (Exceptions). Corporate Procurement must be satisfied that the actions taken to facilitate the purchase are cost-effective and reflect the complexity and value of the purchase. The minimum competition requirements are as follows:

- **Up to £10,000** – value for money must be considered with at least one oral quotation confirmed in writing (a catalogue or published price or an email is acceptable for the purposes of this requirement only). In addition, where practicable the use of local suppliers should be considered.
- **Over £10,000 and up to/below the applicable Public Contracts Regulations (PCR) threshold for the Relevant Contract.**

Corporate Procurement shall determine, in consultation with the Chief Officer, the most appropriate procurement strategy and approach. This may include either of the following:

##### Quotes

Where a quotation process is deemed by Corporate Procurement to be appropriate, at least three written relevant quotations shall be obtained and considered from suitable third parties. In addition, where available, any in-house provider must also be asked to provide a quotation.

Where it is not reasonably practicable to obtain three quotations, Corporate Procurement and the relevant Chief Officer may agree to reduce the number of quotations required to be obtained provided that the reasons for this are documented before the purchase is made or the contract is let.

##### Tenders

Where a tender process is deemed by Corporate Procurement to be appropriate, the specific form and nature of the tender process shall be determined by Corporate Procurement in consultation with the relevant Chief Officer.

- **Applicable PCR threshold and above** – the form of procurement process must be approved by Corporate Procurement and shall be in accordance with the **PCR** as set out in Rules 11 to 19 below.
  - **Payment by Results or Success Fee based contract**– The estimated total value of the fee/income to be received by the contractor shall be assessed by the Chief Officer and Corporate Procurement in order to determine the value of the Relevant Contract for the purpose of determining the appropriate procurement route under 4.1.1 to 4.1.3 above.
- 4.2 Current PCR thresholds are displayed on the Council's website and will be maintained by Corporate Procurement. For the avoidance of doubt, all references in these Rules to the relevant PCR thresholds mean such thresholds as may be amended from time to time.
- 4.3 In the case of **Port Contracts**, the relevant thresholds for the purposes of the above are contained in the Utilities Contracts Regulations 2016 (as may be amended from time to time).

## **5 EXCEPTIONS**

- 5.1 All exceptions made in accordance with this Rule 5 and the reasons for them must be recorded and reported in advance to Corporate Procurement in the manner determined by the Executive Director of Corporate Services. In addition, in each case reliance on any of the exceptions set out below is also subject to compliance with the provisions of the PCR (where applicable).
- 5.2 Where a Chief Officer considers that one of the exceptions as set out in this Rule 5 should apply, they must first discuss this with Corporate Procurement prior to seeking advance written approval of the Executive Director of Corporate Services and, as appropriate, authorisation from Cabinet.
- 5.3 Subject to Rule 5.2 above and save where Cabinet has expressly authorised the use of an exception in relation to a specific contract, a Delegated Decision Form is to be completed by the relevant Chief Officer including the rationale for the application of the relevant exception and a copy provided to Corporate Procurement where a central record will be maintained.
- 5.4 For the avoidance of doubt, in the event that one of the exceptions set out in this paragraph 5.5 is to be relied on, a specification setting out the Council's requirements and the terms and conditions of contract for the proposed appointment are still required.
- 5.5 Subject to Rules 5.1 to 5.4, Rules 11 to 15 do not need to be applied to the following categories of procurement, provided that where the procurement is equal to or exceeds £500,000 in value the prior approval of Cabinet is obtained:
  - 5.5.1 where the goods/asset are being sold through an auction or purchased through the used goods/second-hand market;
  - 5.5.2 procurement when, for economic, technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can only be awarded to a particular third party or where the use of another party would otherwise cause significant inconvenience or substantial duplication of costs to the Council;
  - 5.5.3 execution of works by statutory undertakers;
  - 5.5.4 execution of works or services in which the personal skill or knowledge of the person(s) carrying out the works or services is of primary importance;
  - 5.5.5 call-offs via an existing Framework Agreement or dynamic purchasing system under which the Council has a right to participate which offers value for money and provided the Council follows the frameworks or system's call-off procedures;
  - 5.5.6 contracting via a contract awarded by a third party under which the Council has a right to participate and offers value for money, and provided the Council follows the terms and conditions of the contract;
  - 5.5.7 urgency, when (for reasons brought about by events unforeseeable and not attributable to the Council and only to the extent it is strictly necessary) the time required to fully comply with these Rules would be prejudicial to the Council's interests or its ability to discharge its statutory functions or duties. In these cases, consideration should still be given to those parts of the Rules that could still be followed particularly the need for competition. Where the value of the procurement is equal to or over £500,000 a report shall be submitted to the next Cabinet with an explanation of the circumstances giving rise to the need for the exemption and detailing the procurement process actually followed;
  - 5.5.8 the award of any Port Contract which is below the relevant threshold as contained in the Utilities Contract Regulations 2016 and provided that consideration is given to those parts of these Rules that can be reasonably followed for the particular procurement;

- 5.5.9 procurement of works, goods or services below the applicable threshold within the PCR to meet the requirements of a principal contract that has been awarded to a Council department as a result of a competitive tendering process. Where the principal contract has not been awarded via competition then this exception shall not apply. Further, this exception is restricted to those elements of these Rules that cannot reasonably be followed.

## **6 COLLABORATIVE OR JOINT PROCUREMENT ARRANGEMENTS**

- 6.1 In order to secure **Value for Money** and fulfil its general duty of **Best Value**, the Council may enter into a variety of collaborative or joint procurement arrangements.
- 6.2 Where the Council acts as the lead or host authority in any collaborative or joint procurement arrangements these Rules will apply, unless otherwise agreed by the Executive Director of Corporate Services.
- 6.3 Subject to Rules 9 and 10 (Approvals), where a Chief Officer wishes to participate in a proposed collaborative or joint procurement arrangement to be undertaken by a third party, the prior written agreement of the Executive Director of Corporate Services shall be obtained. The procurement process followed should be broadly comparable to that set out in these Rules unless otherwise agreed by the Executive Director of Corporate Services.
- 6.4 Where applicable, officers should be aware that collaborative or joint procurement arrangements are subject to the requirements of the PCR.

## **7 STEPS PRIOR TO PURCHASE**

- 7.1 The Chief Officer must appraise any procurement decision in a way that matches its complexity and value by:
- taking into account the information from any relevant consultation;
  - appraising the need for the expenditure and the priority of the purchase;
  - defining the objectives of the purchase (having first consulted users where appropriate) and relating it to the achievement of the Council's objectives as set out in the City Plan;
  - assessing the risks associated with the purchase and how to manage them; and
  - considering what procurement method is most likely to achieve the purchasing objective, including internal or external sourcing, partnering, collaboration or use of a purchasing consortium.

## **8 ESTIMATING CONTRACT VALUES/AGGREGATION**

- 8.1 To meet the requirements of both these rules and the PCR, the relevant Chief Officer must calculate the estimated contract value for any purchase as follows:
- where the proposed contract is for a one-off purchase or task, by taking the estimated price (excluding VAT) for the purchase of those items, or the completion of that task;
  - where the proposed contract is for a fixed period, by taking the total price (excluding VAT) to be paid or which might be paid (or received if a Concession Contract) during the whole period, including all potential options and permitted extensions;
  - where a contract for the provision of services is of an uncertain duration (e.g., a "rolling" contract) by multiplying the estimated monthly payment by 48 (i.e., four years);
  - where the contract is for the purchase of goods or materials, involving recurring transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months; and
  - for preliminary feasibility studies, the value of the overall scheme or contracts which may subsequently be awarded as a result of the initial work to the same supplier.

- 8.2 An Officer must not enter into separate Relevant Contracts nor select a method of calculating the estimated contract value in order to circumvent the application of these Rules.
- 8.3 Prior to any procurement process, Corporate Procurement and Chief Officers shall have regard to the optimum packaging of works, supplies or services, particularly those of a similar nature, which are likely to be carried out in connection with a particular project in order to achieve the best value for money and taking into account all relevant requirements, including the need for integration and any inter-dependencies plus the promotion of social value. However, a proposed contract must not be divided into separate lower value contracts simply to avoid the full application of these Rules. This does not affect the determination of the number and size of lots within a Framework Agreement.

## **9 APPROVALS: GENERAL PROCUREMENTS**

- 9.1 The Executive Director of Corporate Services (through Corporate Procurement) must agree the procurement process for all procurements with a value equal to or over £10,000.
- 9.2 Where the aggregate value of the intended procurement is estimated to be equal to or over £500,000 Cabinet approval is required prior to advertising, except only in urgent cases where approval must be secured before award.
- 9.3 The requirement in Rule 9.2 above does not apply to those Relevant Contracts that are in place to underpin the day-to-day workings of the Council (e.g., including (without limitation) utility supplies, stationery supply) provided that the prior agreement of the Executive Director of Corporate Services has been obtained before relying on this provision. Subject to the foregoing, the procurement of such contracts may be authorised by the relevant Chief Officer in consultation with the Executive Director of Corporate Services.

## **10 APPROVALS: CONSULTANCY SERVICES**

- 10.1 In relation to proposals to use Consultants (as defined in paragraph 23.2 below):
- the relevant Chief Officer shall engage with Corporate Procurement on all such proposals where the estimated total value is £10,000 or greater;
  - where the estimated total value of the proposed Relevant Contract for Consultancy Services is equal to or greater than £100,000, the prior written consent of the Executive Director of Corporate Services or the Chief Executive is required to the proposed appointment before the procurement process is undertaken; and
  - where the estimated total value of the proposed Relevant Contract for Consultancy Services is equal to or greater than £500,000, Cabinet approval is required to the proposed appointment before the procurement process is undertaken.

## **Procurement Process**

### **11 ADVERTISING CONTRACTING OPPORTUNITIES**

- 11.1 Where the value of the proposed Relevant Contract is on or above the applicable PCR threshold, a contract notice must first be published in accordance with the requirements of the PCR.
- 11.2 All tender opportunities shall be published on the e-Tender Portal. All contract opportunities to be advertised with a value exceeding £25,000 shall also be published in Contracts Finder.
- 11.3 All procurement opportunities (regardless of value) should be considered as to whether their advertising would be beneficial in order to encourage competition.

## **12 PROCUREMENT PROCEDURES**

- 12.1 The PCR set out the procedures which can be used to procure Relevant Contracts at or exceeding the applicable PCR threshold.
- 12.2 Corporate Procurement, in consultation with the Chief Officer, shall select the most appropriate procedure for the procurement of a Relevant Contract which is equal to or exceeds the applicable PCR threshold, having regard to the requirements of the PCR.
- 12.3 In order to determine a suitable procurement approach for a proposed Relevant Contract (whether above or below the applicable PCR threshold), officers, in liaison with Corporate Procurement, may first choose to carry out preliminary and non-committal soft market testing in order to inform the market of the Council's potential procurement plans and to understand the likely level of interest. Any such testing should be undertaken in accordance with the principles of equal treatment and transparency and should not have the effect of distorting competition.
- 12.4 The relevant documents for each procurement process (including the instructions to bidders, the Council's specification, submission requirements and the evaluation criteria) shall be agreed by the relevant Chief Officer and Corporate Procurement. The terms and conditions of the proposed contract shall be approved by the Assistant Director of Law & Governance.

## **13 SUBMISSION AND OPENING OF QUOTES AND TENDERS**

- 13.1 Quotes over £10,000 and Tenders shall be submitted through a secure electronic system whereby they are not 'opened' until the deadline has passed for receipt of the quotes/tenders.
- 13.2 Tenders for a Relevant Contract shall be opened at one time and in the presence of an officer designated by the Executive Director of Corporate Services. A Register of Tenders opened shall be maintained by the Executive Director of Corporate Services. The Register of Tenders shall include the names, addresses, value and the date and time of opening.

## **14 NEGOTIATIONS**

- 14.1 Negotiations with individual candidates or bidders during a procurement process shall not take place except where expressly permitted under the provisions of the PCR.
- 14.2 Negotiations following receipt of tenders or quotations may only take place with the prior approval of the Assistant Director of Law and Governance.

## **15 ACCEPTANCE OF QUOTATIONS AND TENDERS**

- 15.1 A Chief Officer may accept a tender or quotation on the basis of the offer which is considered to be the most advantageous to the Council as determined in accordance with the evaluation criteria as set out in the invitation to tender or quote for that procurement.

## **16 AWARD NOTICE**

- 16.1 In respect of a contract which exceeds the relevant threshold as set out in the PCR, an Award Notice shall be published by Corporate Procurement no later than 48 days after the date of award of the contract and shall also be published on Contracts Finder.
- 16.2 In the case of the award of a contract which exceeds £25,000 (including a call-off contract awarded under a framework agreement), an Award Notice shall be published by Corporate Procurement on Contracts Finder within a reasonable period of time from the date of the award.

## **17 CONTRACT TERMS AND CONDITIONS**

- 17.1 All contracts and orders shall be in writing or in an approved electronic format, and every contract which equals or exceeds £75,000 in value shall be in writing in a form to be approved by the Assistant Director of Law and Governance and executed in accordance with **Section 6, Part 2** of the Council's Constitution. As a minimum, the following areas must be adequately covered within the terms and conditions:

- the Contract Period (including any extensions);

- the Contract Price and payment terms;
- the Council's requirements (e.g. its specification and performance requirements);
- Insurance and liability provisions; and
- termination

## **18 CONTRACT MANAGEMENT**

- 18.1 Chief Officers must ensure that contract management arrangements are in place for all contracts which are deemed as medium / high risk relevance in accordance with the Council's Supplier Relationship and Contract Management Framework (as may be updated from time to time).

## **19 NOMINATED CONTRACTORS AND SUB-CONTRACTORS**

- 19.1 In circumstances where there is a case for the Council to nominate sub-contractors to main contractors, the provisions of these Rules shall apply in relation to the selection of the nominated sub-contractor.

## **20 VARIATION OF CONTRACTS**

- 20.1 All proposed contract variations shall be consistent with the scope and terms of the existing contract and proportionate in value to the total value of the contract when originally awarded. In addition, where applicable, any proposed variation must also comply with the relevant provisions of the PCR.

- 20.2 Any proposed variation, or series of variations, incurring extras, shall be authorised prior to the work or services being undertaken or supplies being received as follows:

- Where the net cumulative value of the variation to a contract (together with all previous variations to the contract) is lower than £250,000 by the Chief Officer having obtained prior written agreement of the Executive Director of Corporate Services and provided payment can be contained within the relevant budget provision. If not, prior authorisation must be obtained from Cabinet;
- where the net cumulative value of the variation to a contract (together with all previous variations to the contract) is equal to or exceeds £250,000, Cabinet approval must be sought regardless of whether this can be contained within the existing approved budget for the contract;
- where the net cumulative value of all variations to a contract is estimated to equal or exceed 50% of the original contract value, the Chief Officer may only authorise the variation or series of variations after consultation with the Assistant Director of Law and Governance as to application of the PCR.

For the avoidance of doubt, this Rule 20.2 shall not apply in the case of a potential variation which expressly formed part of the original procurement documents and where the future exercise of that proposed variation as an option was expressly authorised by Cabinet as part of the award of the original contract.

- 20.3 Once duly authorised, approved variations must be executed in writing in a form agreed with Corporate Procurement, and payments made in accordance with the terms of the contract.
- 20.4 The Chief Officer shall issue separate certificates, showing all extras less deductions presented to the Council for payment, stating the amounts of extras ordered to date and the amount certified for payment.

- 20.5 This Rule 20 shall not apply to the discharge of the Council's obligations under the terms of a contract in connection with the granting of compensation events (or equivalent) or relief which arise or become due under the terms of the contract provided that records relating to the grant of such compensation events or relief shall be kept in a form acceptable to the Executive Director of Corporate Services.

## **21 CONTRACT EXTENSIONS**

- 21.1 A contract may be extended before its expiry date where the extension is in accordance with its original terms, can be shown to offer value for money and with the approval of the applicable Chief Officer and the Executive Director of Corporate Services.

- 21.2 Where the contract terms do not provide expressly for an extension:

- Those contracts subject to the PCR may only be extended as expressly permitted by the PCR and on the written approval of the applicable Chief Officer and the Assistant Director of Law and Governance.
- Those contracts not subject to the PCR may only be extended by formal written variation where the extension to a contract can be shown to offer value for money and is proportionate and reasonable in all the relevant circumstances on the written approval of the applicable Chief Officer and the Executive Director of Corporate Services.

In addition, where the contract does not include an express right of extension, any proposed extension will also constitute a contract variation for the purpose of Rule 20 above and therefore the provisions of Rule 20 will also need to be followed.

- 21.3 After the expiry of the term of a contract, it may not be extended or varied.

## **22 ASSIGNMENT AND NOVATION**

The relevant Chief Officer, in consultation with the Executive Director of Corporate Services, shall have authority to determine whether permission to assign or novate a contract is given on behalf of the Council.

## **23 TERMINATION**

Where a Chief Officer wishes to terminate a contract early, they may do so only after consulting with the Executive Director of Corporate Services and Assistant Director of Law and Governance as to the financial and legal implications of the proposed termination.

## **24 INTERPRETATION AND DEFINITIONS**

- 24.1 "PCR" means The Public Contracts Regulations 2015 (as amended).
- 24.2 For the avoidance of doubt, all references in the Rules to the PCR, The Concession Contracts Regulations 2016 and The Utilities Contracts Regulations 2016 shall in each case be construed as a reference to such legislation as may be amended, consolidated or re-enacted from time to time and includes any subsequent enactment, regulation or other similar instrument having equivalent effect.
- 24.3 "Third party" for the purposes of these Rules includes any economic operator, another public sector body, a works contractor, a supplier, a services provider, a consultant, a firm, a company, a partnership or an individual.
- 24.4 "Consultant" and "Consultancy Services" means all such Third Parties who market their services as a consultancy service for whatever purpose, whether management, technical, financial, IT, marketing, personnel etc., and are generally understood to come within the term "consultants". This does not include staff employed via job agencies or other organisations that carry out day-to-day work on the Council's behalf.
- 24.5 In relation to a Port Contract, all references in these Rules to Cabinet shall be interpreted as meaning the Port Board.

