

PART 4 RULES OF PROCEDURE

7. CONTRACT PROCEDURE RULES

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PART 4 RULES OF PROCEDURE

7. CONTRACT PROCEDURE RULES

SECTION 1 – SCOPE OF CONTRACT PROCEDURE RULES

1.0 Introduction

- 1.1 Strategic Procurement is ‘the process of acquiring goods, works and services, covering both acquisitions from third parties and from in-house providers. The process spans the **whole life cycle** from identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical 'make or buy' decision.’¹
- 1.2 These Contract Procedure Rules outline the policy and procedures for the procurement activities across the Council that includes ordering for the purchase, commissioning, hire and lease of goods, services and works on behalf of the Council.
- 1.3 Compliance with the Contract Procedure Rules ensures that:
- All providers are treated fairly and equally, and that all procurement takes place in an open and transparent way, encouraging competition.
 - The rules and procedures governing the procurement process are set out clearly for Council Members, Officers, third parties buying or commissioning on behalf of the Council, providers and other interested stakeholders.
 - All elements of procurement, from identifying the need through to disposal of goods or ending of contracts, are governed to ensure sound, robust procurement practice.
 - The Council complies with Public Procurement Regulations (“the Regulations”) and any other legislation governing public sector procurement.
 - The Council can defend against allegations of incorrect or fraudulent procurement practice, should the need arise.
- 1.4 The Council has a duty to make the best use of its assets and finances on behalf of the residents and businesses of the borough. It is important that goods, services and works are procured in a way that offers value for money and is carefully regulated, lawful, and ensures transparency and accountability.
- 1.5 The following pages offer further details in relation to the compliance and general requirements around procuring goods, services and works on behalf of the Council and should be read and complied with for any procurement activities.
- 1.6 It also should be noted that these Contract Procedure Rules should be read in conjunction with the Council’s Finance Procedure Rules (FPR’s), the Contract Procedures Guide and other Procurement Guides in order for Council employees to discharge their responsibilities accordingly.

¹ Source – National Procurement Strategy for Local Government

2.0 Basic Principles of Procurement

2.1 All procurement and commissioning procedures must:

- Be in line with the Council's objectives as set out in the Corporate Plan.
- Meet the procurement need and achieve value for money.
- Ensure fairness and transparency in the allocation of public contracts.
- Comply with all appropriate legal requirements.
- Ensure that all risks in the process are appropriately assessed and managed.
- Ensure that all required pre-tender consultation has taken place.
- Ensuring Strategic Procurement is engaged at an early stage of the process to ensure that the best commercial option is undertaken in any resulting tendering exercise
- Encourage the participation of local businesses in Council contracts.
- Promote social value through the Councils contracting activities.

2.2 Procurement Procedures - once the need for goods, services or works has been identified, Officers are required to :-

- a. investigate whether the Council has an In-House Provider which can meet the requirements; if this is not possible
- b. investigate whether the Council operates a Council Wide contract or other arrangement through which the requirement can be met; if this is not possible;
- c. investigate whether there is a suitable regional or national framework which could be used to source the requirement; **or**
- d. carry out a Council procurement process (c and d should be conducted simultaneously to ensure the best route to market is obtained)

3.0 Procedures for Schools

3.1 Governing bodies, in association with Head Teachers and Management Teams, are required to use the Council's Schools Financial Rules – Contract Procedures Rules.

4.0 Compliance and Conduct

4.1 The Contract Procedure Rules must be adhered to by:

- All Members
- All Officers
- Persons or organisations responsible for awarding, managing and monitoring contracts on behalf of the Council.

4.2 The highest standards of probity are required of all those involved in the procurement, award and management of Council contracts.

4.3 Any **failure to comply** with any of the provisions of these Contract Procedure Rules, the Code of Practice, the Financial Procedure Rules or Public Procurement

legal requirements by Officers **may result in disciplinary action** and may in some instances/cases constitute a criminal offence.

- 4.4 The Contract Procedure Rules are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK Law and agreements with Grant Funding Organisations.
- 4.5 Measures should be taken to effectively prevent, identify and remedy conflicts of interest arising through procurement activity to avoid any distortion of competition and to ensure equal treatment of all providers.
- 4.6 Any Officer, Member or other person acting on the Council's behalf in relation to a procurement or purchase must declare any potential Conflict of Interest as soon as they become aware of it. This must be declared to Strategic Procurement Team (SPT) and a decision to allow continued involvement approved or declined by the Head of Procurement and recorded.

5.0 Procurement Plan and Contracts Register

- 5.1 The Council's Strategic Procurement Team (SPT), in conjunction with Directorates, may publish Prior Information Notice's using the Find a Tender Service (FTS) detailing the contracts for goods, services and works, which it expects to procure in the coming financial year.
- 5.2 Directors shall ensure that all contracts to be procured over the Public Procurement thresholds as stated in CPR 17.5 are notified to SPT and are registered on the procurement forward plans.
- 5.3 Each Director shall ensure that they notify the SPT of any contracts awarded, extended, novated, or materially varied linked to Regulation 72 of the PCR2015 (SPT will advise) so that SPT may update the Contracts Register and publish any required notices.

6.0 Contract Value

- 6.1 When contracting goods, services or works, a genuine assessment of the whole life value of the contract or framework agreement must be undertaken. (Refer to the **Contract Procedures Guide** for further guidance on how to calculate).
- 6.2 If the project can be demonstrated as truly, innovative and an estimate cannot be, provided approval to proceed must be obtained from the Monitoring Officer or nominated deputy before commencing a competitive tendering process.
- 6.3 The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. In particular contracts for goods, services or works shall not be disaggregated in an attempt to avoid the /application of these Contract Procedure Rules or the Regulations.
- 6.4 For Concession contracts, the value of the contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the goods, services or works that are the object of the Concession contract. (For further detail refer to the **Contract Procedures Guide**)
- 6.5 The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, services or works supplied by the Council.

7.0 Awarding Contracts

7.1 These CPRs should be read in conjunction with the decision-making provisions in the Council's Constitution and Financial Procedure Rules. Directors may take the decision to award a contract themselves provided that any appropriate key decision or budget approvals are already in place.

8.0 Relevant Contracts

8.1 All relevant contracts must comply with the Contract Procedure Rules

8.2 A relevant contract is any arrangement made by, or on behalf of, the Council for the carrying out goods, services or works.

This includes arrangements for:

- The purchase, hire or leasing of goods and equipment
- The delivery of services, including (but not limited to) those related to
- Use of agency staff
- Land and property transactions relating to development agreements
- Financial services
- Consultancy services
- Concession and Income contracts

8.3 Relevant contracts do not include:

- Employment contracts (permanent, interim or casual). For the avoidance of doubt, the appointment of recruitment services is subject to the CPRs.
- Contracts relating to the disposal or acquisition of an interest in land (except those involving development agreements)
- Certain financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments
- Concessions relating to street traders and market stalls
- Residential and nursing care contracts which the Council has a duty to provide under S117 Mental Health Act 1983, S17, s17A, s17B and s17ZA – ZI Children Act 1989 and S2 Local Government Act 2000
- Health and social care contracts where the recipient of care has a personal choice and directly contracts with the care provider including direct payment including under sections 31 – 36 of the Care Act 2014, section 57 - s 58 of the Health and Social Care Act 2001, section 12A of the NHS Act 2006 and section 17A of the Children Act 1989;
- The employment of Barristers - Barristers engaged to represent the Council must be appointed through the Assistant Director of Legal and Democratic Services
- Legal services contracts and arbitration services provided they fall within the exemptions set out in Regulation 10 of the Public Contract Regulations.

- The selection of a provider whose use is a condition of a Grant funding approval.
- Where only one provider is able to supply for technical or artistic reasons or because of exclusive rights, for example the purchase of work of art, museum artefacts, manuscripts or archive collections items
- Grant funding in line with the Financial Procedure Rules part E15, E16, E17 and E18
- Licence agreements of private or public land
- Partnership Agreements made under Section 75 of the National Health Service Act 2006 and payment by and to NHS Bodies made under Section 76 and 256/257 of the NHS Act 2006
- Supplies purchased or sold in a public market or auction

8.4 A contract is a legally binding agreement required for all goods, services or works entered into by a representative of the Council. A contract can be formed through verbal or, written means (including by email) or via the exchange of monies.

8.5 All contracts above £250,000 are required to be approved by the Assistant Director of Legal and Democratic Services.

8.6 All construction related contracts must be executed as a deed (under seal)

8.7 Letters of Intent will only be issued in very exceptional circumstances following consultation and approval of the Assistant Director of Legal and Democratic Services.

8.8 The Council may enter into nil (cash) value contracts and the Council's Contract Procedure Rules will still apply in this case.

8.9 Providers undertaking procurement activity on behalf of the Council must comply with the Council's Contract Procedure Rules.

8.10 Any lease, hire or credit arrangement (such as vehicle or equipment leasing) which has a capital cost must be approved for inclusion in the Capital Programme in accordance Finance Procedure Rules relating to Capital expenditure, prior to commencing any procurement exercise

9.0 Exemptions to the Contract Procedure Rules

9.1 No exemptions can be made to the requirements of competition in terms of the Contract Procedure Rules, unless authorised in writing by the Monitoring Officer (or nominated deputy), after considering a written report by the appropriate Director.

9.2 A register of all exemptions will be maintained by the Monitoring Officer.

9.3 Any breaches to the Contract Procedure Rules will be reported to the Audit Committee on a six-monthly basis.

10.0 Waivers to the Contract Procedure Rules

- 10.1 Waivers to the CPRs may be permitted when the CPRs cannot be practicality applied, and the award meets one of the following circumstances:
- a) For works, goods or services which are either patented or unique that it is not possible to obtain competitive prices or are only available from one organisation
 - b) For the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills.
 - c) An organisation which has won a contract for an earlier phase of work via a competitive process and where further work is required that could not have been identified when the contract was let or to allow safe exit or decommission.
 - d) Reasons of urgency where it is otherwise not reasonably possible to comply with the appropriate CPR requirement (for example an emergency). Even in such circumstances officers must continue to seek and obtain value for money wherever possible.
 - e) The use of time-limited grant funding from an external body, where the time limitations will not allow a competitive process to be completed and where grant conditions allow this.
 - f) Where relevant UK or EU legislation not otherwise referred to in these CPR's prevent the usual procurement process as cited in the CPR's.
 - g) Is permissible under Regulation 72 of the PCR2015.
 - h) Constitutes a trial purchase in line with point 14.0
- 10.2 Only the Monitoring Officer (or nominated deputy) has the authority to waive Contract Procedure Rules or the Chief Financial Officer (CFO) in respect of waivers for Legal and Democratic Services.
- 10.3 Waivers must be obtained in advance of the procurement action as a waiver cannot be authorised retrospectively unless in an emergency (CPR 10.1 (d)).
- 10.4 Waivers **must not** be used to avoid the requirements of the Contract Procedure Rules to go to competition due to lack of time to procure. Procurement projects should be planned well in advance.
- 10.5 Waivers for goods & services contracts can only allowed up to the value, exclusive of VAT, of **£177,898 (£213,477 inc. VAT), £552,950 (inc. VAT £663,540)** for contracts under the Light Touch Regime (Social & Other Specified Services) and **£4,447,488 (£5,336,937 inc. VAT)** (or current Public Procurement thresholds) for works contracts unless in exceptional circumstances and in line with the law on direct awards i.e., Regulation 32, or Regulation 72.
- 10.6 Waivers must demonstrate that value for money has been considered and there are clear benefits or advantages to the Council.
- 10.7 Waivers must demonstrate any risks to the Council associated with granting the waiver.
- 10.8 Waivers must be documented in a form approved by the Monitoring Officer; this is available on the Council's intranet and must be submitted to the SPT for approval.
- 11.0 Contracting Route Options (refer to Contract Procedures Guide on how to follow each option)**

There are different methodologies to contracting on behalf of the Council, these are;

- 11.1 Using In House Service Providers
- 11.2 Using Council Wide Contracts, Council Framework Agreements or Council Dynamic Purchasing Systems (DPS).
- 11.3 Using Dynamic Purchasing Systems (DPS) or Framework Contracts (Third Party Arrangements).
- 11.4 Perform a quotation or tender exercise to set up a new contract on behalf of the Council.

12.0 Approved Lists (below Public Procurement threshold only)

- 12.1 Approved lists may only be used in agreement with the Monitoring Officer (or nominated deputy) and in line with the **Contract Procedures Guide** on setting up approved lists.

13.0 Joint Procurement

- 13.1 When undertaking a joint procurement arrangement on behalf of the Council the Director must ensure this is done in line with the **Contract Procedures Guide**.

14.0 Trial Purchases

- 14.1 Directors may purchase a trial of goods, services or works that is new to the Council up to a value of **£100,000**, to ascertain if the supply is of interest to the Council, without competition.
- 14.2 Where an exception to competition in CPR 10.0 does not apply, a full competition, compliant with the CPR's must be conducted following the trial, if the Director wishes to continue with the type of supply.
- 14.3 Arrangements must be made to ensure the provider(s) involved in the trial has not obtained any advantage through that involvement when compared to alternative providers of a similar supply.
- 14.4 The Monitoring Officer must approve proposed trial arrangements exceeding **£25,000** and this must be approved via a CPR Waiver Form.

15.0 Negotiated Contracts

- 15.1 There may be a need to consider negotiation when procuring goods, services and works. Officers should be advised that there are restrictions associated with procuring above Public Procurement thresholds. Refer to the **Contract Procedures Guide** for further information on when it is appropriate.
- 15.2 The use of a negotiated process must be approved in writing by the Monitoring Officer and the relevant Director via an Officer Decision Record 1 (ODR1) Form.
- 15.3 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by the Monitoring Officer (or nominated deputy).

15.4 Written negotiation must be subject to evidenced independent process check, calculation and value for money. If the contract value is above threshold and the proposed procedure is either Competitive Dialogue or Negotiated Procedure, these must be conducted in line with the Public Procurement regulations and the advice of the SPT sought.

16.0 Concession Contracts

16.1 Concession contracts for services or works are a contract and the procurement of Concessions shall follow the competitive and contracting requirements in these CPRs.

16.2 Concession contracts for works or services with a value of **£4,447,447 (£5,336,937 inc. VAT)** or more are subject to the Concession Contracts Regulations 2016 and will be such to such additional procurement process requirements. To calculate the value of a Concession contract refer to CPR 6.4 and in addition to that the following should be taken into account:

16.3 The value of a Concession contract shall be the total turnover generated by the concessionaire over the duration of the contract, in relation to the services or works that are the object of the Concession contract. For further guidance, refer to the **Contract Procedures Guide**.

17.0 Contracting Rules based on value (exc. VAT) and commodity being procured

For further guidance on the below refer to the **Contract Procedures Guide**

17.1 Contracts valued up to £50,000 inclusive

- Where the estimated value or amount of a proposed Contract does not exceed £50,000 then the Authorised officer should obtain at least **one** verbal quotation from suitable providers followed up by written confirmation (including email). Officers are encouraged to conduct an informal quotation exercise to ensure value for money.
- For contract awards between £25,000 to £50,000 officers must formally demonstrate value for money, . A Best Value Form (available from SPT) must be completed and sent with the Contract Award Notice to SPT. These will be audited to ensure best value was sought and achieved.
- A quotation must be sought from a Doncaster based business unless in exceptional circumstances Whilst there is only a requirement for one quotation, the Authorised Officer must consider whether additional quotations are in the Councils best interest.
- A written record must be kept of all quotations and procedures followed.
- An internal Contract Award Notice must be completed for all contracts above £5,000 and submitted to SPT to meet the requirements of the Regulations and Transparency Agenda

All contracts awarded over £25,000 must have an award notice published on Contracts Finder

17.2 Contracts valued £50,000 to £177,898 – Quotation

- Between these values, the requirement is to obtain at least **three** written quotations from suitable providers. Wherever possible a minimum of one of the quotations must be sought from a Doncaster Business unless in exceptional circumstances.
- A written record must be kept of all quotations and procedures followed.
- A decision on how to conduct the quotation should be based on the contracting risk.
- Social value must form part of the evaluation criteria for all procurements above £100,000 and must be a minimum of 10% of the evaluation score.
- An internal Contract Award Notice must be completed for all contracts above £5,000 and submitted to SPT to meet the requirements of the Regulations and Transparency Agenda

17.3 Contracts valued £177,898 to £552,950 (Social & Other Specified Services)

- A minimum of **three** tenders should be sought from suitable providers. Wherever possible a minimum of one tender must be sought from a Doncaster Business unless in exceptional circumstances.
- When using an approved third party framework agreement that has been validly set up to be called off on a non-competitive basis (direct award) the Officer must have a written justification for the selection of the provider(s) and if above **£250,000** the decision to execute the direct award must be approved by the Monitoring Officer (or nominated deputy).
- Social value must form part of the evaluation criteria for all procurements above £100,000 and must be a minimum of 10% of the evaluation score.
- An internal Contract Award Notice must be completed for all contracts above £5,000 and submitted to SPT to meet the requirements of the Regulations and Transparency Agenda

17.4 Contracts valued £177,898 to £4,447,448 (Works)

- A minimum of **three** tenders should be sought from suitable providers or providers. A minimum of one tender must be sought from a Doncaster Business unless in exceptional circumstances.
- When using an approved third-party framework agreement that has been validly set up to be called off on a non-competitive basis (direct award) the Officer must have a written justification for the selection of the provider(s) and if above **£250,000** the decision to execute the direct award must be approved by the Monitoring Officer (or nominated deputy).
- Social value must form part of the evaluation criteria for all procurements above £177,898 and must be a minimum of 10% of the evaluation score.

- An internal Contract Award Notice must be completed for all contracts above £5,000 and submitted to SPT to meet the requirements of the Regulations and Transparency Agenda

17.5 **Contracts valued over £177,898 (Goods & Services), £552,950 (Social & Other Specified Services) or £4,447,448 (Works)**

- Over these values, the requirement is to tender all contracts in accordance with the Public Procurement regulations and Contract Procedure Rules.
- When using an approved third-party framework agreement that has been validly set up to be called off on a non-competitive basis (direct award) the Officer must have a written justification for the selection of the provider(s) and if above **£250,000** the decision to execute the direct award must be approved by the Monitoring Officer (or nominated deputy).
- Social value must form part of the evaluation criteria for all procurements above £100,000 and must be a minimum of **10%** of the evaluation score.
- An internal Contract Award Notice must be completed for all contracts above £5,000 and submitted to SPT to meet the requirements of the Regulations and Transparency Agenda

18.0 **General Data Protection Regulation (GDPR)**

18.1 Where any Provider is given possession of or access to any personal data, the Service Director must comply with the Council's Data Protection obligations. The Service Director must follow the Council's Information Security and Data Protection Policies, in particular regarding contracting with data processors and sharing data and carry out a Data Protection Impact Assessment (DPIA) in consultation with the Information Governance Team. For further information, refer to the **Contract Procedures Guide**.

19.0 **ICT Related Contracts**

- 19.1 Any technology requirement, including hardware, software, accessories/peripherals, and consumables, must be procured and agreed by the ICT Department
- 19.2 Any requirement for new or replacement technology or major upgrade/enhancement to existing technology, or contract changes, must be considered and approved by the Technology Governance Board. The Assistant Director – Finance and Technology or nominated officer must be involved in all procurement activities for Council systems and specific advice taken into account in the contract award decision.

20.0 **Contract Award Notice**

- 20.1 All Contract awards above **£5,000** will be recorded on the Council's Contracts Register.
- 20.2 All contracts over **£250,000** shall be under seal, unless the Monitoring Officer approves other arrangements.
- 20.3 Contracts with a value up to **£177,898** (Public Procurement Threshold) will be based on the Council's standard terms and conditions. Where a variation is

required from the standard terms and conditions this will be agreed by the Monitoring Officer (or nominated deputy).

- 20.4 The decision to award a contract shall be made by the Director (or nominated deputy) on receipt of a written recommendation from the relevant officer. This recommendation should give details of the reasons why tenders, if any, were disqualified and the reasons for the selection of provider(s).
- 20.5 Where the terms and conditions of Contract are not fully agreed no provider shall be allowed to commence delivery of goods, services or works until a full risk assessment has been carried out by the Authorised Officer as to the possible implications to the Council by the provider being allowed to commence work before the Contract terms and conditions have been finalised.
- 20.6 Following the notification of award of contract, the Authorised Officer is required to submit a Contract Award Form to the Strategic Procurement Team so the details of the awarded Contract can be published on the Council's Corporate Contracts Register and Contracts Finder to meet the requirements of the Regulations and Transparency Agenda.
- 20.7 Where a contract has been tendered pursuant to Public Procurement Law, the Council shall publish a contract award notice to meet the relevant legislative requirements.
- 20.8 Authorised Officers are also required to prepare a report in accordance with Regulation 84 of the Public Contract Regulations and a copy stored.

21.0 Contract Terms and Conditions

- 21.1 The officer shall use their best efforts to ensure that Contracts are entered into on the Council's terms and conditions, which shall be included with each purchase order or Invitation to Tender. Where this is not possible, because the Council's terms and conditions are not suitable, and a provider has been asked to submit their own terms and conditions, where there are material changes to the Council's terms and conditions, they must be formally approved in writing by the Monitoring Officer (or nominated deputy) before they can be accepted.

22.0 Contract Extensions and Variations

Variations

- 22.1 **Variations** must be evidenced in writing.
- 22.2 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially affect or change the scope of the original contract are not allowed unless approved by the Monitoring Officer. If a material change is accepted then notices must be published in accordance with the regulations.
- 22.3 A new procurement is required in the case of a material change where one or more of the following conditions are met:
- The variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;

- The variation increases the value of the contract or the framework agreement substantially in favour of the provider in a manner which was not provided for in the initial contract or framework agreement;
- The variation extends the scope of the contract or framework agreement considerably.

22.4 All contract variations must be in writing and signed by both the Council and the provider except where different provisions are made within the contract documentation.

22.5 The value of each variation must be assessed by the Authorised Officer and all necessary approvals sought prior to the variation taking place including registrations on the Council's forward plan if applicable.

22.6 Approval for any variation shall be sought in writing from the Director in a timely manner and supported by an appropriate decision record signed by the Director.

22.7 If the variation relates to a contract that has previously been waived then a CPR Waiver Report Addendum should be completed and signed by the Monitoring Officer (or the Chief Financial Officer if the waiver relates to Legal and Democratic Services contracts).

Extensions

22.8 The term of any contract may only be extended where all the following criteria have been met:

- Provision for an extension of the term is evidenced by the original contract (and the original tender/quotation); and
- Where the budget provision and the extension is in line with the Financial Procedure Rules; and
- Where the contract value including the extension exceeds the key decision threshold (£250,000 – revenue budget, or £1,000,000 – capital budget), a separate key decision has been approved.
- Where the contract still delivers Value For Money
- In the case of ICT related expenditure has had the appropriate approvals.

22.9 Only the Monitoring Officer may approve an extension to the term of a contract outside the rules through a CPR Waiver Report Form.

22.10 Contract extensions will not be permitted if the value of the extension is above the advertised value in the Contract Notice.

22.11 All variations and extensions to any Council contracts must be in writing and reported to the SPT in order that the Contracts Register for the Council can be updated accordingly. Material variations once agreed with the Monitoring Officer must be notified to SPT.

23.0 Transfer of Contracts – Novation and Assignment

23.1 Transfer, assignment, and novation of contracts can only be agreed by the Monitoring Officer (or nominated deputy) using an ODR.

24.0 Termination of Contract(s)

- 24.1 Provision for the termination of a contract must be included within the terms and conditions of the contract. Only the Monitoring Officer has the authority to agree early termination of a contract where this is not built into the contract terms and conditions. This must be formalised via an ODR authorised by the Monitoring Officer.
- 24.2 The Monitoring Officer must be consulted where there are serious concerns over the performance of a contract.
- 24.3 The Monitoring Officer must be consulted if the performance of a contract is giving rise for concern and consideration is given to termination.
- 24.4 An Exit Plan, which can cover one or more Contracts, must be prepared for every contract well in advance of contract expiry. It is recommended that this should be put in place at least 6 months in advance to allow for the approvals, pre-planning process, and any re-procurement.

25.0 Procurement by External Agents

- 25.1 Any consultants used by the Council shall be appointed in accordance with these Contract Procedure Rules. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Director shall ensure that the consultants carry out any procurement in accordance with these Contract Procedure Rules.
- 25.2 No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to.
- 25.3 The Director shall ensure that the consultant's performance in relation to procurement is in accordance with these Contract Procedure Rules.
- 25.4 Where the Council uses consultants to act on its behalf in relation to any procurement the consultant must declare any conflict of interest that may arise to the Director prior to commencing work on any Tender.
- 25.5 Where the Director considers that such a conflict of interest is significant the Director should consider whether it is appropriate for the consultant to work on a particular tender and the consultant should not be allowed to evaluate Tenders on behalf of the Council.
- 25.6 Before any self-employed provider is awarded a contract, the provider's details must be obtained and assessed through the Council's assessment tool to ensure our obligations under IR35 are adhered to. Further guidance can be found in the Contract Procedure Guide (CPG).

26.0 Member Involvement

- 26.1 Directors are responsible for ensuring appropriate consultation has taken place with members, this could include consultation on the evaluation criteria.
- 26.2 Members should not become involved in the remainder of the procurement activity, unless any specific decisions are required by portfolio holders, Cabinet or the Council, in accordance with the Councils constitution and scheme of delegation.

27.0 Record and Document Retention and Control

- 27.1 A Contracts Register of all Contracts awarded with an aggregated value above **£5,000** shall be maintained by the SPT.

27.2 Each relevant Director shall maintain their own register of all other Contracts, under **£5,000** as a minimum, entered into by their directorate.

27.3 For every individual Contract above **£25,000** a 'Contracts File' shall be maintained with appropriate documentation which must include, as a minimum, the following: -

1. The method for obtaining bids
2. Any exemption under Rule 10 together with reasons for it;
3. The evaluation criteria in descending order of importance and associated evaluation method;
4. Tender documents sent and received from the Providers;
5. Any pre-tender market research;
6. All notes made by the evaluation panel during the evaluation of tenders;
7. Clarification and post-tender negotiation (to include minutes of meetings);
8. A copy of the Contract documents (originals should be held in Legal Services);
9. Post-contract evaluation and monitoring;
10. Communications with all provider(s) during the Tender process and with the successful provider throughout the period of the Contract;
11. Award of Contract documentation;
12. Any decision to abandon a procurement exercise or terminate a Contract.
13. All delegated decisions, authorisations, waivers and reports relating to the Tender process and subsequent Contract.

28.0 Council Purchase Cards

28.1 The Council uses Purchasing Cards in order to reduce transaction costs for low value purchases by reducing time spent on processing of orders and invoices or in emergencies.

28.2 Purchasing cards must not be used as a way of bypassing CPRs. However, in some circumstances, where a contract exists and the provider allows, a purchase card may still be used as a method of payment, where this offers better value for money or is specified in the contract. For further guidance refer to the Purchase Card Policy or contact SPT.

29.0 Cost Control

29.1 The Director shall ensure that suitable procedures are laid down and followed for the effective cost control of all contracts. Such procedures shall involve a continuous monitoring of the cost being incurred on each contract with the objective of ensuring that the project is completed within the authorised cost and that any unavoidable extra costs are identified quickly so that appropriate action can be taken.

29.2 All contracts must have a clear review and approval mechanism for price increases i.e. be linked to the applicable index related to the contract category.

29.3 The procedures shall provide:

- (a) A cost statement to be prepared every time a contract payment is made assessing the probable final cost. This should take into account all known factors

including variations, adjustments of prime cost and provisional sums and other items such as re-measured work;

(b) A cash flow forecast based on a cost statement prepared by the relevant Director, showing the expected pattern of payments to the end of the contract, updated each month until the final payment is made.

As soon as it becomes apparent to the Director that costs will exceed the amount authorised, the Director must immediately report the situation to the CFO (or nominated deputy). A final cost report shall be submitted to the CFO (or nominated deputy).

30.0 Contract Claims and Disputes

- 30.1 To safeguard the Councils right to deduct liquidated damages, if the contract is over-running the officer must certify in writing that the provider ought reasonably to have completed the works within the contract period. Such a certification must be in accordance with the contract conditions and be issued prior to the issue of the final certificate for payment.
- 30.2 Any events that may lead to claims for extension of time must immediately be brought to the attention of the officer.
- 30.3 Claims for extension of time must be assessed promptly and any extension award made in accordance with the conditions of contract.
- 30.4 If the works are not complete, the officer must issue a certificate of non-completion in accordance with any relevant contract conditions immediately after the expiry of the (extended) date for completion. It is the ultimate responsibility of the Director (or nominated deputy) to arrange for the deduction of liquidated damages.
- 30.5 If the provider subsequently brings forward fresh evidence of delay, the officer may award a further extension but must then also issue a revised certificate stating the revised date in accordance with any relevant contract conditions.
- 30.6 Before the final certificate is issued, the officer shall check that any necessary certificate has been issued in accordance with the relevant contract conditions.
- 30.7 The Monitoring Officer (or nominated deputy) shall be kept informed at all times of all contractual claims whether by or against the Council.
- 30.8 Documentary evidence must be kept relating to all aspects and stages of a claim and these should be kept by the Director at one central point.

31.0 Review and Amendment of Contract Procedure Rules

- 31.1 The Monitoring Officer and Chief Financial Officer are authorised to make technical amendments as necessary to ensure these procedures are consistent with legal requirements, changes in Council structures, personnel and best practice.

GLOSSARY OF TERMS (including general procurement terms)

Added Value - Any benefits or services that can be provided over and above that of the contract requirements

Aggregation of Demand – Where similar or same purchases made separately over a period of time (and often from multiple providers) are combined into one contract requirement

Alcatel (or Standstill) Period – Contracts over the Public Procurement threshold must include a minimum 10 calendar days standstill period between the decision to award a contract and the actual award. Unsuccessful providers are notified of the proposed award and given the opportunity to appeal if they believe that the award is not justified. It is named after the case law establishing a ruling of an unfairly awarded contract

Approved List – List of providers who have met a minimal level of quality assessments, usually through a pre-qualification questionnaire, or pre-approved list e.g. Constructionline database and approved to provide specific work, goods or services

Approved Providers – Providers included on approved lists

Assignment – The transfer of rights from one provider to another based on the same contract

Audit Trail – System or paper generated evidence showing how decisions and procedures were carried out

Authorised Officer – a person appointed by a Director who is responsible for the procurement Procedure

Award – The allocation of a contract to a successful bidder/provider/provider

Award Stage – Final stage of the tendering process, with notification of the successful provider and the signing of the contract

Bid – A submitted tender

Business Case (Procurement) – The reasons for carrying out a procurement or project, usually indicating initial value, and justifying the need such as an identified service need or meeting Council objectives

Challenge Point – a review of the evaluation process to ensure that the procedures and outcome of the evaluation process are fair, transparent and reflect the views of the evaluation panel

Collaboration – Process by which two or more 'organisations' (local authorities, other public sector bodies) work together to obtain a joint solution for a shared requirement. Used to capitalise on the advantages of aggregating demand, such as economies of scale or stronger positioning in the marketplace

Collusion – illegal process of agreeing to unfair activities in a procurement process, such as price fixing

Commissioning – the strategic activity of assessing need and using resources (both budgets and services) to meet those needs, with procurement forming part of commissioning for the sourcing and setting up contracts to provide services

Competitive Dialogue – Competitive dialogue is a procedure in which any economic operator may request to participate and whereby the contracting authority conducts a dialogue with the candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting its requirements, and on the basis of which the candidates chosen are invited to tender

Concession – an agreement between the Council and a private company for the sole right to provide a specific service

Contingencies – future events or circumstances that may occur

Contract – Legally binding document that sets out the terms and conditions of the delivery of the works, services or goods, including performance measures

Contract Management – Contract management activities can be broadly grouped into three areas.

CFO – Chief Financial Officer is the officer appointed by the Council to exercise the powers defined in Section 151 of the Local Government Act 1972.

Contract administration – handles the formal governance of the contract and changes to the contract documentation.

Contracts Finder - Government portal for advertising contract valued above £25,000 as required by the Public Contract Regulations 2015

Contracts Register – A register of Council wide contracts centrally held by Strategic Procurement

Contract Award Notice – Notice of the award of a contract published in the Find a Tender (FTS) UK government portal and as required by Public Procurement Law.

Contract Extension – continuing with the contract after the initial period of the contract term

Contract Notice – published notice of tender opportunity or contract award on the Find a Tender Service (FTS)

Contract Procedure Rules – The section of the Councils Constitution that sets out the rules that must be followed when undertaking any procurement process

Council Wide Contracts – contracts let on behalf of the Council to meet the requirements of good, services or works that are common or shared across the Council (previously referred to as Corporate Contracts)

Criteria – Set of specific requirements that a quote or tender will be marked against

Delegated Authority – Officers who have been authorised to carry out such tasks as set out in the Council’s scheme of delegation contained within the Council constitution.

Director – The person responsible for the proper compliance with these procedures. Except as indicated otherwise, a Director may delegate authority to other persons to deliver their responsibilities.

Disaggregation – Splitting a requirement for similar works, goods or services into a number of smaller contracts to avoid having to undertake a full competitive tender exercise for contracts exceeding the Public Procurement thresholds. This practice is a breach of Public Procurement Law.

Dispute - Disagreement between Council and provider or provider that may result in Court action

Doncaster Business – A company or other organisation that has an office or premises within the Doncaster Metropolitan Borough Council area.

Dynamic Purchasing System - is a procedure available for contracts for works, services and goods that has aspects similar to a framework agreement, but where new providers can join at any time.

Electronic Tendering (E-Tendering) – Online tendering and contract management system

Evaluation – Detailed assessment and comparisons of bid submissions verifying how providers will meet the requirements of the contract, measured against quality and price criteria

Evaluation Panel – Group brought together with the specific aim of assessing submitted tenders against pre-set criteria, to make final recommendations on the award of contract.

Exceptions – Permits the undertaking of a procurement action within a specific area without the need for a competitive tender exercise, but signed by the Monitoring Officer (or nominated deputy) or the CFO.

Execute – the completion of contract documentation, including the signing, and sealing where required, of the formal contract

Exemption – excluding a procurement activity from one or more of the Contract Procedure Rules

Framework Agreement – Used where specific works, services or goods will be needed on a number of occasions over a known duration, but the exact requirement is not known. Can be with a single provider (sometimes referred to as a ‘call-off’ contract) or with a multiple number of providers. Once set up, there is no need to go to the open market as competition is held between those providers on the framework

ISP – In-House Service Provider is an identified internal service offered by the Council to carry out Council services

ICT – Information, Communications and Technology

Invitation to Tender – Sent to tenderers asking them to submit bids based on a specification indicating the requirements of the Council.

Joint Procurement – Where other public bodies are included within a procurement exercise

Key Decision – A decision which is likely to result in savings or expenditure of over £250,000 gross full-year effect in the case of the revenue budget, or in the case of the capital budget, £1,000,000 or more in respect of a single project or otherwise across one financial year. In addition, any decision that is likely to have a significant effect on two or more wards in the Borough.

Letter of Intent – A written statement indicating the Council's willingness to enter into a formal contract.

Light Touch Regime – The light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015

Liquidated Damages – Compensation awarded by a court judgement or a contract stipulation regarding breach of contract

Marketplace – Wording used to describe a commercial activity or a group of potential providers possibly able to meet requirements

Monitoring Officer – This is the Assistant Director of Legal and Democratic Services

Negotiation – Process by which a contract proposal is reached through discussion and agreement between the prospective provider and the Council representative

Negotiated Procedure – Procurement process undertaken directly with one bidder. Used under specific circumstances

Novation – Substitution of a provider with a new provider, or of a contract with a new contract

Open Tender Procedure – Tender process that is open to any provider who wishes to bid. All tenders must be considered

PFI – A Private Finance Initiative is a way of creating public – private partnerships by funding public infrastructure projects with private capital.

Pre-Procurement Procedure – A requirement for stakeholder to ensure they have correctly identified the needs of the service and outcomes have been assessed.

Provider – Any person, partnership, company or other organisation, which provides or contractually offers to provide any supply to the Council or on behalf of the Council.

Public Procurement Law – UK law known as the Public Contract Regulations 2015, detailing rules and regulations that must be complied with for all public sector procurement processes that exceed specified thresholds

Qualified Tender – Where a bidder submits a bid which has been amended to the bidders requirements, such as inserting their own terms and conditions

Quotation – Written or verbal price given by a provider on request

Remedies Directive – Public Procurement legislation that sets out the rules by which the procurement actions and decisions may be challenged.

Regulations –UK Public Procurement Regulations

Relationship management – keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early.

Restricted Tender Procedure – Tender process where potential suitable tenderers are identified by the evaluation of a pre-qualification questionnaire. Only those passing the evaluation criteria of the pre-qualification questionnaires will be invited to tender.

Section 76 and 256/257 of the NHS Act 2006 – payments made between the NHS and local authorities.

Selection Questionnaire (SQ) – Set of questions used to establish the suitability of a provider to be included in a bidding process, based on experience, financial stability and quality assessments. Is also be used to eliminate bidders in a restricted (two stage) tender so that only the most suitable providers are invited to tender. This can only be used for above threshold procurements.

Service delivery management – ensures that the service is being delivered as agreed, to the required level of performance and quality.

Specification – Detailed description of what is required, including monitoring procedures

Stakeholder – Individual or organisation with an active interest in the impact or effect of the Council's procurement activities

State Aid – Any Government aid must not distort competition by favouring certain businesses or goods

Sub-Letting – Engagement of another provider by the main provider

Submission – The bid or tender submitted by a provider in response to an invitation to quote or tender

Sustainable Procurement – the economic, environmental and social issues to be considered in procurement

Tender – Written response to an invitation to tender that contains a full costed proposal. Submitted in a sealed process, and evaluated against set criteria

Tenderer – Prospective provider who submitted a bid in response to an invitation to tender or quote

Tender Documents – Set of documents provided to prospective tenderers that forms the basis on which tenders will be submitted. Includes, as a minimum, instructions to tenderers, contract terms and conditions, specification, evaluation criteria, pricing schedule, form of tender and anti-collusion statement

Testing the Market – Formal procurement process to establish whether there are providers able and interested in providing quotes or bidding

Termination – Cancellation of all or most of a contract.

Thresholds – Financial boundaries (based on the whole life value of a proposed contract) which determine the procurement action, for example whether a competitive tender is required, or whether a competitive action is required

TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) - Preserves the continuity of employment and safeguards employment rights of all employees transferring to a new employer i.e. where there is a change of contract provider or where current Council staff are being transferred to another service provider

Value for Money – ensuring the needs of the Council are met whilst achieving the required balance of quality and price

Variation - A variation is usually a change to the specification. It may either be a one off item of work or service, or a change for the remainder of the contract. Deeds of Variation and Variation Orders are contractually binding on both parties.

Waiver – Approval obtained prior to procurement activity, by the MO (or nominated deputy) or CFO, permitting an exception to the Contract Procedure Rules.

Whole Life Value – All costs incurred in the lifespan of the contract, including disposal.

Further guidance is available from the Strategic Procurement Team (SPT) and the **Contract Procedures Guide**.