

PART 4: RULES OF PROCEDURE

7. CONTRACT PROCEDURE RULES

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SECTION 1 – SCOPE OF CONTRACT PROCEDURE RULES

1.0 Introduction and definition of procurement

1.1 Strategic Procurement is ‘the process of acquiring goods, works and services, covering both acquisition 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 which includes ordering for the purchase, commissioning, hire, rental of goods, supplies, works and services on behalf of the Council.

1.3 Compliance with the Contract Procedure Rules ensures that:

- All contractors, suppliers and 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, and suppliers 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 EU Procurement Directives and the UK Public Procurement Regulations.
- 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 business of the borough. It is important that works, goods and services 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 and services on behalf of the Council and should be read and complied with for any procurement exercise.

1.6 It also should be noted that these Contract Procedure Rules should be read in conjunction with the Council’s Finance Procedure Rules and the Procurement Guidance Manual in order for budget holders to discharge their responsibilities accordingly.

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.

¹ Source – National Procurement Strategy for Local Government

- 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 Commissioning process to ensure that the best commercial option is undertaken in any resulting tendering exercise

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

- investigate whether the Council has an In House Supplier which can meet the requirements; if this is not possible
- investigate whether the Council operates a Council Wide contract or other arrangement through which the requirement can be met; if this is not possible
- investigate whether there is a suitable regional or national framework which could be used to source the requirement; if this is not possible
- consider carrying out a DMBC procurement process (for the avoidance of doubt a DMBC process should only be carried out if steps a-c have not proved possible).

3.0 Procedures for Schools

3.1 Governing bodies, in association with Head Teachers and Management Teams, are required to use the Council's Contract Procedure Rules as the basis for development of their own Contract Procedure Rules.

4.0 Compliance

4.1 The Contract Procedure Rules must be adhered to by:

- All Members
- All Officers
- Contractors, suppliers and third parties 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 UK and European Union legal requirements by Officers **may result in disciplinary action**.

5.0 Procurement Plan, Contracts Register and Statistical Returns

5.1 The Council's Strategic Procurement Team (SPT), in conjunction with Directorates, shall publish Prior Information Notice's in the Official Journal of the

European Union listing the contracts for services and supplies which it expects to procure in the coming financial year. Directors shall ensure that all contracts to be procured over £164,176 (or EU threshold as revised) per annum are notified to the procurement team and are registered on the procurement forward plan.

- 5.2 Each Director shall ensure they notify the SPT of any contracts awarded or extended so that SPT may update the Corporate Contracts Register

6.0 Contract Value

- 6.1 Competitive tendering exercises must be undertaken with due consideration to Contract Procedure Rules, EU Procurement Regulations and EC Treaty principles which include fairness, transparency, non-discrimination and mutual recognition.
- 6.2 When contracting goods, services or works, a genuine assessment of the whole life value of the costs must be undertaken.
- 6.3 The estimated value must present the total potential cost, exclusive of VAT, over the whole life of the project, including any extension terms.
- 6.4 If the project can be demonstrated as truly, innovative and an estimate cannot be provided approval to proceed must be obtained from the Chief Financial Officer (CFO) or nominated deputy before commencing a competitive tendering process.
- 6.5 The Council shall make the best use of its purchasing power by aggregating purchases wherever possible. In particular contracts for supplies, services or works shall not be split in an attempt to avoid the application of these Contract Procedure Rules or the Regulations.

7.0 Awarding of Contract

- 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 accept a tender 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 of works, or for the supply or provision of goods, materials or services.

This includes arrangements for:

- The supply or disposal of goods
- The hire, rental 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

8.3 Relevant contracts do not include:

- Contracts for the employment of individual members staff (permanent, interim or casual). For the avoidance of doubt the appointment of recruitment agencies would need to be subject to CPRs.
- The employment of Barristers - Barristers engaged to represent the Council must be appointed through the Assistant Director of Legal and Democratic Services
- Contracts relating to disposal or acquisition of an interest in land

8.4 A contract is a legally binding agreement required for all goods, works or services entered into by a representative of the Council. A contract can be formed through verbal, written means 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 Letters of Intent will only be issued in very exceptional circumstances following consultation and approval of the Assistant Director of Legal and Democratic Services.

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

8.8 Contractors fulfilling duties on behalf of the Council must comply with the Council's Contract Procedure Rules.

8.9 Any lease, hire, rental 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 CFO (or nominated deputy), after considering a written report by the appropriate Director.

9.2 A register of all exemptions will be maintained by the Assistant Director – Finance and Performance and will be reported to the Audit Committee on a six monthly basis.

10.0 Waivers to Contract Procedure Rules

10.1 Waivers to contract procedure rules may be allowed under certain circumstances. Waivers which may be permitted include:

- a) Where the Director is able to demonstrate that only one specialist firm is able to meet the requirement
- b) A contract to be placed as an emergency solution only where the Director is able to demonstrate immediate risk to persons or property or serious disruption to Council Services

The Director must notify the CFO (or nominated deputy) immediately of the action taken in dealing with the emergency. The specific circumstances in which the exception was justified must be recorded.

- 10.2 Only the CFO (or nominated deputy) have authority to waive Contract Procedure Rules for exceptions listed or the Chief Executive for the CFO's Directorate.
- 10.3 Any other request for a waiver of Contract Procedure Rules outside those listed requires the approval of the CFO (or nominated deputy) or the Chief Executive for the CFO's Directorate.
- 10.4 Waivers must be obtained in advance of the procurement action as a waiver cannot be issued retrospectively.
- 10.5 Waivers must not be used to avoid the requirements of the Contract Procedure Rules to go to competition, due to lack of time available within the procurement timelines.
- 10.6 Requirements of EU Procurement Directives, UK Procurement legislation or any other relevant law or external regulatory framework cannot be waived.
- 10.7 Waivers for goods & services contracts can only allowed up to the value of £164,176, £589,148 for contracts under the Light Touch Regime and £4.104,394(or current EU threshold) for works contracts.
- 10.8 All Waivers for services subject to the Light Touch Regime above £164,176 and below £589,148 will require joint approval of the CFO (or nominated deputy) and the Chief Executive.
- 10.9 Waivers must demonstrate that value for money has been obtained and there is a clear benefit or advantage to the Council.
- 10.10 Waivers must be documented in a form approved by the CFO, this is available on the council's intranet and should be submitted to Strategic Procurement Team for approval.

11.0 Using In House Suppliers (IHS)

- 11.1 Where an In House Supplier is available, then this provider must be used. A full list of In House Suppliers is available on the Council's intranet page.
- 11.2 Where the IHS cannot provide the service required, they will be responsible for procuring the requirements for the Council.
- 11.3 The council will benchmark all In House Suppliers to ensure they are achieving value for money, and where it is decided that the Council is not receiving value for money then alternative arrangements will be considered, this may include looking to external suppliers to provide the service.

12.0 Using Council Wide Contracts

- 12.1 Where the Council holds council wide contracts on behalf of all services, officers are required to use those contracts.
- 12.2 Details of the current council wide contracts are available on the Councils intranet page
- 12.3 There is no exemption from the use of council wide contracts unless agreed by the CFO (or nominated deputy).

13.0 Using Framework Contracts

- 13.1 Services must use a framework agreement let by another public sector body, such as public sector consortia or another Council, where these are available for the service or goods that are required. SPT maintain a list of such frameworks on the Council's Intranet page (see link)
- 13.2 The advice of SPT should be sought when using Frameworks. The Strategic Procurement Team will provide a list of all appropriate frameworks that can be accessed for the service or goods required.
- 13.3 The framework may also include within its terms the requirement for a mini-competition exercise, if this is required, the SPT will assist with this process, in line with the guidance published on the SPT intranet page

14.0 Approved Lists (below EU threshold only)

- 14.1 Approved lists may only be set in agreement with the CFO (or nominated deputy) and in line with the SPT guidance on setting up approved lists.
- 14.2 Where authorised approved lists have been set up, Directors shall ensure that these are regular reviewed and agreed with the CFO.
- 14.3 Before drawing up an approved list it should be advertised and expressions of interest should be invited for contractors to become approved suppliers for the particular type of contract. The officer establishing the approved list should ensure that the approved list is advertised in such a manner so as to ensure that it will be visible by Doncaster Businesses. An approved list shall:
- Set out the criteria for inclusion, suspension and exclusion from the list including but not by way of limitation:
 - Economic and financial standing
 - Technical ability and capacity
 - Insurance arrangements
 - Quality systems
 - Health and Safety Records
 - Environmental performance and compliance with environmental legislation
 - Compliance with all relevant legislation
 - Transparency/basis of appointment
 - Indicate the categories of contracts for which the contractors listed may be invited to tender
 - Be reviewed at regular intervals of not less than one year or more than four years
- 14.4 Approved lists must be operated so as to ensure that all contractors on the list are given a reasonable opportunity of submitting quotations or tenders for appropriate contracts let by the Council from time to time.
- 14.5 Approved lists **must not** be used for any procurement exercise over the EU procurement thresholds (which are currently set at £164,176 for goods and

services, £625,050 for contracts under the Light Touch Regime & £4,104,394m for Works contracts).

15.0 Joint Procurement

15.1 When undertaking a joint procurement arrangement on behalf of the Council the Director must ensure the other public bodies that are to be included in that arrangement are listed in the advertisement and contract documents. They can either be individually listed or referred to as a class of organisation within a particular region e.g. "all Local Authorities in the Yorkshire and Humber Region". The estimate given must include the potential usage of that joint arrangement by those public bodies listed.

16.0 Contracts valued up to (£5,000 inclusive)

16.1 Where the estimated value or amount of a proposed Contract does not exceed £5,000 then the Authorised officer should obtain at least 1 verbal quotation from suitable suppliers followed up by written confirmation (including email). Wherever possible the quotation should be sought from a Doncaster based business.

16.2 Whilst there is only a requirement for one quotation the Authorised Officer must consider whether additional quotations are in the Councils best interest.

17.0 Contracts valued £5,000 to £25,000 – Low Value Procurement (Quotations)

17.1 Between these value the requirement is to obtain 3 verbal quotations from suitable suppliers followed up by written confirmation (including e-mail (see Appendix A for further details). Wherever possible a minimum of one of the quotations must be sought from a Doncaster Business. A written record must be kept of all quotations.

18.0 Contracts valued £25,000k to £164,176k (current EU threshold) – Intermediate Value Procurement (Quotations)

18.1 Three written quotations should be sought from suitable suppliers or providers (see Appendix A for further details). Wherever possible a minimum of one of the quotations must be sought from a Doncaster Business.

19.0 Contracts valued over £164,176k – High Value Procurements (Tenders)

19.1 Over this value the requirement is to tender all contracts. Where the EU threshold is exceed (£164,176k for goods and services) then tenders should be in accordance with the EU regulation and Contract Procedure Rules (see Appendix A for further details). A separate limit exists for contracts under the light touch regime and works contracts, see Appendix A for details.

20.0 ICT and ICT Related Contracts

20.1 The Assistant Director – Customers, Digital & ICT must be consulted regarding the procurement of ICT consumables, hardware, software or website development or any other ICT service prior to the commencement of any tendering activity.

21.0 Qualification

21.1 For all procurements with a value of over £164,176k the Council shall only enter into a contract with a Contractor if it is satisfied as to the Contractor's:-

- Economic and financial standing
- Technical ability and capacity
- Insurance arrangements
- Quality systems
- Health and Safety Records
- Environmental performance and compliance with environmental legislation
- Compliance with all relevant legislation

22.0 The Invitation to Tender/Quote

22.1 The Invitation to Tender or Quotation shall include details of the Council's requirements for the particular contract including:

- (a) A description of the services, supplies or works being procured;
- (b) The procurement timetable including the Tender/Quotation return date and timescales. A reasonable period should be allowed for the applicants to prepare their Tender/Quotation and where applicable meet the minimum Regulation timescales;
- (c) A specification and instructions on whether any variant bids are permissible;
- (d) Subject to the Council's terms and conditions of contract or a request for the bidders to submit their terms and conditions (the Council should look to use its own terms & conditions wherever possible).
- (e) The evaluation criteria including any weightings and or sub-criteria as considered appropriate;
- (f) Pricing mechanism and instructions for completion;
- (g) Whether the Council is of the view that TUPE may apply;
- (h) if appropriate the form and content of method statements to be provided by the bidders;
- (i) rules for submitting of Tenders/Quotations (all Tenders/Quotations should state that the Council's preferred option is to have Tenders/Quotations submitted electronically where appropriate);
- (j) any further information, such as a project brief, which will inform or assist Contractors in preparing Tenders/Quotations;
- (k) Consideration should also be given whether or not a performance bond should be required. This should be considered for all contracts over £500,000, and should only be specified following advice from legal services and finance.

23.0 Submission, Receipt, Opening and Registration of

23.1 Electronic Tendering

Requests for Quotations and Invitations to tender must be transmitted by electronic means using the Council's YORtender system. This will:

- (a) Evidence and record successful transmissions

- (b) Securely store tenders under the control of the Head of Strategic Procurement to ensure that they are not opened until the deadline for receipt of quotations/tenders has passed.

The Council's preferred method of tendering is by electronic means. However, in very exceptional circumstances (e.g. PFI schemes, large construction contracts where there are a large amount of drawings required or where a contractor doesn't have the capacity to tender electronically), paper submission may be allowed.

23.2 Hard Copy Tendering

Tenders received shall be addressed to the Chief Financial Officer in a sealed envelope endorsed with the word "Tender" followed by the subject matter to which it relates. No marks shall be included upon the envelope that identifies the bidder prior to the opening of the envelope. Tenders shall be kept in a safe place and remain unopened until the time and date specified for their opening.

Tenders shall be opened by Strategic Procurement Team (SPT) and if required at least one other officer nominated by the CFO. An immediate record shall be made of the Tenders received including names, addresses, value and the date and time of opening.

Officers who have been involved in preparing a tender bid, must not be involved in the recording or opening of tenders. Only persons authorised by the Director (as client), and a member of SPT shall attend tender opening. Due notice must be given to the SPT of the details of the scheme, the closing date and time, and the number of Tenders invited.

24.0 Hard Copy Quotations

- 24.1 Should be returned to the appropriate service Director. Quotations should be opened by persons not involved in the procurement and an immediate record shall be made of the Quotations received including names, addresses, value and the date and time of opening.

25.0 General

- 25.1 The design of the Tender/Quotation documents must be such that price documentation cannot be changed or substituted following submission of the Tender or Quotation.
- 25.2 No Tenders, Quotations or Pre-Qualification Questionnaires received after the specified date and time for their receipt can be considered by the Council unless approved by the CFO.
- 25.3 All Tender/Quotation documents must be retained in line with the provisions set out at by the council's records management policy and set out on the Councils intranet site

26.0 Evaluation of Tenders & Quotations

- 26.1 The evaluation criteria shall be predetermined and approved by the Relevant Director and listed in the Invitation to Tender/quote documentation in order of importance. In addition, the criteria shall be strictly observed (and remain unchanged) at all times throughout the contract award procedure.
- 26.2 Tenders subject to the Regulations shall be evaluated in accordance with the relevant Regulations and the evaluation criteria set out in the Invitation to Tender.

Sub-criteria should also be listed – further advice is available from SPT. All other Quotations/Tenders shall be evaluated in accordance with the evaluation criteria set out in the Invitation to Tender.

- 26.3 All contracts, except contracts where lowest price was predetermined to be the only criteria, must be awarded on the basis of the offer which represents Value for Money for the Council.
- 26.4 Procurements can only be abandoned and re-tendered for proper justifiable reasons e.g. receipt of non-compliant bids so genuine competition cannot be obtained or funding is no longer available etc. It would be a breach of the Regulations if a tender was abandoned on the grounds that a particular contractor was not the successful bidder and such action would leave the Council open to legal challenge.

27.0 Errors in Tenders/Quotations

- 27.1 Errors in Tenders/Quotations must be dealt with either by asking the Contractor to confirm that they will accept the contract documentation as issued or if not withdraw the Tender/Quotation from the procurement process. Where a Contractor has made a genuine error they may be given an opportunity to correct that error. Other than where a procurement exercise is being carried out under the competitive dialogue or negotiated procedure, where fine tuning and clarification are permitted, no other adjustment, revision or qualification is permitted.
- 27.2 Tender/Quotation documents must state how errors in Tenders/Quotations will be dealt with.
- 27.3 Contractors regularly making errors should be warned appropriately.

28.0 Post Tender Negotiation

- 28.1 Where a procurement exercise is conducted pursuant to the Regulations through either the open, restricted or competitive dialogue procedures, post tender negotiations are not permitted. Under the open and restricted procedures negotiations on price are never permitted. Where the competitive dialogue procedure is used all aspects of the procurement can be discussed pre-tender. However, post tender the officer may only seek to clarify, specify or fine tune tenders in accordance with (i) the Regulations and (ii) the tender instructions (this should only be done in accordance with advice from Legal services & SPT).
- 28.2 Where procurements are conducted outside the Regulations, such as below threshold contracts, the CFO (or nominated deputy) may authorise negotiations if he/she considers that it is in the Council's interest to do so.
- 28.3 Negotiations shall be conducted on behalf of the Council by at least two appropriately trained officers (in correct procurement procedures) from the client department concerned and or SPT member. A full written record shall be kept of the results of the negotiations, signed by the Director or his or her nominee personally and the Contractor, and retained on a central file by the Director.
- 28.4 An amended Tender following negotiations under this rule may not be accepted unless it provides Value for Money to the Council.
- 28.5 At all times during the procurement process the Council shall ensure that all tenderers are treated equally and in a non-discriminatory and transparent manner.

29.0 Awarding Contracts.

- 29.1 A contract shall only be awarded subject to the tender evaluation criteria.
- 29.2 Where a Tender is to be evaluated on price only the Contract must be awarded to the Contractor submitting the lowest price, it is not recommended to award contracts on price only.
- 29.3 Where the quotation/tender proposed for acceptance exceeds the estimated budget by more than 10% it shall not be accepted unless the Director has received written advice from:
- an authorised officer, explaining why the contract exceeds the budget; and
 - the relevant Group Finance Manager has confirmed that adequate budgetary provision exists to cover the funding of the additional cost.
- 29.4 Where the scope of the original contract is to be reduced in order to fit within budgetary provision you will be required to re-enter negotiations with all contractors who have submitted a bid.

30.0 Debriefing

- 30.1 Once a decision to award any contract, subject to the EU Regulations has been taken, the officer shall inform SPT and Legal services immediately in order for a 10 day standstill period to be implemented (i.e. a contract must not be entered into with the successful tenderer and neither goods, works or services may be performed or delivered to the Council during this period).
- 30.2 Legal Services and the SPT will advise the officer on the preparation of an "Alcatel Letter". This is a specific letter that must be sent out to:
- The successful tenderer;
 - any unsuccessful tenderer
- 30.3 The Alcatel letter advises all tenderers of the result of the evaluation and as a minimum must:
- contain the award criteria used to select the winning bid,
 - the score obtained by the recipient of the letter/notice
 - the score obtained by the winning bidder and the name of the winning bidder.
 - the reasons for the decision, including the characteristics and relative advantages of the successful tender.
 - The precise date when the standstill is expected to end

31.0 Contract Award Notice

- 31.1 All Contract awards above £5,000 will be recorded on the Supplier Contract management System (YORTENDER)
- 31.2 All contracts over £250,000 shall be under seal, unless the Assistant Director of Legal and Democratic Services approves other arrangements.
- 31.3 Contracts with a value up to £164,176k (EU 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 Assistant Director of Legal and Democratic Services (or nominated deputy).

- 31.4 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 Contractor(s).
- 31.5 Where the terms and conditions of Contract are not fully agreed no Contractor shall be allowed to commence delivery of goods, works or services until a full risk assessment has been carried out by the Authorised Officer as to the possible implications to the Council by the Contractor being allowed to commence work before the Contract terms and conditions have been finalised.
- 31.6 Following the notification of award of contract the Authorised Officer is required to submit a pro-forma 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.
- 31.7 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in the Official Journal of the European Union and on the YORtender system as soon as possible after the decision to award the contract has been taken, and in any event no later than 30 days after the date of award of the contract.
- 31.8 Authorised Officers are also required to prepare a Report in accordance with Regulation 84 of the Public Contract Regulations.

32.0 Contract Terms and Conditions

- 32.1 The officer shall use their best endeavours 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 Contractor has been asked to submit their terms and conditions, where there are material changes to the councils terms and conditions they must be formally approved in writing by the Assistant Director of Legal and Democratic Services (or nominated deputy) before they can be accepted.

33.0 Contract Extensions and Variations

- 33.1 Variations must be evidenced in writing.
- 33.2 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.
- 33.3 All Contract variations must be in writing and signed by both the Council and the Contractor except where different provisions are made within the Contract documentation. 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. 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

33.4 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), a separate key decision has been approved.
- Where the contract still delivers Value For Money

33.5 Only the CFO may approve an extension to the term of a contract outside the rules, after consulting the Portfolio Holder for Finance and Corporate Services, and the Assistant Director of Legal and Democratic Services.

33.6 Contract extensions will not be permitted if the value of the extension is above the EU procurement threshold.

33.7 All variations and extensions to any Council contracts must be in writing and reported to the SPT in order that YORtender can be updated accordingly.

34.0 Termination of Contract

34.1 Provision for the termination of a contract must be included within the terms and conditions of the contract. Only the Assistant Director of Legal and Democratic Services has the authority to agree early termination of a contract where this is not built into the contract terms and conditions.

34.2 The CFO must be consulted where there are serious concerns over the performance of a contract.

34.3 The Assistant Director of Legal and Democratic Services must be consulted if the performance of a contract is giving rise to concern and consideration is given to termination.

35.0 Procurement by External Agents

35.1 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. No consultant shall make any decision on whether to award a Contract or who a Contract should be awarded to. The Director shall ensure that the consultant's performance in relation to procurement is in accordance with these Contract Procedure Rules.

35.2 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.

35.3 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.

36.0 Member Involvement

- 36.1 Directors are responsible for ensuring appropriate consultation has taken place with members, this could include consultation on the evaluation criteria.
- 36.2 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.

37.0 Record and Document Retention and Control

- 37.1 A Contracts Register of all Contracts awarded above annum shall be maintained by the SPT.
- 37.2 Each Relevant Director shall maintain his/her own register of all other Contracts, under £25,000 as a minimum, entered into by his/her department.
- 37.3 For every individual Contract above £25,000 a contracts file shall be maintained with appropriate documentation which must include, as a minimum, the following: -
- (a) The method for obtaining bids (see Rules 16, 17, 18 & 19);
 - (b) Any exemption under Rule 10 together with reasons for it;
 - (c) The evaluation criteria in descending order of importance and associated evaluation method;
 - (d) Tender documents sent and received from Contractors;
 - (e) Any pre-tender market research;
 - (f) All notes made by the evaluation panel during the evaluation of tenders;
 - (g) Clarification and post-tender negotiation (to include minutes of meetings);
 - (h) A copy of the Contract documents (originals should be held in Legal Services);
 - (i) Post-contract evaluation and monitoring;
 - (j) Communications with all Contractors during the Tender process and with the successful Contractor throughout the period of the Contract;
 - (k) Award of Contract documentation;
 - (l) Any decision to abandon a procurement exercise or terminate a Contract.
 - (m) All delegated decisions, authorisations, waivers and reports relating to the Tender process and subsequent Contract.

38.0 Council Purchase Cards

- 38.1 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.
- 38.2 Purchase cards must not be used as a way of bypassing CPRs. However, in some circumstances, where a contract exists and the supplier 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 Strategic Procurement.

39.0 Cost Control

- 39.1 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.
- 39.2 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.
- 39.3 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).

40.0 Contract Claims

- 40.1 To safeguard the Council's right to deduct liquidated damages, if the Contract is over-running the officer must certify in writing that the Contractor 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.
- 40.2 Any events that may lead to claims for extension of time must immediately be brought to the attention of the officer.
- 40.3 Claims for extension of time must be assessed promptly and any extension award made in accordance with the conditions of Contract.
- 40.4 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.
- 40.5 If the Contractor 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.
- 40.6 Before the final certificate is issued the officer shall check that any necessary certificate has been issued in accordance with the relevant Contract conditions.
- 40.7 The above procedures must be strictly followed for each section of a 40.8. The CFO (or nominated deputy) shall be kept informed at all times of all contractual claims whether by or against the Council.
- 40.9 It is critical that documentary evidence is kept relating to all aspects and stages of a claim and these should be kept by the Director at one central point.

41.0 Review and Amendment of Contract Procedure Rules

- 41.1 The CFO and Assistant Director of Legal and Democratic Services are authorised to make technical amendments from time to time to ensure these procedures are consistent with legal requirements, changes in Council structures and personnel and best practice.

Appendix A: Procurement Flow Chart

1.0 Contracts below £5,000

- 1.1 Where the estimated value or amount of a proposed Contract does not exceed £5,000 the appropriate Director shall ensure that value for money is achieved.
- 1.2 Where the estimated value or amount of a proposed Contract does not exceed £5,000 then the Authorised officer should obtain at least 1 verbal quotation from suitable suppliers followed up by written confirmation (including email). Wherever possible the quotation should be sought from a Doncaster based business
- 1.3 Whilst there is only a requirement for one quotation the Authorised Officer must consider whether additional quotations are in the Councils best interest.
- 1.4 For all Contracts valued below £5,000 the Authorised Officer must retain on file a note outlining the process undertaken and justification for the decision to award work to a given Supplier.

2.0 Between £5,000 and £25,000 (Quotations)

- 2.1 Where no appropriate In House Supplier, Council Wide Contract or Framework Agreement exists, competition (three verbal quotations three quotations using quick quotes) is required for procurements with an estimated value of between £5,000 and £25,000 followed up by written confirmation. Wherever possible a minimum of one of the quotations should be requested from a Doncaster Business. Where an Approved List is in place it must be used.
- 2.2 The Authorised Officer must ensure that for all contracts, details of the procurement is entered onto the Council e-Procurement Portal and a unique reference number obtained, which will be applied to all stages and documentation of the procurement process.
- 2.3 Once a Contractor is selected an order shall be issued specifying the services, supplies or works to be provided and the price and terms of payments.
- 2.4 Subject to reasons outlined in CPRs, quotations should be invited using the Council's standard terms and conditions.
- 2.5 Written confirmation of any verbal quotation accepted must be obtained from the contractor prior to placing an order as well as a written record (including email) containing the following information:
 - Details of the contract
 - The full name and address of the contractor
 - The person who verbally supplied the quotation
 - The contractor's submitted price

3.0 Between £25,000 and £164,176 - Intermediate Value Procurement (Quotations)

- 3.1 Where no appropriate In House Supplier, Council Wide Contract or Framework Agreement exists, competition (3 written and confirmed quotations) is required for procurements valued over £25,000 but at or below £164,176k. Wherever possible a minimum of one of the quotations must be requested from a Doncaster Business. Where an Approved List is in place it must be used.
- 3.2 The procurement must, as a minimum, be procured using YORtender. At least three written and confirmed Quotations shall be invited. The Authorised Officer shall obtain a unique reference number from YORtender which will be applied to all stages and documentation of the procurement.
- 3.3 Procurements need not be advertised on YORtender where other arrangements are already in place which enables works, goods and services to be procured via a website set up for those purposes (for example conducting a procurement exercise via the Crown Commercial Services website). However, once complete details of those procurements must be registered on YORtender.
- 3.4 Faxed or emailed quotations are not acceptable for these purposes.
- 3.5 Director's shall ensure that, where proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU, a sufficiently accessible advertisement is published on YORtender and Contracts finder. Generally, the greater the interest of the procurement to potential bidders from other member states, the wider the coverage of the advertisement should be. Advice must be sought from SPT.
- 3.6 Where clients undertake their own procurements they shall do so in accordance with these Contract Procedure Rules and Procurement Code of Practice as agreed by SPT.
- 3.7 Details of all procurements undertaken by client departments of a value greater than £25,000 must be recorded on YORtender by the Authorised Officer or shall be forwarded to SPT in order that YORtender can be updated on their behalf.
- 3.8 Where the procurement of any value is fully funded by a third party, and if that third party so requests, then the name(s) of one or more Contractor(s) may be added to the quotation list or be the only Contractor(s) invited provided the Approved List criteria are satisfied (and the Regulations not contravened).
- 3.9 Quotations should be invited using the Council's standard terms and conditions

4.0 Contracts over £164,176 - High Value Procurements (Tenders)

- 4.1 Where the estimated value of the proposed contract exceeds £164,176 tenders shall be invited. Where the proposed contracts exceed the EU threshold, then the contract shall be tendered in accordance with the Regulations and these CPRs. In all such circumstances appropriate advice must be sought from SPT and Legal Services. The current thresholds are:-

Services	£164,176
Supplies	£164,176
Light Touch Regime	£589,148

Works

£4,104,394

- 4.2 The thresholds change every two years and are due to change again on the 1st January 2018.
- 4.3 The Authorised Officer shall obtain a unique reference number from YORtender which will be applied to all stages and documentation of the procurement.
- 4.4 Approval of the proposed procurement and contract award procedure including the evaluation criteria to be applied shall be formally sought by the Authorised Officer from the Director in accordance with CPR's.
- 4.5 The officer shall develop and document the procurement approach which shall set out relevant considerations to the procurement exercise.
- 4.6 The procurement must, as a minimum, be procured using YORtender by the officer. This will include advertising the Tender on the system and ensuring that the Tender documents are electronically available in accordance with CPR's.
- 4.7 Where there are sufficient numbers of Contractors at least five written Tenders shall be invited. The only exception to this is where five suppliers fail to reach the minimum criteria for selection.
- 4.8 Faxed or emailed Tenders are not acceptable for these purposes.
- 4.9 Directors shall ensure that, where proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU, a sufficiently accessible advertisement is published on YORtender and Contracts Finder. Generally, the greater the interest of the procurement to potential bidders from other member states, the wider the coverage of the advertisement should be. Advice must be sought from SPT.
- 4.10 Where clients undertake their own procurements they shall do so in accordance with these Contract Procedure Rules the Procurement Guidance Manual as agreed by SPT.
- 4.11 Details of all procurements undertaken by client departments must be recorded on YORtender or shall be forwarded to SPT in order that YORtender can be updated on their behalf.
- 4.12 Where the procurement of any value is fully funded by a third party, and if that third party so requests, then the name(s) of one or more Contractor(s) may be added to the tender list or be the only Contractor(s) invited provided the Approved List criteria are satisfied (and the Regulations not contravened).
- 4.13 Subject to CPRs above Tenders should be invited using the Council's standard terms and conditions.

Please follow the instructions below when procuring, goods, services or works. These procedures aim to ensure the Council is achieving value for money and operating a fair, transparent and consistent approach to procurement.

**Under
£5,000**

→ In House Supplier (1st)
Council Wide Contract(2nd)
Available framework agreement (3rd)
Approved list (4th)
Direct award (5th)

£5,000 - £25,000

→ In House Supplier (1st)
Council Wide Contract(2nd)
Available framework agreement (3rd)
Approved list (4th)
Request 3 verbal quotations

[one of which must be from a Doncaster based business followed by written confirmation (5th)

£25,000 - £164,176

→ In House Supplier (1st)
Council Wide Contract (2nd)
Available framework agreement (3rd)
Approved list (4th)

Request 3 written quotations [one of which must be from a Doncaster based business](5th)

**£164,176 – Tender or
Full EU Tender**

→ In House Supplier (1st)
Council Wide Contract (2nd)
Available framework agreement (3rd)
Approved list (4th)
Tender (5th)

GLOSSARY OF TERMS (including general procurement terms)

Added Value - Any benefits or services which 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 suppliers) are combined into one contract requirement

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

Approved List – List of suppliers 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 Suppliers – Suppliers included on approved lists

Assignment – The transfer of rights from one contractor to another on the basis of 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/contractor/supplier

Award Stage – Final stage of the tendering process, with notification of the successful supplier 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 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 which 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, the statutory Section 151 Officer, this is the Director of Finance and Corporate Services

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 Procurement 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 Official Journal of the European Union (OJEU) as required by EU legislation

Contract Procedure Rules – The section of the Council's Constitution which sets out the rules which 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 which 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 EU thresholds. This practice is a breach of EU legislation

Dispute - Disagreement between Council and supplier or contractor which may result in Court action

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

EU Procurement Directives (EU Legislation) – European procurement law enacted into UK law as the Public Procurement Regulations 2006, detailing rules and regulations that must be complied with for all public sector procurement processes that exceed specified thresholds

Evaluation – Detailed assessment and comparisons of bid submissions verifying how suppliers 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 Assistant Director of Finance and Performance or the Corporate Director Corporate Services and Finance.

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 isn't known. Can be with a single supplier (sometimes referred to as a 'call-off' contract) or with a multiple number of suppliers. Once set up, there is no need to go to the open market as competition is held between those suppliers on the framework

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

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 over £250,000 or affects 2 or more wards.

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

Light Touch Regime – The new 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 suppliers possibly able to meet requirements

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

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

Non-Commercial Consideration – Non-financial concerns such as social and environmental factors

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

OJEU (Official Journal of the European Union) – on-line publication advertising tender opportunities and publicising contract awards for the public sector in all EU Member states, the European Economic Area and the World Trade Organisation

OJEU Notice – published notice of tender opportunity or contract award in OJEU

Open Tender Procedure – Tender process which is open to any supplier 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.

Pre-Qualification Questionnaire – Set of questions used to establish the suitability of a supplier 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 suppliers are invited to tender

Procurement Code of Practice – The document is an aid to understanding approaches and best practice approach to procurement activity.

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 supplier on request

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

Regulations – EU Procurement Directives and the 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

YORtender – Supplier, contract, management, system (YORtender) is an electronic e-tendering system used by Yorkshire Council's.

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 contractor by the main contractor

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

Tender Documents – Set of documents provided to prospective tenderers which 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 suppliers 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 an EU 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 CFO (or nominated deputy), 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 also available from the Strategic Procurement Team.