

Calderdale Council Contracts Procedure Rules (“CPRs”)

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SECTION 1 CONTRACTS PROCEDURE RULES

1. Scope of CPRs

1.1 These CPRs set out:

a) the rules and procedures for contracts and procurement activity undertaken by, or on behalf of the Council, by Council staff or its appointed representatives; and

b) the roles and responsibilities of those undertaking contracts and procurement activity.

1.2 Template procurement documents and further guidance is available for Council officers and Members to view through the Council's Intranet.

1.3 These CPRs constitute standing orders for the purposes of the Local Government Act 1972.

1.4 For the purposes of these CPRs, the term 'procurement' includes any arrangement whereby a new, replacement, amended or extended contract for the provision of goods, works or services is to be put in place.

1.5 This includes the award of Concessions (where the Council receives some form of benefit).

2. Compliance

2.1 All procurement and contracts undertaken by, on behalf of or entered into by the Council will be done in compliance with:

a) Public Contracts Regulations 2015

b) Concession Contracts Regulations 2016

c) National Procurement Policy Statement

d) These CPRs and the Council's Financial Procedure Rules.

e) The Council's priorities and objectives

f) The Council's policies including, but not limited to, the Inclusive Economic Growth Strategy, Anti-Poverty Strategy, the Council's Code of Conduct

g) The Council's Constitution

h) Relevant Public Procurement Notices (PPNs)

2.2 Failure to comply with these CPRs could have serious legal implications for the Council. Following the CPRs means the Council complies with both procurement and data transparency legislation. Any non-compliance may result in disciplinary action being taken.

3. Procurements Not Covered By These CPRs

3.1 These CPRs apply to all contracts except the following:

a) Employment contracts for individuals who are direct, salaried employees of the Council (including fixed term employees and secondees)

Contracts for the engagement of interim or casual officers of the Council including individuals who are engaged on a PAYE basis through an agency/employment (PCRs 34, 35, 36 and 37 relating to procurement thresholds still apply for directly engaged interim and consultancy staff)

b) Contracts relating solely to the disposal or acquisition of shares, securities or land and in the case of a land disposal, where the Council exercises no further contractual control over the specific content and execution of the works following the disposal.

c) Contracts for the appointment of Legal Counsel or for the appointment of experts for legal proceedings (such appointments only to be made by the Head of Legal and Democratic Services).

d) An arrangement with a statutory body (such as the Police) to provide a service that only the statutory body can legally provide

e) A contract or other arrangement with a company that is controlled by the Council (whether wholly or jointly owned with another public body) and where Legal Services has confirmed the CPRs will not apply.

f) d) the execution of works or the supply of goods or services are controlled by a statutory body;

4. Responsibilities of Chief Officers , Authorised Officers and Contract Managers

4.1 These CPRs apply to all Council employees, or any person or organisation working on behalf of the Council, either in Commissioning or procurement activity and/or contract management, or undertaking negotiations on behalf of the Council.

4.2 **Chief Officers** are responsible for:

- a) ensuring that Commissioning, procurement and contract management by their authorised officers and officers with delegated responsibility is undertaken in compliance with these CPRs and the Financial Procedure Rules;
- b) ensuring appropriate supervision and performance management of the procurement cycle and ensuing contract management is applied with appropriate quality control procedures and within delegated authority;
- c) ensuring the Officer appointed to manage the Contract and supplier relationship has relevant knowledge and understanding of the Contract Manager's role and responsibilities;
- d) the categories of spend that sit within their Directorate. Where a category of spend is shared across Directorates, a process of management needs to be agreed in order to identify the lead Service & the level of spend undertaken by the relevant Directorate;
- e) ensuring that appropriate authorisation and/or delegation has been issued to authorised officers and officers with delegated responsibility,
- f) ensuring that contracts for which their Directorate is responsible are monitored and managed effectively and in line with these CPRs and any guidance issued by the CPU and
- g) ensuring that, in the case of a procurement of a contract that may be used by more than one Directorate, the other relevant Directorates are consulted and involved.

4.3 Chief Officers must promptly report breaches of these CPRs and lessons learned to the Head of Finance and the Head of Legal and Democratic Services.

4.4 The Chief Officer is responsible for ensuring appropriate project board and gateway structures are in place for all complex procurements, such as those procurements with an identified high value, and/or reputational based risks or covering multiple or key Council services.

4.5 Chief Officers will ensure that each procurement or contract for which they have responsibility complies with these CPRs.

4.6 The Chief Officer will ensure that procurements are not conducted by consultants or other third parties, unless the prior authorisation of the Head of Legal and Democratic Services has been given, and a Calderdale Council authorised officer remains part of the procurement process.

4.7 **Authorised Officers** are responsible for;

- a) ensuring they have Cabinet authority (where deemed a key decision) or written approval from an officer with appropriate delegated responsibility to incur the expenditure or take appropriate procurement action;
- b) ensuring that Officer decisions are recorded accurately and promptly, including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options;
- c) ensuring that the procurement is in line with the actions proposed and agreed in the business case or plan;
- d) ensuring that the expenditure to be incurred for the procurement and contract is contained within the service area spending plan and/or the approved budget plan (i.e. there is an approved budget) prior to commencing any procurement exercise;
- e) ensuring that those undertaking the procurement understand their role and have the appropriate technical knowledge of the goods/services or works being procured and for the level and complexity of procurement being undertaken;
- f) ensuring that prior to undertaking any procurement activity, the officers undertaking the procurement are aware of the need to follow the Councils CPR's;
- g) ensuring that for all contracts exceeding the National Public Procurement Threshold guidance and advice is sought from the CPU, in relation to the procurement process and procedures required;
- h) ensuring that a reasonable time is allocated for an effective procurement cycle from identifying the need through to contract award and the mobilisation required to be undertaken; and

- i) ensuring that effective and robust contract management takes place to ensure delivery of identified KPIs, service levels, objectives, and outcomes, to ensure the Council meets the terms of contract and to identify any risks of possible non-delivery or failure.

4.8 Authorised Contract Managers

4.8.1 Contract management is a key control area for ensuring that the Council is obtaining value for money through delivery of services, goods or works agreed under the Contract. Contract Managers must be appointed for each contract and shall be authorised and responsible for:

- a) managing the Contract effectively, engaging with and maintaining a positive relationship with the supplier, ensuring performance of the Contract in accordance with the terms and to the satisfaction of the Council and ensuring value for money is achieved through the meeting of KPIs, service levels, objectives and outcomes of the Contract;
- b) ensuring that they manage any call-off contract which has been awarded under a framework. It is not the responsibility of the overall Frameworker holder to manage individual contracts awarded under any framework.;
- c) verifying the Council is receiving or has received the service/works or goods as detailed in the Contract; payment under the agreed payment mechanism and
- d) following verification or confirmation of receipt of services/works or goods as required by the Contract, ensuring payment is made to suppliers within the agreed timescales as set out in the Contract.

4.9 The **Corporate Procurement Officer** reports to the Head of Legal and Democratic Services in all matters relating to the Public Contract Regulations 2015, these CPRs and compliance and control concerns.

4.10 The Corporate Procurement Officer may issue guidance notes to aid the interpretation of these CPRs or any relevant procurement.

5. Enabling Social Value Through Procurement & Contracts

5.1 The Public Services (Social Value) Act 2012 currently applies to contracts for services with a value above the relevant National Public Procurement Thresholds, and local authorities have a statutory duty to consider how the procurement may

contribute to the improvement of economic, social or environmental factors within their area.

5.2 The Council has taken the wider view, and all procurement activities over the National Public Procurement Thresholds and any capital procurements over the value of £100k should consider where and how additional social value requirements could be incorporated to meet Government, regional and local priorities and objectives where achievable.

5.3 The Council, in line with the National Procurement Policy Statement, must consider the following national priority outcomes alongside any additional local priorities in their procurement activities:

- Creating new businesses, new jobs and new skills
- Tackling climate change and reducing waste
- Improving supplier diversity, innovation and resilience

and the Council's priorities of

- Strong & Resilient Towns
- Reducing Inequalities
- Climate Emergency

5.4 Procurement activity must be undertaken in accordance with any Social Value guidance, instructions & templates issued by the Council.

6. Declaration of Interest and Conflict of Interest

6.1 Officers or Members of the Council, or any corporate body (except as set out at CPR 6.2) or partnership in which any officer or Member of the Council holds an interest, or any employee, spouse or partner of an officer or Member of the Council shall refer to the relevant Code of Conduct to establish whether there are restrictions on them entering into a Contract with the Council.

6.2 Where such restrictions are identified, Officers or Members of the Council or any corporate body (except any corporate body of which the Council is a registered member or shareholder) must provide a declaration of interest to the Head of Legal and Democratic Services for consideration immediately following such identification (in or any event, by not later than two business days).

- 6.3 Officers involved in a procurement procedure, must immediately declare any interest or potential conflict of interest and refer this to the Head of Legal and Democratic Services for advice on whether they may take part in the procurement process. An example of a potential conflict of interest is where an officer involved in the procurement procedure has a social, family or business connection with a bidder or someone within a bidder's organisation.

7. Anti-Bribery and Corruption

- 7.1 Members, officers and third parties representing the Council have a duty to safeguard the Council from any allegations of dishonesty or corruption.
- 7.2 When carrying out any procurement or Commissioning activity, Officers and Members of the Council must ensure they comply with:
- a) the Bribery Act 2010 and any regulations or guidance issued pursuant to it;
 - b) the obligations set out in the Council's Code Of Conduct;
 - c) any other relevant policies, guidance or strategies relating to bribery, fraud and corruption issued or endorsed by the Council.
- 7.3 No gifts or benefits may be accepted from or provided to any suppliers (including any potential suppliers) during any procurement or Commissioning activity.
- 7.4 Where identified as appropriate, written contracts must have a clause inserted which allows the Council to terminate the contract (without liability) and to recover from the supplier the amount of any loss resulting from such cancellation if:
- (a) in relation to any contract with the Council, the supplier or any person employed by the supplier, or acting on the supplier's behalf shall have committed any offence under the Bribery Act 2010; or
 - (b) if they shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972, or any statutory modification, extension or re-enactment thereof.

8. Legislative Requirements

8.1 All Council procurements must comply with the Public Contracts Regulations 2015, and all other relevant, current legislation and other non-procurement related legislation, including:

- Contract Concessions Regulations 2016
- Localism Act 2011
- Public Services (Social Value) Act 2012
- Modern Slavery Act 2015
- Data Protection Act 2018
- Freedom of Information Act 2000
- Bribery Act 2010
- Transfer of Undertakings (Protection of Employment) Regulations 2006
- Housing, Grants, Construction & Regeneration Act 1996
- Subsidy Control Act 2022

8.2 Procurement activities, and the behaviour of Council suppliers must also comply with safeguarding legislation, including:

- Modern Slavery Act 2015 (the Council is committed to preventing slavery and human trafficking in its corporate activities and to ensuring that its supply chains are free from slavery and human trafficking);
- Counter-Terrorism and Security Act 2015 (Section 26 of the act places a duty on the Council to 'have due regard to the need to prevent people from being drawn into terrorism' and the Council requires that its suppliers also have the same regard and compliance with this).).

9. Bidders and Third Parties Assisted by Grant Aid or Funding and Subsidy Control Act 2022 (previously State Aid)

9.1 If a Bidder or any other third party is in receipt of (or will receive) grant aid or funding (whether monetary or in the form of any other benefit to the Bidder or third party) from either the Council or other public body sources, Legal Services must be consulted for legal advice on whether Subsidy Control rules apply and what action needs to be taken if Subsidy Control rules apply.

9.2 Officers are required to consult with Legal Services regardless of whether the Council is receiving or awarding grant aid or funding.

10. Contract Management

10.1 Contract Managers must manage the contract in accordance with CPR 4.8.

10.3 Contract performance must be monitored and recorded in line with the Contract requirements including any KPIs.

10.4 Legal Services must be notified of issues which may lead to disagreement, poor delivery, or early termination.

10. CPRs for Local Authority Maintained Schools

11.1 Local Authority Maintained Schools are required to have substantially similar CPRs in place.

11. Nil Cash Value Contracts

12.1 These CPRs also apply in the case of Nil Cash Value (in kind) contracts.

12. Lease Hire, Rental and Credit Arrangements

13.1 Any lease, hire, rental or credit arrangement (for example vehicle or equipment leasing) must be approved prior to any contract being entered into, in accordance with the Council's Section 151 Standards for Finance and Contracts and any other applicable Council Financial Procedure Rules and must be signed in consultation with Legal Services.

13. Disaggregation of Contracts & Use of Smaller Value Contracts

14.1 Procurement of the same or similar requirements must not be split (Disaggregated) into smaller values, in order to avoid the competition process.

14.2 Repeated purchase of the same or similar requirements from the same supplier or group of suppliers must be monitored by the identified Contract Manager to ensure overall Whole Life Value does not exceed procurement thresholds under these CPRs or the National Public Procurement Thresholds.

14.3 Estimated values must not be disaggregated to avoid applying the National Public Procurement Thresholds or these CPRs.,

14. Waiver of the CPRs

15.1 In exceptional circumstances (for procurements with a value above £30k but below the National Public Procurement Thresholds), it may be necessary to consider a waiver of one or more CPRs. The decision to waive one or more CPRs can only be authorised by a Chief Officer, and should clearly set out:

- why the circumstances are exceptional;

- which CPRs are being waived; and
- the financial, legal and risk implications of the waiver sought

15.2 Examples of exceptional circumstances where a Waiver of the CPRs may be requested by an Authorised Officer and signed by the appropriate Chief Officer include, but are not limited to:

- a) the commission of goods or services or the execution of works which are required in demonstrable circumstances of extreme urgency or unforeseeable emergencies and which pose a real and immediate risk to persons, property, or serious disruption to Council Services. Legal Services must be immediately notified of any action for procurement, or;
- b) Contracts within the realms of Children's Services or Adults Health and Social Care or Public Health for urgent cover or engagement of services or works which the Council has a statutory duty to provide and it is the reasonable and proper opinion of the appropriate Chief Officer that it is considered to be in the Council's interest and demonstrates value for money, such as:
 - Emergency care or foster placements
 - Emergency works or services to ensure continuance of statutory services i.e. urgent repair or replacement of a school building

and in the case of CPRs 15.2 (a) and (b) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the Council, the time limits for the procurement procedure cannot be complied with;

- c) it can be clearly demonstrated that there is no genuine competition obtained and evidenced by robust market testing;
- d) the purchase of proprietary or patented goods or materials or services where it can be demonstrated that they are available from only one supplier, with no reasonable alternative available (such evidence to be retained for audit purposes);
- e) works, goods or services are of such a specialised nature that only one supplier is able to meet the need and no satisfactory alternative is available;

- f) the procurement activity is for a unique artistic performance or work of art

15.3 Copies of signed Chief Officer waivers must be submitted to Legal Services for their records prior to contract award or Modification.

15.4 Any proposed waiver for a contract with a value exceeding the National Public Procurement Thresholds (including waivers for direct awards, extensions, variations and other modifications) must be referred to the Head of Legal and Democratic Services for consideration prior to contract award or modification. The Head of Legal and Democratic Services will have sole discretion to refer the request to Cabinet for approval, where necessary.

16. Use of Framework Agreements and Corporate Contracts

16.1. The use of Framework Agreements should be considered where;

- a) The framework provides an appropriate procurement solution
- b) Where relevant and practicable, the available framework supports the Council's Themes, Outcomes and Measures and is compatible with the Council's priorities
- c) Legal Services has confirmed that the framework and the Framework Agreement terms are legally compliant, before engaging in any procurement or Commissioning activity through the framework; and
- d) it can be demonstrated that the framework delivers value for money to the Council (for example, it provides a more efficient solution to prevent duplication of work).

16.2 Where Corporate Contracts, public sector purchasing organisation solutions and contracts shared with other public sector bodies are available, these should be used first.

16.3 Responsibility for management of the Contract sits with the Contract Manager of the Commissioning Service, not the framework holder.

17. Use of Alternative Procurement Routes and Dynamic Purchasing Systems

17.1 Alternative Procurement Routes established in line with CPR 37, Light Touch Regime options, and dynamic purchasing systems may only be set up and used in consultation with and subject to the prior written agreement of the Legal Services and the Commercial Procurement Unit (CPU).

18. Collaborative Procurement Arrangements

18.1 Officers wishing to enter into a collaborative agreement with another public sector body must consult with the Head of Legal and Democratic Services and the Head of Finance prior to entering into such agreements.

19. Financial Checks

19.1 Some contracts may require an assessment of the risk to Council business or public money if a potential supplier bidding were to go out of business during the life of the Contract or had inadequate financial resources to fulfil the Contract.

19.2 Where an appropriate risk is identified by the Chief Officer, the Head of Finance will undertake an assessment of the financial risk of suppliers. A decision based on the risk to the Council must then be made based on the outcome of the risk assessment.

20. Health and Safety

20.1 Suppliers and Sub-Contractors engaged by and on behalf of the Council will be required to meet the minimum levels of health and safety standards as relevant and appropriate to the needs of the Commissioning Service, and the Council's Health and Safety Standards, including standards for safe working.

21. Insurance Requirements

21.1 It is the responsibility of the Chief Officer to ensure that the appropriate level of insurance is in place, taking into consideration guidance documents issued by the Council's Insurance Team and the Council's Risk Manager. The Head of Finance should be consulted for advice if the Service needs any further assistance with its risk assessment but the final decision on any type of insurance policy required and the level of indemnity for that policy shall be made by the Commissioning Service.

21.2 Clear and appropriate instructions must be provided to Legal Services to include any required insurance obligations in the Contract. Where the Commissioning Service has not carried out its own risk assessment, the Council's minimum insurance level requirements will be included by default in the Contract.

22. Transfer of Undertakings (Protection of Employment Regulations) 2006 - TUPE

22.1 When undertaking Commissioning, procurement, or re-procurement of services or works (including where a service is to be brought in-house), Officers must consider the potential implications of TUPE and pensions at the outset and before identifying any procurement route. The Head of HR and Organisational Development and Legal Services must be consulted as soon as any potential TUPE and/or pensions issues are identified.

23. Bonds and Guarantees

23.1 Some contracts may require security to ensure the performance obligations under the Contract where there is a failure by the supplier. Officers must consider and identify where there is the need or risk for a Bond or Guarantee to secure such performance and this must be undertaken as part of a risk assessment prior to any Commissioning or procurement activity being carried out, seeking advice from Internal Audit, Legal Services and the CPU as necessary.

24. Contingencies in Construction or Services

24.1 Chief Officers are required to ensure the inclusion of Contingencies in the budget, where identified as appropriate, based on an assessment of risk and as agreed with the Head of Finance.

25. Liquidated Damages

25.1 Liquidated Damages should be included within a Contract where they reflect a legitimate interest and is proportionate to the value of the Contract. Legal Services must be consulted as to whether a Liquidated Damages clause will be appropriate for a specific contract.

26. Contract Variations and Extensions (“Modifications”)

26.1 A new procurement is required where it is considered that the variation or extension (referred to as a Modification) constitutes a substantial change. A substantial change is where one of the following are met:

- a) the Modification renders the Contract materially different in character from the one initially concluded;
- b) the Modification introduces conditions which, had they been part of the initial Contract would have:
- c) allowed for admission of other Bidders than those initially selected;
- di) allowance for the acceptance of a bid other than that originally accepted; or
- e) attracted additional participants to the procurement procedure;
- f) the Modification changes the economic balance of the Contract in favour of the supplier in a manner which was not provided for in the initial Contract;
- g) the Modification extends the scope of the Contract considerably; or
- h) a new supplier replaces the current supplier for a reason that is not due to a universal or partial succession into the position of the initial supplier, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the Contract.

26.2 The Contract may only be modified (by way of extension or variation) where the following additional criteria are met:

- a) there is budget provision and the Modification is in line with S151 Finance Rules; and
- b) the Modification is not classed as a key decision as defined in Article 13 of the Council’s Constitution.

26.3 For contracts exceeding the National Public Procurement Threshold, where any one of the criteria at CPR 26.1 or where grounds for Modification under the PCRs is not met, only Cabinet can authorise an extension or variation to the Contract, following a report from the relevant Chief Officer, in consultation with the Head of Legal and Democratic Services and the Head of Finance.

26.4 For contracts below the National Public Procurement Threshold the relevant Chief Officer may authorise an extension or variation (provided such Modification would not mean that the Whole Life Value of the Contract should have been procured as a contract with a Whole Life Value above the National Public Procurement Thresholds) subject to consultation with Legal Services and the Corporate Procurement Officer. Evidence of the relevant grounds for Modification must be provided to Legal Services for audit purposes

40. Assignment, Novation and Sub-Contracting

27.1 Where possible, Contracts must state that the supplier is prohibited from transferring, sub-contracting, assigning, or novating its obligations under the Contract without the prior written approval of the Council.

27.2 In the case of a supplier indicating that it wishes to transfer, sub-contract, assign or novate a Contract, Legal Services must be consulted prior to any agreement to accept.

27.3 If a supplier's business is transferred to another supplier, the relevant Chief Officer is responsible for ensuring that the Head of Finance is requested to undertake a risk assessment of the capability and financial standing of the new supplier and legal advice must be sought from Legal Services as to whether a Novation or Assignment of the Contract is required.

41. Sub-Contractors

28.1 All contracts above the National Public Procurement Thresholds must include clauses to require that suppliers and Sub-Contractors must pay Sub-Contractors in the supply chain within 30 days of receipt of payment from the Council. It is best practice to include this all other contracts where it is not to the detriment of payment arrangements already in place by small businesses with their own Sub-Contractors.

28.2 The supplier must state its intention to sub-contract any portion of the Contract, and notify the Council of their named Sub-Contractor, for approval by the Council before any sub-contracted activity commences.

28.3 Where sub-contracting is permitted, the Contract must include a clause stating that the principal supplier shall be responsible for all work done by the Sub-Contractor and that the work must be carried out as if executed by the principal supplier.

42. Insolvency, Receivership, Administration and Liquidation

29.1 In the event of a supplier entering receivership, administration or liquidation or otherwise becoming insolvent, the relevant Chief Officer or Contract Manager must inform the Head of Legal and Democratic Services and the CPU immediately to seek advice on appropriate action.

43. Contract Disputes and Claims

30.1 The Head of Legal and Democratic Services and the Corporate Procurement Officer must be kept informed at all times as soon as any dispute arises (whether actual or potential). This includes any actual or potential termination of a contract.

30.2 Chief Officers (or the Contract Manager) must notify the Head of Legal and Democratic Services and the Corporate Procurement Officer immediately of all claims by or against suppliers which are the subject of dispute. This includes where the Council is a third party.

44. Termination of Contract and Exit Plans

31.1 Contractual provision for the termination of a contract must be included within the terms and conditions of the Contract. Only Legal Services has the authority to agree the early termination of a Contract where this is not permitted under the terms and conditions.

31.2 An exit plan, which may cover one or more contracts, must be prepared by either the relevant Chief Officer or the Contract Manager for every contract in advance of Contract expiry and must allow sufficient time for approval, planning and re-procurement if required.

45. Pre-Procurement Market Testing and Expressions of Interest (Soft Market Testing)

32.1 Engagement with interested parties, clients and stakeholders is a key element of the pre-procurement exercise, to help understand the state of the market and effectiveness of any proposed procurement exercise.

32.2 The engagement must be undertaken ensuring that the subsequent procurement process remains open, fair and transparent and must not give any one supplier a competitive advantage over others.

32.3 Bidders days, feedback from the market place and Expression of Interest exercises to establish market interest should be used to understand availability and gaps in the market and to decide on the appropriate procurement route.

33. Procurement with a Contract Value of less than £30,000 excluding VAT

33.1 A procurement for a contract with a Whole Life Value of less than £30,000 exc VAT may be undertaken by any reasonable means, provided:

- a) it is undertaken by the most efficient, proportionate and cost effective method (including consideration of value for money on a resource basis for both internal officer time and impact on suppliers or organisations) available; and;
- b) an audit trail is kept of the reasons justifying the use of the most reasonable means.

33.2 Repeated purchases of the same or similar services, products or works and from the same supplier without a competition must not be made where a purchase will result in a total spend with that same supplier for the same service above £30k, unless permitted by a waiver in accordance with CPR 15 or by calling off from a Framework agreement.

33.3 In line with policies, instructions and guidance issued by the CPU, the most efficient method of procurement which demonstrates value for money must be followed.

34. Procurement with a Contract Value Between £30,000 exc VAT and up to £100,00k exc VAT – Quotation exercise

34.1 Consideration should be given as to whether any other relevant framework contract or opportunity to join another public sector contract is an option.

34.2 Unless the Chief Officer considers that the criteria for exemption from competition (refer to CPR 15) a form of competition will be required by undertaking a quotation exercise using one of the following routes:

- closed to identified, named bidders, particularly where there is a wide range of suppliers; or;
- open, particularly where there is a limited market or an unknown interest

whichever is the most appropriate, in line with policies, instructions and guidance issued by the CPU.

- 34.3 A minimum number of 3 Quotations must be considered and a minimum number of 6 invitations is recommended to provide an appropriate level of competition. Where practicable, suppliers and providers from the Borough of Calderdale, or the wider West Yorkshire area are encouraged and should be invited.
- 34.4 If the minimum number of 3 Quotations cannot be obtained, the Chief Officer is responsible for retention of a written record demonstrating the reasons (such as lack of market interest or suitable suppliers). This record should be retained in line with the Council's Record Management and Disposal Schedule.
- 34.5 An appropriate form of Suitability Assessment may be undertaken if required for suppliers where this is relevant, proportionate and appropriate to the nature and risk of the goods/services/works and in line with guidance and templates as issued by the CPU.
- 34.6 Formal terms and conditions will be required, unless advised otherwise by Legal Services, and Commissioning Services should notify Legal Services as soon as possible in the procurement process to request legal support.

35. Procurements with a contract value of over £100,00k exc VAT but below National Public Procurement Thresholds – Competitive Tender Exercise

- 35.1 Contracts with an estimated value of over £100,000 exc VAT and up to National Public Procurement Thresholds are subject to an open competitive tender unless permitted to be waived by CPR 15 or use of an appropriate Framework Agreement has been approved by Legal Services and the CPU.
- 35.2 The CPU and Legal Services must be notified at the earliest stages of procurement activity and before considering and finalising the procurement route.
- 35.3 Any impact or effect on other relevant Council Services by the proposed services or works must be considered and the relevant Council Services made aware at the outset of the process.

35.4 Officers must consider and evaluate the different procurement routes available, taking the Council's Priorities, value for money and efficiencies into consideration when determining the most appropriate procurement route. Options may include:

- Development of our own approach to achieve Council priorities, including inclusive growth and Social Value;
- Shared or collaborative opportunities; Appropriate Framework Agreements which share the Council's priorities and objectives;
- Opportunities available through contracts led by other public sector bodies;
- Light touch regime approach for social care and other specific contracts; or
- Innovative partnerships

35.6 All procurement documentation must be complete prior to advertising the ITT, and must include:

- a) Specification, including performance standards
- b) Evaluation Criteria and marking methodology
- c) Proposed terms and conditions of contract

35.7 The use of Selection Questionnaires (SQ) is not permitted for contracts with a value below the National Public Procurement Thresholds. Suitability Assessments may be used for suppliers where relevant, and which are proportionate and appropriate to the needs of the contract and in line with guidance issued by the CPU.

35.8 Chief Officers must ensure that construction suppliers are appointed in line with S151 Standards for the Construction Industry Scheme (CIS).

36. Contracts Exceeding National Public Procurement Thresholds – Competitive Tender through Find a Tender Service

36.1 Any proposed procurement which has an estimated value which exceeds or is considered to have the potential to exceed the National Public Procurement Threshold must involve the CPU and Legal Services from the earliest stages of development and prior to the choice of any procurement route.

36.2 Services must consider the most appropriate route to procurement in line with the Council's priorities, such as:

- a) the use of lots to provide access to contract opportunities for small to medium size businesses;
- b) measures to enable delivery of Social Value;
- c) shared or collaborative opportunities;
- d) appropriate Framework Agreements which meet the Council's objectives; or
- e) opportunities available through contracts let by other public sector bodies

36.3 A Standstill Period of at least 10 calendar days must be included and observed between the notice of intention to award and the award of contract and must be calculated in consultation with CPU.

36.4 Publication of contract opportunities, award and other relevant information on the Find a Tender service are a legal requirement and are not permitted without the consultation and approval of the CPU and Legal Services.

37. Social and Other Specific Services (Light Touch Regime)

37.1 In accordance with Section 7 and Schedule 3 of the Public Contracts Regulations 2015, the Chief Officer, in consultation with the CPU and Legal Services, shall determine the procedures that are to be applied for these services.

37.2 Any decision on the procedure to be applied under the Light Touch Regime will be agreed with Legal Services and the CPU before the commencement of any procurement action.

38. Minimum Number of Bids

38.1 The minimum number of Bids received for consideration should be:

Exercise	Threshold	Minimum Number of Bids Required for Consideration
Quotations	Over £30,000 exc VAT up to £100,00 exc VAT	3
Tenders	Over £100,000 exc VAT to National Public Procurement Thresholds	3
Single Stage Procedure	National Public Procurement Thresholds and above	3
Restricted Procedure	National Public Procurement Thresholds and above	5 is the Minimum number required to take through to 2 nd stage of ITT
Competitive Procedure with Negotiation (CPN) Competitive Dialogue Procedure (CDP) Innovative Partnership Procedure (IP)	National Public Procurement Thresholds and above	3

38.2 Suppliers who do not participate through the defined channels named in the ITQ or ITT must not be considered.

38.3 Where a minimum quality threshold identified in the ITT to pass to the second stage of a procurement exercise is not reached by a Bidder, the bid must be excluded from the remaining procurement exercise.

38.4 Where the number of bids meeting the selection criteria and the minimum levels of ability required is below the minimum number or is lower due to lack of market interest, the procedure may continue by inviting those bids with the required capabilities. The Chief Officer must retain a written record as evidence for the reasons for continuing with the procedure.

39. Advertising of Contract Opportunities and Submission of Quotations and Tenders

39.1 The complete procurement exercise, including Expression of Interest, Invitations for Soft Market Testing and ITQs or ITTs for contracts with a value of £30,000 and above must be undertaken through the Council's nominated e-tendering portal.

39.2 Where an ITQ is identified for exercises below the £30k threshold, this must also be undertaken through the Council's YORtender portal e-tendering portal.

39.3 The CPU must be consulted for consideration of alternative method of advertising.

39.4 The Council is legally required to ensure, through the YORtender portal, that any procurement opportunity or contract awarded with a value of £25,000 or greater must be published on the Government Contracts Finder site.

39.5 The Council is legally required to ensure that those opportunities which are close to or exceed the National Public Procurement Threshold must be advertised on the Government's Find A Tender Service.

39.6 All Find a Tender notices must be agreed with Legal Services and prior to publication.

40. Preparation of Contract Documentation

40.1 The Chief Officer, or delegated authorising officer as appropriate, is responsible for ensuring that all required documentation is submitted to Legal Services for the completion of the Contract.

40.2 The Chief Officer, or delegated authorising officer as appropriate, shall, upon request, provide the following documents to Legal Services:

- a) completed legal instruction form
- b) signed Waiver (where appropriate)
- c) any documentation evidencing authority to award and enter into the Contract as requested by Legal Services

40.3 The Chief Officer is responsible for ensuring that all outstanding legal matters are resolved before the commencement of the Contract.

41. Retention of Contract Documents

- 41.1 The original executed Contract will be retained by Legal Services.
- 41.2 A copy of the final, agreed contract (Legal Services will retain the original) must be retained by the relevant Service as a reference point for the purposes of contract management and may be asked to produce this documentation as part of any internal audit.
- 41.3 All other relevant Tender and Quotation documentation must be retained by the Service in line with the Council's Records Management, Retention and Disposal Schedule and the Data Protection Act 2018.

41. Confidentiality of Procurement and Evaluation Documentation

- 42.1 Details of submitted Quotations and Tenders, and associated documents (including evaluation documentation and records) must be treated in the strictest confidence and shall not be disclosed to any person other than persons directly involved in the relevant tender exercise.

42. Clarification of Quotations and Tenders

- 43.1 Any requests for clarification submitted both to and from Bidders (or prospective Bidders) must be submitted and communicated via the Council's YORtender portal, unless, in the case of technical issues, an alternative method is approved by Legal Services and the CPU.
- 43.2 Clarification may also be facilitated through presentations or a panel designed to assist in the understanding or verifying of submitted bids. All key information provided in the presentation or panel must be recorded accurately and any further clarifications confirmed in writing. Clarification obtained through a presentation or panel may result in prior scoring being moderated to achieve a final outcome.

44. Acceptance of Qualified Quotations and Tenders

44.1 Qualified Quotations or Tenders (or variant bids) may only be considered if any of the following apply:

- It is legally compliant for the Council to do so
- The terms of the ITQ or ITT permit this (and where applicable, the Contract Notice)
- The qualification does not give the Bidder an advantage which could discriminate against another Bidder

45. Late and Rejected Quotations and Tenders

45.1 Quotations and Tenders must be submitted before the closing time and date set in the ITQ or ITT.

45.2 Late Quotations and Tenders must only be considered if agreed by the CPU and Legal Services, and where it is evidenced that the delay is as a result of a fault in the Council's e-tendering portal.

45.3 Rejected Quotations and Tenders must not be considered.

46. Evaluation Procedure

46.1 The Evaluation Criteria for:

- Quality Evaluation, including any social value criteria
- Price Evaluation
- Suitability Assessment or Selection Questionnaire

must be published with the ITQ or ITT documents.

46.2 The evaluation must be conducted as a moderation exercise to ensure fair consideration of all compliant bids and in line with the latest instructions and guidance issued by the CPU.

46.3 Evaluation by averaging of individual scores is not permitted.

47. Evaluation Panels

47.1 The composition of an Evaluation Panel will be determined by the value and complexity of the procurement. When more complex procurement exercises require a range of expertise, the composition of the Evaluation Panel should reflect this.

47.2 Except where CPR 48.1 applies, panels must have a minimum of 3 members. Evaluation panels must be made up of a minimum of 3 members, including the Chair, but any panel must include the appropriate range of members to ensure that the wide and relevant range of expertise is met.

47.3 For all contracts, regardless of value, no person with a personal or financial interest in any of the Bidders should be involved in evaluating Quotations or Tenders, or be involved in any way in influencing the decision of the Evaluation Panel.

47.4 The Evaluation of Quotations and Tenders must be in accordance with the Evaluation Criteria specified in the ITQ and ITT documents, and no deviation from this Evaluation Criteria or introduction of undeclared sub-criteria is permitted.

47.5 All members of the Evaluation Panel must ensure that:

- each Quotation or Tender is marked in a fair and consistent manner in line with the Evaluation Criteria;
- impartiality is observed when Evaluation is undertaken;
- the recorded decision of the Evaluation Panel is a true reflection of the process and outcome;
- the submitted bid is marked only against the published Evaluation Criteria agreed and set for the procurement process;
- Evaluation must be for each specific response to the specific evaluation question being marked

48. Evaluation Panel for Procurements with a Maximum Quality Mark of 20% or Below

48.1 In the case of procurements for goods, works or services with a Whole Life Value of £100,000 or below and with a maximum quality mark of 20% or below, an Evaluation Panel may comprise 2 officers from the service undertaking the procurement.

49. Recording the Evaluation

49.1 The scores and supporting comments of the Evaluation Panel must be recorded using the latest templates, matrix and procedures published by the CPU.

- 49.2 The Chair of the Evaluation Panel is responsible for ensuring that the scores of the Evaluation Panel are recorded accurately and are a true reflection of the Evaluation.
- 49.3 Copies of all initial individual and final moderated Evaluation Panel notes and marks, and the completed evaluation matrix form part of the procurement audit trail and must be retained by the Commissioning Service in line with the Council's Records Management, Retention and Disposal Schedule.

50. Abnormally Low Bids

- 50.1 Where a Bid appears to be abnormally low, the Bidder must be invited to provide a full and detailed response to explain the fee or cost proposed.
- 50.2 An abnormally low Bid may be rejected where the justification provided by the Bidder does not satisfactorily account for the low fee or cost set out in the Bid. Legal Services and CPU must be consulted throughout the process.

SECTION 2 GLOSSARY OF TERMS

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

Alternative Procurement Procedure – A procurement route conducted under Part 7 and Schedule 3 of the Public Contracts Regulations 2015.

Assignment – The transfer of a right (benefit) from one party to another. For example, a party to contract may, subject to the express terms of a contract, assign its rights under the contract to a third party. Obligations cannot be transferred to a third party except by novation.

Award – Point at which agreement is reached and a Contract is entered into.

Award Stage – Final stage of the Quotation or Tender process, with notification of the Award to the successful Bidder followed by execution of the Contract.

Bid – A submitted Quotation or Tender.

Bidder – A supplier who has submitted a Bid.

Bonds and Guarantees - An undertaking by a bank or third party to cover a debt or risk on a transaction where a supplier fails to meet obligations (such as fulfilling the terms of a Contract).

Cabinet – The executive decision-making body of the Council.

Chief Officer – As defined in Article 12.1 (b) of the Council's Constitution, as amended from time to time.

Code of Conduct – The Member Code of Conduct and the Employee Code of Conduct.

Collaboration – Process by which two or more organisations (such as the Council, other local authorities or public sector bodies) work together to obtain a joint solution for a shared requirement.

Commercial Procurement Unit (CPU) – the Strategic Procurement Service for the Council.

Commissioning – Strategic activity of assessing need and using resources (both budgets and services) to meet those needs.

Concession – Granting a right to a third party to provide a service or an asset and transferring the opportunity to that third party to exploit the market and retain any profits it makes.

Contingencies – Element of budget, allowing for future events or circumstances which may occur.

Contract – Legally binding agreement (written or oral) between two or more parties.

Contract Manager – The appointed officer who is responsible for the day to day management of the Contract.

Contract Award Notice – Notice published on the Find A Tender Service, required for procurement over the National Public Procurement Thresholds.

Contracts Procedure Rules (CPRs) – The Section of the Council's Constitution which sets out the rules by which procurement or Commissioning activity must be undertaken.

Corporate Contracts – Contracts let on behalf of the Council to meet the requirement of goods, services or works which are common or shared across the Council (such as facilities management or agency staff provision).

Directorate – A directorate of the Council.

Disaggregation – Deliberately splitting down purchases or contracts to avoid having to undertake a full competitive exercise.

Evaluation – Detailed assessment and comparisons of each Bid against the Evaluation Criteria verifying how Bidders will meet the requirements of the Contract; measured against quality and/or price criteria.

Evaluation Criteria – Set of specific requirements that a Quotation or Tender will be marked against and on which the Award will be based.

Evaluation Panel – Group brought together with the specific aim of assessing Bids against pre-set Evaluation Criteria, to make a final decision on the Award of the Contract.

Expressions of Interest (EOI) – seeking an indication of interest in involvement in a possible procurement exercise

Framework Agreement – An overarching agreement which provides a mechanism for the Council (or other public sector organisation) to place orders or call off contracts with a supplier on agreed terms, sometimes requiring a mini competition or certain direct award criteria requirements.

Invitation to Quote (ITQ) – Opportunity made available to the open market or to a closed market via a number of Bidders who have been pre-selected for that purpose.

Invitation to Tender (ITT) – Opportunity openly advertised and made publicly available to any Bidder who may wish to be considered for that opportunity.

Legal Counsel – Barrister acting on the Council's behalf.

Liquidated Damages – Fixed or determined sum(s) agreed by the parties to a Contract to be payable on breach by one of the parties.

Member – Elected member of the Council.

National Public Procurement Threshold(s) – Public Contracts Regulations 2015 or Concessions Contracts Regulations 2016. thresholds which require specific actions throughout the procurement exercise, including publication of opportunities and award on the Government's Find a Tender site (formerly known as OJEU thresholds).

Nil Cash Value Contract – Payment received in kind through exchange of goods, services or property.

Novation – A three way contract which extinguishes the original contract, and replaces it with a new contract where a new supplier agrees to perform the rights and obligations which were previously performed by original supplier.

Officer – Any officer employed by the Council, including interim or consultant employees working on behalf of and representing the Council.

Qualified Quotation or Tender – Where a Bidder submits a Bid which has been amended to the Bidder's requirements and differs from the requirements expressed by the Council. The bid is also known as a variant bid and whilst it complies with the basic requirements of the Council, it is different from the Reference bid in certain key aspects (a Reference Bid is a bid that complies with certain prescribed requirements of the Council).

Quotation– Written Bid submitted by a supplier on request or as a result of an open or closed invitation to Quote.

Section 151 Standards – S151 of the Local Government Act 1972 deals with procedures to ensure fair supplier selection, payments, controls and performance measurement of suppliers.

Selection Questionnaire – Document used to gather information from prospective suppliers such as financial credentials, equalities and corruption statements, specific early selection criteria and is reserved for procurements exceeding National Public Procurement Thresholds only.

Service – A service within a Council Directorate.

Social Value – Considering how procurement activity can be beneficial to the Borough through inclusion of criteria to deliver economic, social and/or environmental benefits through engagement with relevant service teams and links to users and suppliers in accordance with the Public Services (Social Value) Act 2012.

Specification – Detailed description of the goods/services and/or works and outcomes required from the Contract.

Standstill Period – Contracts over the National Public Procurement Thresholds must observe a minimum 10 calendar day standstill period between the notice of intention to Award and the actual award of Contract. This allows unsuccessful Bidders to be notified of the outcome of the Evaluation and provides an opportunity to appeal against the intention to Award if they believe there is a justified reason to do so.

Subsidy Control – Any advantage granted by public sector authorities/organisations to any organisation through state resources that could potentially distort competition and trade. An ‘advantage’ can take many forms and legal advice must always be sought.

Suitability Assessment – lighter touch version of Selection Questionnaire for procurements below the National Public Procurement Thresholds.

Soft Market Testing/Testing the Market – Engagement with potential Bidders and interested parties or to raise interest in opportunities prior to any procurement exercise.

Sub-Contractor – refers to a person or business with whom the appointed supplier enters into a sub-contract to provide services, works or materials necessary for the

performance of the Contract. Sub-Contractor also includes any third party with whom that Sub-Contractor enters into a further sub-contract.

Tender – Response to an ITT that contains a full response to the Council's requirements and submitted via the Council's YORtender portal.

Themes, Outcomes & Measures (TOMs) - LGA National Framework of Themes, Outcomes & Measures to help local authorities measure the value of Social Value outcomes.

TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) – Preserves continuity of employment and employment rights of specified employees who will automatically transfer to a new employer on their existing terms.

Waiver – Written form of authorisation issued in limited circumstances by a Chief Officer or Head of Legal and Democratic Services which permits the undertaking of a specified purchase of works, services or goods without compliance with the CPRs.

Whole Life Value – the calculation of the estimated value of a procurement based on the total amount payable by the Council, including any form of option and renewals as set out in the procurement documents (and where not set out in the procurement documents, as exercised or utilised by the Council) (excluding VAT).

YORtender – e-tendering system for publication and management of all quotation and tender opportunities.