

CALDERDALE COUNCIL CONTRACTS PROCEDURE RULES – PROCUREMENT ACT 2023

Contracts Procedure Rules (“CPRs”)

FEBRUARY 2025

Contents

General Contracts Procedure Rules

- Section 1** – Purpose and Context
- Section 2** – Standards and Legislative Context
- Section 3** – What lies within scope of these CPRs
- Section 4** – Application of Public Contract Regulations 2015 (PCR2015), Procurement Act 2023 (PA23) and Provider Selection Regime 2023 (PSR23)
- Section 5** – Procurements Not Within Scope (Exempted from) these CPRs
- Section 6** – Compliance and Governance
- Section 7** – Compliance with Corporate Policies and Contracts
- Section 8** – Delegated Roles and Responsibilities
- Section 9** – Use of Chief Officer Waivers
- Section 10** – Approval & Decision Record for Below Threshold Procurements from £10,000 to PA23 Thresholds
- Section 11** – ICT Procurement for Hardware, Software and Accessories
- Section 12** – Social Value & Local Economy Considerations
- Section 13** – Access to the Market for SMEs and VCSE
- Section 14** – Conflict Assessment for Procurements
- Section 15** – Confidentiality During the Procurement Process & Post Procurement
- Section 16** – Breaches of Contract Procedure Rules

- Section 17** – Bidders and Third Parties Assisted by Grant Aid or Funding and Subsidy Control Act 2022 (formerly known as State Aid)
- Section 18** – Anti Avoidance of Procurement Act 2023 (formerly known as Disaggregation)
- Section 19** – Modification of Variations of Contracts
- Section 20** – Financial Checks and Assurances
- Section 21** – Contingencies
- Section 22** – Liquidated Damages
- Section 23** – Health & Safety
- Section 24** – Insurance
- Section 25** – Transfer of Undertakings (Protection of Employment Regulations 2006) TUPE
- Section 26** – Use of Sub-Contractors
- Section 27** – Excluded Suppliers
- Section 28** – Abnormally Low Bids
- Section 29** – Assignment, Novation & Insolvency of Contractors
- Section 30** – 30 Day Payment Requirements
- Section 31** – Contract Disputes and Claims
- Section 32** – Ending of Contracts Through Early Termination or Natural Expiry
- Section 33** – Retention of Contract Documents
- Section 34** – Glossary of Terms

- Appendix A** – Under Threshold procurements
- Appendix B** – Threshold procurements
- Appendix C** – Over Threshold procurements

GENERAL CONTRACTS PROCEDURE RULES

Section 1 - Purpose and Context

- 1.1 The CPRs are a body of rules and requirements which oversee procurement practice, performance and behaviour for the Council.
- 1.2 These CPRs are built into the Councils Constitution, approved by Governance & Business Committee and ratified at full Council. They apply, without exception, to all Officers, third parties instructed and appointed to act on behalf of the Council, and Members.
- 1.3 These CPRs apply in the procurement of goods, works and services for all procurements covered by:
 - a. The Public Contract Regulations 2015 and related legislation where applicable
 - b. Procurement Act 2023 for all procurements eligible from 24th February 2025 Including all and any procurements which fall below the thresholds of the Public Contract Regulations 2015 and Procurement Act 2023, including those not eligible or covered by the Provider Selection Regime 2023
 - c. Those procurements eligible under the Provider Selection Regime 2023
- 1.4 The Council's procurement activities must demonstrate how they achieve the maximum value for money whilst delivering quality outcomes and meeting the objectives of the Government's National Procurement Policy Statement 2025 when published, and the Council priorities of:
 - a. Reducing Inequalities
 - b. Strong thriving towns and places
 - c. Climate Action
- 1.5 All Council employees, or authorised representatives undertaking, or involved in any step of a procurement, concession or disposal exercise on behalf of the Council must do so in compliance with:
 - a. these CPRs
 - b. any published S151 Council Financial Standards and Rules
 - c. further guidance and instruction for procurement procedures, and practice as issued by the Corporate Procurement Unit (CPU) and Legal Services.
- 1.6 For the avoidance of doubt, in the case of any conflict being identified between this CPRs and the relevant legislation, or procurement guidance, and precedence will be given to:
 - a. The relevant legislation, followed by;
 - b. These CPRs, followed by;
 - c. Procurement instruction & guidance issued by CPU

Section 2 - Standards & Legislative Context

- 2.1 All Officers, Chief Officers, Contract Managers and Members covered by these CPRs must act in a transparent and open manner, treating economic operators equally and without favouritism or discrimination.
- 2.2 The purpose of these CPRs is to ensure all Officers:
 - a. act with integrity and consideration to value for money and proportionality in all procurement activities

- b. use procurement to achieve and demonstrate obtaining value for money
 - c. comply with the legislation & requirements which oversee behaviour in public procurement
 - d. provide a legal and auditable framework for the Councils procurement activities
 - e. comply with the law governing the use of public money, transparency and standards for public expenditure
 - f. are, by compliance with these CPRs, protected from undue criticism or allegations of wrongdoing
- 2.3 For the avoidance of doubt, the requirements of Officers under CPR 2.2 shall apply even where the commission or procurement they are responsible for, or otherwise involved in, falls outside the scope of these CPRs.
- 2.4 Officers must ensure they also comply with the requirements under CPR 2.2 when undertaking relevant procurements under the Provider Selection Regime 2023.
- 2.5 Part 2 Threshold Specific Contract Procedure Rules sets out the specific limits and actions required within Council set thresholds up to the Procurement Act 2023 thresholds, and then those required by the Procurement Act 2023 for over threshold procurements.
- 2.6 These Contracts Procedure Rules are governed by the Procurement Act 2023, the Procurement Regulations 2024, the Provider Selection Regime 2023 for relevant Public Health related procurements, and any future National Procurement Policy Statement, and any relevant active legislation, including but not exclusively:
- a. Freedom of Information Act 2000
 - b. Data Protection Act 2018
 - c. Bribery Act 2010
 - d. Modern Slavery Act 2015
 - e. Subsidy Control Act 2022
 - f. Housing, Grants, Construction & Regeneration Act 1996
 - g. Equality Act 2010
 - h. Worker Protection (Amendment of Equality Act 2010) Act 2023
 - i. Employment Act 2002

Section 3 - What lies within scope of these CPRs

- 3.1 These CPRs are mandatory and apply to all actions, exercises and behaviours relating to any procurement undertaken by all Council Officers and the Council includes all arrangements for any new, renewal, replacement, extension, amendment or modification of any contract whether by purchase order or form of agreement or contract.
- 3.2 Those contracts and procurements commenced (advertised) under the Public Contract Regulations 2015, will continue to be governed by the Public Contract Regulations 2015, including eligible framework and dynamic purchasing system opportunities.
- 3.3 Any procurement opportunity commencing or published as an opportunity or as a Tender Notice from 24th February 2025 will be governed by the Procurement Act 2023 (PA23).
- 3.4 These CPRs also apply to concession contracts and to contracts 'in kind' or 'nil cash'.

Section 4 - Application of Public Contract Regulations 2015, Procurement Act 2023 and Provider Selection Regime 2023

4.1 The application of the appropriate procurement legislation will depend on the following:

- **Public Contract Regulations 2015**

4.2 Where a procurement opportunity has been advertised (contract or tender notice published) or the procurement route decision for under threshold procurements made, prior to 24th February 2025, the Public Contract Regulations 2015 will apply. This includes public sector frameworks and dynamic purchasing systems.

- **Procurement Act 2023**

4.3 Where a procurement opportunity has been advertised (contract or tender notice published) on or after 24th February 2025, then the Procurement Act 2023 will apply. This includes any below threshold procurement decision taken on or after the 24th February 2025. This will include any new public sector frameworks or dynamic markets

- **Light Touch Contracts – Section 9 & Schedule 1, PA23**

4.4 Light Touch contracts cover certain social, health, education or other public services provided directly to individuals or groups of individuals and are treated with greater flexibility by the Procurement Act 2023.

4.5 Contracts below the Light Touch Threshold are subject to these CPRs as set out in Appendices A and B of Part 2 Threshold Specific Contract Procedure Rules.

4.6 Identification & procurement of light touch contracts must be undertaken in line with instruction & guidance as issued by the Strategic Procurement Service (Social Care) & the CPU to ensure compliance with the Procurement Act 2023.

- **Provider Selection Regime 2023**

4.7 For eligible procurements identified as meeting the criteria of Provider Selection Regime 2023, then PSR23 applies from 4 January 2024. Where a procurement is identified as eligible under the criteria of PSR23, there is no minimum threshold and therefore any contract identified must comply with PSR23.

4.8 All PSR 23 procurements must be undertaken in compliance with the NHS England Statutory Guidance.

Section 5 - Procurements Not Within Scope (Exempted from) these CPRs

5.1 These CPRs apply to all procurements & contracts except for the following:

- a. All procurements identified as eligible and administered under the Provider Selection Regime 2023
- b. Contracts of employment for salaried posts
- c. Engagement of interim officers on a PAYE basis
- d. The acquisition of land or buildings where the Council exercises no further contractual control over the content and execution of the works following disposal.
- e. The provision of arbitration, mediation or conciliation services

- f. Contracts for the appointment of Legal Counsel or for the appointment of experts for legal proceedings, and made by the Head of Legal Services
 - g. Contracts with local authorities for shared services, or provision of services
 - h. Contracts with local authority commercial companies subject to agreement by the Head of Legal and Democratic Services
 - i. Where the Council acts on behalf of a statutory or non-regulated body
 - j. Academies, unless the Council is acting, by agreement, as procurement lead on their behalf
 - k. Grant agreements and awards to external organisations
 - l. When procuring as part of a joint or collaborative procurement with another public sector organisation which is acting as the procurement lead
- 5.2 Other exemptions may, on occasion also qualify but these must be confirmed with CPU and Legal Services before proceeding.

Section 6 - Compliance and Governance

- 6.1 The procurement of all contracts, including those appointed through frameworks and dynamic markets (formerly known as dynamic purchasing systems) entered into on behalf of the Council and any maintained schools, regardless of value or origin of the funding, will comply with the Council's CPRs, S151 Rules, and issued procurement guidance. PSR23 eligible procurements must be done so in line with PSR23 requirements.
- 6.2 Town Boards, Academies and other bodies responsible for administering their own funding are responsible for ensuring compliance with any relevant legislation and rules as required in their grant award letters. Where the Council is providing commercial procurement services to another public body, procurement legislation and CPRs will apply and in this case, will only be provided where prior approval and agreement to such provision has been sought and given by the Corporate Procurement Officer.
- 6.3 All officers hold responsibility for ensuring their compliance with these CPRs, and responsibility for governance of compliance lies with the relevant Chief Officer and their respective chain of delegation.

Section 7 - Compliance with Corporate Policies

- 7.1 All procurements must be undertaken with regard to any Corporate Policies, including but not limited to, any HR policy regarding engagement of staff, engagement of Agency Staff or ICT policies regarding procurement of ICT Equipment & Software, any Information Governance requirements or any Business Continuity requirements.

Section 8 - Delegated Roles and Responsibilities

- 8.1 Officers shall act within their duties and responsibilities identified in Part 3 - Responsibility for Functions, Section 5 of the Council's Constitution.
- 8.2 A function being delegated to a Chief Officer does not preclude the Council, a Committee or the Cabinet from reserving decisions on particular matters to itself/themselves.
- 8.3 Neither the Chief Officer, Council, a Committee or Panel, nor the Cabinet have the right to influence or change the outcome of an evaluation panel, other than the right not to proceed.

- 8.4 It is the responsibility of the Service to ensure they have the appropriate knowledge and skills, or access to the appropriate knowledge and skills to provide an effective, detailed specification for the procurement required.

Chief Officers

- 8.5 The Scheme of Delegation operates on a 'cascade' principle with Chief Officers empowered to act and take decisions in the name of the Council as set out in the Scheme of Delegation and may also authorise officers they consider to be of suitable experience and seniority to undertake powers delegated under the scheme of delegation.
- 8.6 It should be noted that actions and decisions taken under that authority are the responsibility of the Chief Officer delegating the responsibility.
- 8.7 The role of Chief Officers and associated delegated responsibilities referred to in these CPRs relate specifically to delegated powers which govern the procurement decision making and monitoring process for Council funding, expenditure and externally provided funding.
- 8.8 Chief Officers are responsible for:
- a. ensuring that commissioning, procurement and contract management by their officers is undertaken by those with appropriate delegated authority or authorisation, and is in compliance with these CPRs, Financial Procedure Rules and relevant terms and conditions set as part of allocation of grant funding from external sources for any such procurement;
 - b. ensuring appropriate supervision and performance management of the procurement cycle and ensuring 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 budget and relevant spend that sit within their Directorate. Where a category of spend is shared across Directorates, a process of management needs to be agreed between those Services 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 and understood by those Officers in receipt of delegated authority, and that those Officers understand their role and responsibility;
 - f. ensuring that contracts for which their Directorate is responsible are monitored and managed in an effective manner and in appropriate timescales to ensure timely commencement, implementation & delivery, including replacements for those expiring, in compliance with these CPRs.
 - g. insuring 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.
 - h. Timely returns of requests for Procurement Pipeline and Workplans updates as requested by the CPU.
- 8.9 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, any projects which exceed the Procurement Act 2023 thresholds, and/or carry reputational based risks or covering multiple or key Council services.

- 8.10 The Chief Officer will ensure that procurements are not conducted by consultants or other third parties, without prior agreement from the Corporate Procurement Officer & representative of the Head of Legal, and a Calderdale Council authorised officer must remain part of the procurement process.

Responsible Officers (Officer with Delegated Responsibility)

8.11 Responsible Officers in receipt of appropriate delegated responsibility, are responsible for:

- a. ensuring they have appropriate authority to incur the expenditure and undertake the appropriate identified action
- b. ensuring that the procurements are undertaken in full compliance with all aspects of the CPRs
- c. checking whether a suitable corporate contract or other publicly available contract/framework agreement is available before seeking to procure another contract.
- d. 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;
- e. ensuring that the procurement is in line with the actions proposed and agreed in the business case or plan;
- f. 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;
- g. ensuring that those undertaking the procurement understand the requirement of the procurement, and have the appropriate skills and technical knowledge of the goods/services or works being procured to enable them to ensure any procurement outcomes meet the needs of the Council and demonstrate value for money;
- h. ensuring that for all contracts exceeding the Procurement Act 2023 thresholds, guidance and advice is sought from the Procurement Team, in relation to the procurement process and procedures required;
- i. ensuring that a reasonable and manageable timescale and appropriate resources are allocated for an effective procurement cycle from identifying the need through to contract award and the mobilisation required to be undertaken; and
- j. ensuring that effective and robust contract management takes place to ensure delivery of identified KPIs, service levels, objectives, and outcomes, to ensure meeting the requirements of the Procurement Act 2023 and to ensure the Council meets the terms of contract and to identify any risks of possible non-delivery or failure.
- k. ensuring that once the contract is in place, all relevant information is recorded and entered onto the Corporate Contracts Register in line with guidance and instruction issued by the CPU.
- l. ensuring that an up-to-date copy of the contract is held by the Contract Manager and retained at the point of transition of change of any officers involved

Named or Nominated Contract Manager

- 8.12 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. In order to ensure continued contract management, named 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. compliance with all requirements regarding transparency including publication of notices & documentation, KPIs and performance reports as required by Procurement Act 2023 or PSRs 23, as appropriate, or instructed by the CPU
- c. ensuring that they manage any call-off contract which has been awarded under a framework. It is not the responsibility of the overall framework holder to manage individual contracts awarded under any framework;
- d. 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
- e. following verification or confirmation of receipt of services/works or goods as required by the Contract, ensuring payment of undisputed invoices is made within 30 days of receipt of invoice.

8.13 The appointed Contract Manager must have the appropriate knowledge to enable effective management of the Contract.

Head of Legal and Democratic Services

8.14 The Head of Legal and Democratic Services acts as custodian of these CPRs in line with Part 5 of the Council Constitution, Officer Delegation Scheme and as the Council's appointed Monitoring Officer.

Director of Resource and Transformation

8.15 The Director of Resource and Transformation acts in line with Part 5 of the Council Constitution Scheme and as the Council's appointed S151 Officer.

Corporate Procurement Officer

8.16 The Corporate Procurement Officer reports to the S151 Officer, Director of Resources and Transformation, and extended to Head of Legal and Democratic Services regarding compliance with these CPRs and any relevant legislations, including reporting of breaches, in all matters regarding compliance and governance concerns relating to the Public Contract Regulations 2015, Procurement Act 2023 and Provider Selection Regime 2023.

8.17 The Corporate Procurement Officer may issue templates, guidance and training materials to assist with implementation of these CPRs, and further instruction on receipt of updated instruction from central Government.

8.18 The key purpose of the CPU will be to provide procurement support for over PA23 procurements, PSR procurements & higher value/higher risk projects.

8.19 The CPU will provide instruction and guidance documents, and training for Officers undertaking competitive procurements and alternative routes, which fall beneath the Procurement Act 2023 thresholds.

8.20 For avoidance of doubt, responsibility for decision making and preparation of the relevant procurement documents for procurements below the Procurement Act 23 thresholds will sit with the Officer and within their delegated budgets responsibility. Such decisions should be made on a demonstrable value for money basis, including consideration of resource costs for both Council resources (including Corporate) and equally for the supply chain.

Section 9 – Use of Chief Officer Waivers

- 9.1 Exceptions to the procedures permitted by Chief Officer Waivers and laid out in these CPRs will only be valid if appropriate approval has been sought and gained prior to commencement of the procurement.
- 9.2 Valid exceptions to these CPRs which may be covered by Chief Officer Waiver, include (but are not excluded to):
- a. Genuine emergencies, critical preventative or remedial work where there is real and imminent risk to life or safety of people or property arising from unforeseen emergency or catastrophic events or incidents.
 - b. For proprietary or patented goods or services; or where the requirement is of such a specialist nature that it can only genuinely be fulfilled by one supplier; or where compatibility with existing goods or services is required and where these can only be sourced from the same supplier
 - c. Urgent situations not of the Council's own making, where the urgency is reasonably unforeseeable, such as a supplier unexpectedly going out of business and there is a genuine case of urgent need. Urgency arising from the Council's own making (such as lack of planning) shall not justify an exception. In this case, the service will be required to demonstrate there are plans in place to implement a compliant procurement process as soon as possible
 - d. Where a contract is being re-procured and there are unavoidable delays in the procurement process, leaving a gap between expiry of the current contract and implementation of the new contract. Where this results in the contract being over the relevant procurement legislation thresholds (as per CPR 4.2 and CPR4.3), then the relevant rules regarding permitting extension will be permitted, in agreement with CPU and Legal team, as in:
 - Where Public Contract Regulations 2015 apply, an extension of 10% of the original contract value is permitted:
 - Where Regulation 74 of Procurement Act 2023 applies, an extension of 10% for goods and services, and 15% for works of the estimated contract value is permitted
- Or where the Chief Officer is satisfied that the waiver justifies the application of a direct award as it provides a sound value for money alternative of the threshold actions set out at Appendix B.
- 9.3 Retrospective waivers are only permitted in the case of:
- Urgent Action because of an unforeseen emergency, involving immediate risk of injury or damage, or to prevent serious disruption to Council Services
 - For Adults or Children's Social Care to immediately secure care for a vulnerable person
 - In the case of no bids being received
- 9.4 With the exception of 9.3, authorised Chief Officer Waivers must be obtained prior to commencement of the relevant procurement procedure. Proceeding with a procurement without the appropriate authorisation is in breach of the CPRs.
- 9.5 Exceptions by way of a Chief Officer Waiver cannot be sought or given for procurements equal to or above either Council Key Decision Threshold or where the total value of the procurement exceeds the Procurement Act 2023 threshold, or for those procurements eligible under PSR. In these cases, legal advice must be sought from the Legal Team.
- 9.6 It is the Directorate's responsibility to record details of any waiver (both authorised and refused) on the Corporate Chief Officer Waiver record and provide copies of all approved and refused waivers in line with instructions issued by the Corporate Procurement Officer.

Section 10 - Approval & Decision Record for Below Threshold Procurements from £10,000 to PA23 Thresholds

- 10.1 To ensure governance, accountability and demonstration of best value choices, in keeping with the Council's own below threshold procedures Part 2 Threshold Specific Contract Procedure Rules appendices A & B, an approval and decision record must be completed to evidence authorisation of route for procurements of goods, services and works with a cost between £10,000 and up to the Procurement Act 2023 thresholds.
- 10.2 Where evidence of authorisation by way of reporting to appropriate levels cannot be demonstrated, then the CPU Approval and Decision Record must be used.
- 10.3 For the avoidance of doubt, an approval and decision record is not required if a relevant Chief Officer Waiver has been obtained.

Section 11 - ICT Procurement of Hardware, Software and Accessories

- 11.1 Procurement of ICT hardware and equipment must be placed through ICT, to ensure compliance with the Council's systems and requirements.
- 11.2 Approval and advice regarding proposed procurement of software must also be sought prior to pursuing commitment to any procurement.
- 11.3 ICT procurement as stated in 11.1 and 11.2 is considered in scope of these CPRs and procurement outside of Section 11 may be considered as a breach.

Section 12 – Social Value and Local Economy Considerations

- 12.1 The National Procurement Policy Statement (NPPS), once published, will form part of the legislative requirements and compliance with the statement is required.
- 12.2 Both the priorities of the NPPS and the Councils objectives and priorities must be considered when building social value priorities for each individual project.
- 12.3 National Procurement Policy Statement priorities, and the Council's priorities and ambitions must also be taken into account when identifying social value priorities.
- 12.4 Any instructions, guidance or policy documents issued by the CPU must be taken into account when identifying social value outcomes for procurements.

Section 13 – Access to the Market For SMEs and VCSE

- 13.1 Any procurement must demonstrate consideration of how barriers for SME and VCSE supply chain can be reduced, such as through direct award (where permitted) or sub-contractor supply chains.
- 13.2 Over Procurement Act 2023 Threshold procurements will be required to demonstrate consideration of inclusion of lots, and where this option is not provided, justification why lots are not appropriate will be required.

Section 14 - Conflict Assessment for Procurements Over £10,000

- 14.1 A conflict of interest can occur at any stage and for any of the following involved in the procurement process:
- Officers and employees of the Council,
 - Members of the Council
 - Their respective spouses or partners
 - Close associates (anyone with influence in the procurement or bid process)
- 14.2 A conflict of interest could result in perceived or known ability to apply undue influence on the outcome of the procurement exercise, and the Council is required to ensure undertaking of conflict assessments at key stages of the procurement process to ensure management of potential or actual conflict.
- 14.3 A conflict can occur anywhere during the procurement period and this includes any action which could influence & affect the competition and award of Council expenditure:
- Award of an order or contract
 - Pre market consultation and engagement
 - Development of procurement documentation including development of specification
 - Discussions and decisions regarding the scope or route of the procurement
 - Choice of procedure
 - Evaluation procedure and selection of successful supplier
 - Decision to direct award
 - Involvement in contract management
- 14.4 Conflicts Assessments must be completed, retained and renewed by the Service Team project manager, from the early stages of the procurement process for any procurement over £10,000. The assessment should be reviewed at key stages during the procurement and before approval for final award of any contract.
- 14.5 Where a potential risk of conflict of interest is identified or as soon as an individual or the responsible Officer becomes aware, advice must be sought from CPU & Legal Team on the impact and risk and whether the individual identified can continue to take part in the procurement process. A Conflicts Assessment must be provided to Head of Legal and Democratic Services & Corporate Procurement Officer for consideration and advice within 2 working days.
- 14.6 Failure to declare a conflict of interest could be in breach of the Council's Codes of Conduct, be viewed as attempting to distort the market and/or result in delay or abandonment of a procurement process, or legal procedures against the Council. A failure to knowingly not declare a potential or known conflict of interest may also result in disciplinary action against the Officer.
- 14.7 A risk assessment must be undertaken each time the declaration is revisited, and where a potential (or actual) risk is identified, notified to the Head of Legal and the Corporate Procurement Officer for advice on managing the risk, which may require the setting of preventative measures such as ethical walls.
- 14.8 For avoidance of doubt, the Council reserves the right to exclude any supplier where it is established that their involvement in an opportunity development may have given them competitive advantage over any other bidder.
- 14.9 A record of the Conflicts Assessment must be retained in line with the procurement documentation. The requirement to maintain a conflicts of interest report with your procurement is a requirement by law.
- 14.10 Those involved in the procurement process are reminded they must observe the Bribery Act 2010 and any relevant guidance or instruction issued by the Councils Internal Audit team.

Section 15 - Confidentiality During the Procurement Process & Post Procurement

- 15.1 Details of submitted tenders, and any associated documents (including details of evaluation panels and record of evaluation) must be treated in the strictest confidence and shall not be disclosed to any person other than those directly involved in the relevant tender exercise.

Section 16 - Breaches of CPRs

- 16.1 Breaches of these CPRs are an extremely serious matter, given that breaches impact on use of public money, and the Council's compliance with procurement and other relevant legislation.
- 16.2 Officers must report breaches to their Chief Officers, who must ensure reporting of any breach and any proposed mitigation to Corporate Procurement Officer and Legal Team.
- 16.3 Where a serious breach has occurred, then the responsible Chief Officer may be called to Audit Committee to report.

Section 17 – Bidders and Third Parties Assisted by Grant Aid or Funding and Subsidy Control Act 2022 (formerly known as State Aid)

- 17.1 If an organisation or any other third party is in receipt of (or will be in receipt of (directly or indirectly) of grant aid, funding or a subsidy (whether monetary or in the form of any other benefit to the organisation or third party) from either the Council or other public sector 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.

Section 18 – Anti Avoidance of Procurement Act 2023

- 18.1 Contracts must not be deliberately sub-divided to avoid the requirements of the Procurement Act 2023 for over threshold procurements.

Section 19 – Modifications and Variations of Contracts

- 19.1 Any modification for relevant over threshold contracts must be done in compliance with:
- Public Contracts Regulations 2015 where relevant, or:
 - Procurement Act 2023 where relevant
 - Provider Selection Regime where relevant
- 19.2 Modification of under threshold contracts may put those contracts into the requirements of the relevant procurement legislation. Any modification or variation to a contract must be done in consultation with the Legal Team to ensure compliance with the relevant legislation, and any instruction or guidance issued by the Corporate Procurement Team.

Section 20 - Financial Checks & Assurances, Including Bonds & Guarantees

- 20.1 Financial standards proportionate to the value and risk of the contract may be considered where:
- a contract will exceed the Procurement Act 2023 Thresholds: or

- there is a risk of significant effect on the delivery of Council Services in the event of the supplier ceasing business or defaulting on delivery of the service or goods and where alternative solutions cannot be sought quickly
- due diligence is required to ensure stability in the supply chain and continuity

20.2 Where financial information has been sought and received, a risk assessment via credit report should be undertaken and where risks give sufficient cause for concern, then the S151 Officer will undertake a further assessment of the financial risk of suppliers to enable a risk based decision.

20.3 The potential contractor may be required to provide a Parent Company Guarantee (PCG) or a Performance Bond, in a form acceptable to the Council for the duration of the contract (including any extension period). All financial requirements, including the possible requirement of a bond must be included in the information provided in the published procurement documents

20.4 Any PCG or Bond shall only be requested in the case of identification of possible and significant risk to the Council and must not provide an unnecessary obstacle to SMEs or other bidders.

Section 21 - Contingencies

21.1 Contingencies proportionate to the value and risk of a project must be built into the required budget. Chief Officers are required to ensure contingencies where identified, are incorporated into the project budget where appropriate and following a risk assessment.

Section 22 - Liquidated Damages

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

Section 23 - Health and Safety

23.1 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 appropriate and proportionate to the needs of the contract requirement and those of the Service undertaking the procurement, and the Council's Health and Safety Standards, including standards for safe working.

Section 24 - Insurance Requirements

24.1 It is the responsibility of the Chief Officer to ensure that the appropriate level of insurance is in place prior to commencement of the contract and not prior to or during any bidding process, taking into consideration guidance documents issued by the Council's Insurance Team and the Council's Risk Manager.

24.2 The levels of insurance must be assessed to ensure it is realistic proportionate and relevant to the nature and value of the procurement and does not place an unnecessary barrier to SME's and VCSE potential bidders.

24.3 Where specific risks are involved which include consideration of non-standard insurance such as clinical insurance, further guidance should be sought from the Insurance Team.

Section 25 - Transfer of Undertakings (Protection of Employment Regulations) 2006 - TUPE

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

Section 26 - Use of Sub-Contractors

- 26.1 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.

Section 27 - Excluded Suppliers

- 27.1 Before assessing which tender best satisfies the award criteria for award, consideration must be given as to whether a supplier is an excluded or excludable supplier following the Government Supplier Debarment List, once this comes into force.
- 27.2 Guidance and instruction provided by CPU regarding identification of excluded and excludable suppliers must be followed and advice sought from the CPU and Legal Services before any action is undertaken.

Section 28 - Abnormally Low Bids

- 28.1 If a bid is identified as abnormally low, the tenderer must be given the opportunity to demonstrate that it is able to perform the contract for the price offered.
- 28.2 If the tenderer does demonstrate ability to perform the contract for the proposed price, the tender may not be disregarded as an abnormally low bid.

Section 29 - Assignment, Novation & Insolvency

- 29.1 Contracts must state the supplier is prohibited from transferring, assigning or novating its obligations under the Contract without the prior approval and confirmation of the Council.
- 29.2 Where a supplier indicates it wishes to implement any such action as stated in CPR 29.1, Legal Services must be consulted prior to any acceptance.
- 29.3 Where there is a proposal to transfer the business to another supplier, the relevant Chief Officer must ensure that appropriate checks take place for risk assessments regarding the capability and financial standing and checks regarding excluded status of the supplier. Legal advice must be sought from Legal Services as to the change of contract.
- 29.4 In the event of a supplier entering receivership, administration or liquidation or otherwise becoming insolvent, the relevant Chief Officer or Contract Manager must inform Legal Services and the CPU immediately to seek advice on appropriate action.

Section 30 - 30-day Payment Requirements

- 30.1 It is a requirement that the Council must pay its contractors and suppliers within 30 days of receipt of invoice, except where an invoice is in dispute.
- 30.2 All contracts, including those below threshold, must contain the term stating that contractors & suppliers are required to pay their sub-contractors in their supply chain, relevant to contract provision, within 30 days of receipt of payment from the Council, unless in dispute with that sub-contractor. This is an implied term and a statutory requirement of the Procurement Act 2023.

Section 31 - Contract Disputes and Claims

- 31.1 Legal Services and CPU 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.
- 31.2 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.

Section 32 - Ending of Contracts Through Early Action or Natural Expiry

- 32.1 Contractual provision for the termination of a contract must be included within the terms and conditions of the Contract. Legal Services must be consulted for advice before any early termination of a Contract where this is not permitted under the terms and conditions.
- 32.2 The Council is required to publish notification of all above threshold contracts ending, including termination or natural expiry & Services are required to comply with instructions & guidance published by the Procurement Unit to notify the Unit of expiry of any contract 3 months before the end or termination of a contract.

Section 33 - Retention of Contract Documents

- 33.1 The original executed Contract will be retained by Legal Services.
- 33.2 The Contract Manager or Service must ensure they retain a copy of the specification and agreed terms and conditions to ensure management and monitoring of delivery and performance.
- 33.3 All other relevant Tender and Quotation documentation must be retained by the Service in line with the Councils Retention and Disposal Schedule, the Data Protection Act 2018 and any guidance or instruction issued by the CPU

Section 34 - GLOSSARY OF TERMS

Approval and Decision Report – Report required to support spend commitments & decisions for procurements over £15k in value but which sit outside of need for Chief Officer Waiver

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.

Assessment Summary – Record of moderated score and highlights of reasons for markings attributed

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

Award Stage – Final stage of the process, after any required standstill period, with notification to the successful bidder followed by execution of the Contract

Bid – A submitted Quotation or Tender.

Bidder – A supplier or contractor 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.

Chief Officer Waiver – Used in line with CPR 14, it's a document completed by Service requiring approval and signed by the Chief Officer. It's used where action is required which doesn't fit within these CPRs to approve the steps taken

Closed Quotes Exercise – invitations to submit quotes made to named suppliers only, and not put to the open market

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.

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

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

Competitive Process – Quote or Tender process, for the purposes of procurements to which the Provider Selection Regime 2023 applies has the meaning given to it in and is as defined by the Provider Selection Regime 2023

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.

Conflicts Assessment – A requirement of the Procurement Act 2023, for completion or non-declaration at various stages of procurement action, including purchase orders

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

Contract – A written agreement intended to be enforceable by law

Contract Award Notice – Mandatory notice published on Find a Tender Service, setting out our intention to enter into a contract

Contract Manager – Officer appointed as responsible for the day to day management of the Contract.

Contracts Procedure Rules (CPRs) – The Section of the Council's Constitution which sets down the rules and governance processes to which procurement or Commissioning activity undertaken on behalf of the Council must comply.

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, consultancy or agency staff provision).

Directorate – A directorate of the Council.

Dynamic Market – Replaces Dynamic Purchasing Systems as pre-selected and approved register of suppliers, only eligible for over Procurement Act 23 threshold procurements

Evaluation - Detailed assessment of each Bid against the evaluation & assessment methodology, verifying how Bidders will meet the requirements of the Contract and measured against the published quality and/or price criteria.

Evaluation Panel – Group brought together with the specific aim of undertaking an assessment of bids against preset criteria and methodology 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 Contracts – A framework is an overarching or ‘umbrella’ contract that covers provision of goods, services or works for a range of needs. The Contract is advertised and usually divided into lots (for example, a foods contract may offer lot 1 for fresh foods, lot 2 for frozen foods and lot 3 for dried goods & foods) and can offer a range of contractors to provide different lots or one single supplier for all. These contracts can be held in house, by other authorities, public sector consortia such as YPO, regional collaboration, or nationally by the NHS or Crown Commercial Services (CCS). They provide a mini competition or even a direct award option, where the market has already been tested.

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.

Moderation Process to review independent evaluation scores to reach a consensus.

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, including, where the context requires, all Chief Officers, Contract Managers, and Members.

Open Exercise – An exercise for quotes or competitive tenders, put out to the open market for any appropriate supplier to bid

Procurement Act 2023 Thresholds – Procurement opportunities with a value over the Procurement Act 2023 Thresholds and subject to the requirements of the Act.

Provider Selection Regime (PSR) – means The Health Care Services (Provider Selection Regime) Regulations 2023.

Project Specific 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 Procurement Act 2023 thresholds only.

Public Health Services – means those services (and goods where forming part of a “mixed procurement”) to which the Provider Selection Regime applies.

Public Sector Consortia – owned and developed by public sector organisations and offer a range of supply or framework options. Examples include Yorkshire Purchasing Organisation (YPO) or Eastern Shires Purchasing Organisation (ESPO).

Qualified Quotation or Tender – Bid which has been amended to meet the bidders requirements and differs from the 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 and Financial Rules – S151 of the Local Government Act 1972 deals with Council standards, governance and financial procedures to ensure fair supplier selection, payments, controls and performance measurement of suppliers.

Service – A service or service team 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 National Procurement Policy Statement

Soft Market Testing - Early market engagement prior to procurement action, with advance notice to marketplace of plans to conduct or have conducted engagement (through optional preliminary market engagement notice)

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

Standstill Period – Contracts over the Procurement Act 2023 Thresholds must observe a minimum 8 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 bids evaluations and provides an opportunity to appeal against the intention to Award if they believe there is a justified reason to do so.

Subsidy Control – The rules governing the giving of subsidies under the Subsidy Control Act 2022.

Suitability Assessment – simple questionnaire identifying capabilities and qualifications of suppliers for procurements below the Procurement Act 2023 Thresholds

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.

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.

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.

Section 2 - Threshold Specific Contracts Procedure Rules

Appendix A Under Threshold Procurements

Goods & Services Up to £75,000 and Capital Works Up to £150,000

1. Making a Decision on a Procurement Route

1.1 Decisions on the process for procurement of goods and services with a contract value of up to £75,000 and capital works with a contract value up to £150,000, are delegated to Directorates and their Service Teams, in line with any delegations, or further authorisations set by the relevant Chief Officer.

1.2 Procurement route options include, but are not excluded to:

- Open Quote – Quote offered to the market
- Closed Quote – Named suppliers or providers are invited and the competition is limited to only those invited to take part
- Framework options – selection of an appropriate framework which may be by further competition or direct award as permitted by the conditions of the framework
- Dynamic Markets
- Direct Award
- Relevant Light Touch Contracts

1.3 The following should be considered when deciding on an appropriate route:

- (a) Money spent by the Council is public money and the Council is accountable for how that money is spent
- (b) Support of the local economy, particularly in using SME or VCSE
- (c) proportionate approach ie the resource and time required both internally within the Council and externally by any bidders, versus the cost of the procurement
- (d) Reasons & justification for choice of route, particularly where direct award is chosen, to demonstrate how value for money is achieved by this
- (e) If the award is being made through a call off contract from an approved framework, does the framework permit the action & route chosen

1.4 Those undertaking the procurement are required to follow instructions & guidance issued by the CPU.

1.5 Publication of contract opportunities are a legal requirement and are not permitted through any other route but YORtender, without the prior approval of the Corporate Procurement Officer and Head of Legal and Democratic Services.

1.6 Any procurement which falls within these threshold limits with a value of £10,000 or over must also be accompanied by a Conflicts Assessment Form as per CPR 14 and an approval and decision record as required in Appendix E of these CPRs.

2. Declaring Conflicts of Interest & Completion & Maintenance of Conflicts Assessments

2.1 CPR 14 of Part One of these CPRs requires the completion and maintenance of Conflicts Assessments for procurements over £10,000 and should be followed.

3. Requirements for Invitations to Quote (ITQ)

3.1 Any procurement documentation for quotation exercises must be complete, using the CPU templates, prior to publication of the ITQ, and must include:

- a) Scope or specification including any required performance or delivery standards
- b) Evaluation Criteria and marking methodology
- c) Proposed terms and conditions of contract

3.2 The use of a Procurement Specific Questionnaire is not permitted for contracts with a value below the Procurement Act 2023 Thresholds. Suitability Assessments may be used for quotation exercises where it is proportionate and appropriate to the needs of the contract and in line with guidance issued by the CPU.

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

4. Confidential Treatment of Submitted Quotes or Tenders

4.1 Section 15 of Part One General Contract Procedure Rules regarding confidentiality in the procurement process applies.

Section 2 - Threshold Specific Contracts Procedure Rules

Appendix B Thresholds For Goods & Services Over £75,000 and Capital Works Over £150,000 Up to Procurement Act 2023 Thresholds

1. Making a Decision on a Procurement Route

- 1.1 Decisions on the process for procurement of goods and services with a contract value of over £75,000 and capital works with a contract value over £150,000, up to Procurement Act 2023 Thresholds are delegated to Directorates and their Service Teams, in line with any delegations, further authorisations set by the relevant Chief Officer and guidance issued by CPU.
- 1.2 Procurement route options for consideration include, but are not excluded to:
 - **Open Competitive Quote** – Quote offered to the market
 - **Closed Quote** – Named suppliers or providers are invited and the competition is limited to only those invited to take part (procedure at discretion of Chief Officer)
 - **Framework options** – selection of an appropriate framework which may be by further competition or direct award as permitted by the conditions of the framework
 - **Dynamic Markets**
- 1.3 The following should be considered when deciding on an appropriate route:
 - (a) Money spent by the Council is public money and the Council is accountable for how that money is spent
 - (b) Support of the local economy, particularly in using SME or VCSE
 - (c) proportionate approach to the procurement based on complexity and value of the procurement
 - (d) Reasons & justification for choice of route to demonstrate how value for money is achieved by this
 - (e) If the award is being made through a call off contract from an approved framework, does the framework permit the action & route chosen
- 1.4 Those undertaking the procurement are required to follow instructions & guidance issued by the Corporate Procurement Team.
- 1.5 Publication of contract opportunities are a legal requirement and are not permitted through any other route but YORtender, without the prior approval of the Corporate Procurement Officer and Head of Legal and Democratic Services.

2. Requirements for Invitations to Quote (ITQ)

2.1 Any procurement documentation for quotation exercises must be complete prior to publication of the ITQ, and must include as a minimum:

- Evaluation Criteria and marking methodology
- Proposed terms and conditions of contract

As a minimum, the tender documents must include:

- a) Calderdale Invitation to Quote completed template with associated forms as required in the Template
 - b) Any full scope or specification, including quality questions & explanation of evaluation methodology
 - c) Suitability Assessment, if identified as required
 - d) Proposed Terms and Conditions of the Contract
 - e) Proposed Quality/price split
- 2.2 The use of a Procurement Specific Questionnaire is not permitted for contracts with a value below the Procurement Act 2023 Thresholds. Suitability Assessments may be used for quotation exercises where it is proportionate and appropriate to the needs of the contract and in line with guidance issued by the CPU.
- 2.3 All procurements must comply with publication of notice requirements as instructed by CPU, as CPR 4.9 of Part One General CPRs.
- 2.4 The Chief Officer, or their delegated officer if appropriate, is responsible for ensuring all required complete documentation is submitted to Procurement team and Legal Services.
- 2.5 Any documentation provided that is incomplete will not be published and will be returned to the applying service team for resolution, regardless of timescales agreed for publication of the document.
- 2.6 Chief Officers must ensure that any construction suppliers are appointed in line with S151 Standards for the Construction Industry Scheme (CIS).

3. Confidential Treatment of Submitted Quotes or Tenders

3.1 Section 15 of Part One of the Contract Procedure Rules regarding confidentiality in the procurement process will apply.

4. Use of An Alternative Route

4.1 It is within the remit of the Chief Officer to authorise alternative routes in exceptional circumstances. In the case of eligible Light Touch Contracts, it is within the remit of the relevant Chief Officer to authorise an alternative such as a direct award. The Chief Officer also retains the remit to authorise use of a closed quotes exercise where this is appropriate.

5. Decision and Approval Report

- 5.1 All procurements falling within these thresholds must evidence the decision and approval trail for the procurement action as required by CPR 10, Part One of the General CPRs.

6. Declaring Conflicts of Interest & Completion & Maintenance of Conflicts Assessments

- 6.1 CPR 14, Part One of the General CPRs regarding declaration of interests applies in all procurements, and the completion and maintenance of Conflicts Assessments for procurements over £10,000 will apply.

7. Clarification of Quotes

- 7.1 Any requests for clarification for either quotes or tenders submitted both to and from bidders or prospective bidders, must be submitted via YORtender, unless, in the case of technical issues, an alternative method is approved by Legal Services and Procurement. It must also be undertaken in compliance with instructions & guidance issued by CPU.

8. Acceptance of Qualified Quotes

- 8.1 Qualified quotes must not be accepted unless invitation to submit qualified quotes is indicated in the quote documentation.

9. Late and Rejected Tenders

- 9.1 Quotes must be submitted before the closing deadline and time set in the Invitation to Quote and advertised on YORtender and Find A Tender.
- 9.2 If a bidder has indicated, in writing, they have been unable to submit a bid due to a technical issue with YORtender, only if it is evidenced that it is a fault of the YORtender system, would the Council consider acceptance of a late bid.
- 9.3 Rejected quotes must not be considered by the evaluation panel.

10. Evaluation Exercise and Moderation

- 10.1 The evaluation exercise must conclude with a moderation exercise to reach a consensus on scoring, to ensure fair consideration of all compliant bids and in line with instructions, guidance and training provided by the CPU.
- 10.2 Evaluation by averaging of individual scores is strictly forbidden and will be deemed an uncompliant procedure, risking delays, disruption and possible abandonment of the procurement process.

11. Evaluation Panels & Panel Membership

- 11.1 The composition of an Evaluation Panel will be determined by the value and complexity of the procurement, and the evaluation panel must reflect the required range of relevant expertise needed to make the relevant assessment of submitted bids. For below threshold procurements, evaluation panels should have 3 members to provide a balanced panel unless unavoidable, in which case, approval will be required from the Corporate Procurement Officer.
- 11.2 All evaluation must be undertaken in accordance with the evaluation criteria specified in the published tender documents. No deviation or introduction of undeclared sub-criteria is permitted, and the introduction of any such criteria will result in the tender process being declared void.
- 11.3 The Chair must ensure that an updated Conflicts Assessment has been completed and submitted prior to issuing of the tender documents to the panel for evaluation.

12. Recording the Evaluation

- 12.1 The scores and comments justifying and explaining marks of the Panel, must be recorded using the latest templates, matrices and procedures instructed by the CPU, unless specific approval to use alternatives (such as framework templates) is given by the Corporate Procurement Officer.
- 12.2 The Chair is responsible for ensuring that the assessment summary is a true record and reflection of the panel discussions and decisions.
- 12.3 All copies of evaluation notes and assessment summary, must be retained by the commissioning service in line with the Councils Records Management, Retention and Disposal Schedule.

13. Contract Award

- 13.1 On conclusion of the evaluation exercise, then all suppliers must be notified of the outcome in line with instruction and guidance issued by the CPU.
- 13.2 Following signing of the Contract, a contract details notice must be published on the Find a Tender system. Direct award notices must also be published for any closed exercises, including direct awards using a framework.

Section 2 -Threshold Specific Contracts Procedure Rules

Appendix C: Contract Procedure Rules for Procurements

Exceeding Procurement Act 2023 Thresholds

1. Compliance and Governance Requirements

- 1.1 All procurements with a value above the Procurement Act thresholds, must follow the CPRs, and instructions, guidance and templates issued by the CPU to ensure compliance with the Procurement Act 2023.
- 1.2 The completion of the Procurement Summary report is required from the beginning of the procurement process as this forms part of the evidence trail for Audit purposes of compliance with the procedure.

2. Routes to Market

- 2.1 There are two available routes to market for procurements with a value over the Procurement Act 2023 Thresholds:

Open an offer out to the open market and open to any legal bidder

Competitive Flexible Procedure enables a more flexible and fluid procurement process depending on the complexity, requirements and expected outcomes of the procurement.

- 2.2 All above threshold procurements must be undertaken in agreement with CPU and Legal team to ensure compliance with the Procurement Act 2023.
- 2.3 Each over threshold procurement route has required procedures, including publication of both mandatory and optional notices at different stages of the procedures.
- 2.4 All above procurement thresholds must be done in compliance with instruction & guidance issued by the CPU and any further requirements from the Legal team. This includes the use of the correct templates and publication of the correct transparency notice requirements as stated the Procurement Act 2023.

3. Completion and Maintenance of Conflicts Assessments (formerly Conflict of Interest query)

- 3.1 CPR 14 regarding the completion and maintenance of a Conflicts Assessment applies to all over threshold procurements and must be conducted in line with further instruction & guidance as issued by the Corporate Procurement Unit.

4. Preliminary Market Engagement and Expressions of Interest

- 4.1 Where early market engagement is identified, this must ensure that the subsequent procurement process remains open, fair and transparent and does not give any one supplier a competitive advantage over others.
- 4.2 Where a need for preliminary market engagement is identified, any requirements of the Procurement Act 2023 must be met and instructions and guidance issued by the Corporate Procurement Team must be followed.

5. Tender Notice (Mandatory Publication of Notice)

- 5.1 For either an open or competitive flexible procedure, a Tender notice must be published, with all associated tender documents, on Find a Tender Service and YORtender. A complete tender pack is required and as a minimum must include:

For publication:

- a) Calderdale Invitation to Tender completed template & all associated documents as required in the Template
- b) Project Specific Questionnaire
- c) Terms and Conditions of the Contract as prepared and provided by legal team

For internal governance purposes

- a) Conflicts Assessment
 - b) Record of Decisions & Approval Procurement Summary detailing information for publication on the YORtender portal
- 5.2 All over threshold procurements, including call offs from frameworks or Dynamic Markets must be undertaken line with CPU instructions & guidance, and only following approval from CPU and Legal Services to proceed.
 - 5.3 The Chief Officer, or their delegated officer as appropriate, is responsible for ensuring all required and complete documentation is submitted to Procurement team and Legal Services.
 - 5.4 Any documentation provided that is found to be incomplete will not be published and will be returned to the service team for resolution, regardless of timescales set for publication of the document.

6. Clarification of Tenders

- 6.1 Any requests for clarification submitted both to and from bidders or prospective bidders, must be via YORtender, unless, in the case of technical issues, an alternative method is approved by Legal Services and Procurement.

7. Confidential Treatment of Submitted Tenders

- 7.1 CPR 15, Part One General CPRs will apply in all over threshold procurements.

8. Late and Rejected Tenders

- 8.1 Tenders must be submitted before the closing deadline and time set in the Invitation to Tender and advertised on YORtender and Find A Tender.
- 8.2 If a Tenderer has indicated, in writing, they have been unable to submit a bid due to a technical issue with YORtender, acceptance of a late bid may only be considered if it can be demonstrated that it was as a result of a fault with the YORtender system.
- 8.3 Rejected tenders must not be considered by the evaluation panel.

9. Evaluation and Moderation Procedure

- 9.1 The evaluation exercise must conclude with a moderation exercise to reach a consensus on scoring, to ensure fair consideration of all compliant bids and in line with instructions, guidance and training provided by the CPU.
- 9.2 Evaluation by averaging of individual scores is strictly forbidden and will be deemed an uncompliant procedure, risking delays, disruption and possible abandonment of the procurement process.

10. Evaluation Panels & Panel Membership

- 10.1 The composition of an Evaluation Panel will be determined by the value and complexity of the procurement, and the evaluation panel must reflect the required range of relevant expertise needed to make the relevant assessment of submitted bids. All panels for procurements exceeding the Procurement Act threshold must have, as an absolute minimum, 3 members of an evaluation panel, including a Chair.
- 10.2 All evaluation must be undertaken in accordance with the evaluation criteria specified in the published tender documents. No deviation or introduction of undeclared sub-criteria is permitted, and the introduction of any further criteria not allowed for in the Tender notice, will result in the tender process being declared void.
- 10.3 The Chair must ensure that an updated Conflicts Assessment has been completed and submitted for each stage and prior to issuing of the tender documents to the panel for evaluation.

11. Recording the Evaluation

- 11.1 The scores and comments justifying and explaining marks of the Panel, must be recorded using the latest templates, matrix and procedures published on the Contracts and Procurement Intranet page, unless an alternative is approved by the Corporate Procurement Officer.

- 11.2 The Chair is responsible for ensuring that the assessment summary is an accurate and true reflection of the views of the panel during moderation.
- 11.3 The Panel will be required to provide an assessment summary as instructed by the CPU, in compliance with PA23.
- 11.4 All copies of evaluation notes and assessment summary, must be retained by the commissioning service in line with the Councils Records Management, Retention and Disposal Schedule.

12. Contract Award Notice (Mandatory Publication of Notice) and Stand Still Period

- 12.1 Once the decision to award is made, the relevant tenderers, both successful and unsuccessful, must be made aware and provided with an assessment summary of why their bid was successful or unsuccessful. At the same time, a Contract Award Notice must be published on Find a Tender Service.
- 12.2 Publication of the Contract Award notice triggers a standstill period of 8 working days, during which time the formal contract may not be awarded to the proposed successful bidder until the completion of the standstill period and that there has been no formal challenge.

13. Contract Details and Formal Award of Contract (Mandatory Publication of Notice)

- 13.1 Within 30 days of the formal contract being signed, a Contract details notice must be published on the Find a Tender site.
- 13.2 All instructions & guidance published by the CPU must be followed regarding further publication of eligible contracts exceeding £5m in value as these may also be required to have redacted contracts published as part of transparency procedures.

14. Further Transparency Requirements Regarding Contract Management

- 14.1 Those contracts with a value of over £5m and which meet the criteria of the Procurement Act 2023 for publication, must follow instruction & guidance issued by CPU regarding any future publishing and monitoring of relevant contract performance information.