

**Joint Report of the Presiding Member, Monitoring Officer and
Head of Democratic Services**

Council – 2 December 2014

**AMENDMENTS TO THE COUNCIL CONSTITUTION & CONSTITUTIONAL
MATTERS**

Purpose:	To make amendments in order to simplify, improve and / or add to the Council Constitution.
Policy Framework:	None.
Reason for Decision:	A decision of Council is required to change the Council Constitution.
Consultation:	Finance, Legal
Recommendation(s):	It is recommended that: 1) The terms of reference of the Equalities Committee be added to the terms of reference of the Engagement and Inclusion Cabinet Advisory Committee; 2) The Equalities Committee be abolished; 3) The terms of reference of the Standards Committee Vacancy Panel be amended as outlined in the report; 4) The changes to the Council Constitution as outlined below in relation to Contract Procedure Rules and Scrutiny Procedure Rules be adopted.
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1. Introduction

1.1 In compliance with the Local Government Act 2000, the City and County of Swansea has adopted a Council Constitution. A number of issues have arisen since adoption and in order to maintain the aims, principles and procedures set out in Articles 1 and 15 of the Council Constitution, it is proposed that the amendments set out below should be made to the Constitution.

2. Delegated Minor Corrections to the Council Constitution

2.1 There are no delegated minor corrections to the Council Constitution.

3. Amendments to the Council Constitution

3.1 This report outlines a number of suggested amendments to the Council Constitution. The amendments are within the following area of the Council Constitution:

- a) Part 3 - Terms of Reference;
- b) Part 4 - Contract Procedure Rules;
- c) Part 4 - Scrutiny Procedure Rules.

4. Part 3 – Equalities Committee - Terms of Reference

4.1 It is proposed to abolish the Equalities Committee and for its work to be carried out by the Engagement and Inclusion Cabinet Advisory Committee.

4.2 It is further proposed that the terms of reference of the Equalities Committee as set out below be added to the terms of reference of the Engagement and Inclusion Cabinet Advisory Committee.

- 1) To support the Council in complying with Equality and Welsh Language legislation and regulations in relation to staff, elected members, members of the public, visitors and others closely associated with the City & County of Swansea.
- 2) To promote an inclusive, supportive, healthy and equitable working environment that is consistent with the Corporate Objectives, Strategic Equality Plan, Welsh Language Scheme and Social Inclusion Strategy.
- 3) To ensure that the Council implements all actions and plans emanating from policy including undertaking Equality Impact Assessments (EIAs) in relation to all services and budgets.
- 4) To ensure appropriate equality and diversity training and developments is provided and accessible to all staff, elected members and others associated with the Council.
- 5) Monitor data, trends and the assessment of impact of policies, procedures, criteria and practices in relation to compliance with Equality and Welsh Language legislation and regulations.

5. Part 3 - Standards Committee Vacancy Panel - Terms of Reference

5.1 In preparation for the need to appoint two Independent Members to the Standards Committee in the New Year, a review of the Standards Committee Vacancy Panel has been undertaken. It was found that they were confusing as such it is proposed that they be amended.

5.2 The current terms of reference are outlined below:

“To appoint the Independent Persons to the Standards Committee when vacancies occur”.

5.3 It is proposed that the current terms of reference be deleted and replaced as outlined below:

- “1. *To shortlist (if necessary) applicants seeking to be appointed as the Independent Co-opted Members to Standards Committee.*
2. *To interview applicants seeking to be appointed as the Independent Co-opted Members to Standards Committee.*
3. *To make recommendation(s) for appointment if appropriate to Council.*

Note: *The Standards Committee Vacancy Panel:*

- a)** *Shall consist of 5 Members, one of which must be a Lay Member and one of which must be a Community / Town Councillor serving within the boundaries of the City and County of Swansea;*
- b)** *Shall be Chaired by a Lay Member appointed by the Monitoring Officer.”*

6. Part 4 - Contract Procedure Rules

6.1 A review of the Contract Procedure Rules has recently been completed. This review has led to a number of suggested amendments. The Contract Procedure Rules together with the proposed amendments are shown as **Appendix A** using tracked changes.

7. Part 4 Scrutiny Procedure Rules

7.1 The Scrutiny Programme Committee at its meetings on 29 September and 27 October 2014 agreed to seek a Council decision in order to amend the Scrutiny Procedure Rules, specifically, Paragraph 11 “Chair’s Letters” (Minute 72 and 87 refers).

7.2 The Scrutiny Programme Committee proposed a number of amendments to Paragraph 11 “Chair’s Letters” including a reduction in the timescale allowed for a Cabinet Member to respond to the Scrutiny Programme Committee from 1 month to 21 calendar days.

7.3 The current wording together with the proposed amendments are shown as **Appendix B** by way of tracked changes.

8. Equality and Engagement Implications

- 8.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

9. Financial Implications

- 9.1 There are no specific financial implications associated with this report.

10. Legal Implications

- 10.1 There are no specific legal implications associated with this report. The amended version of the Council Constitution will be available at www.swansea.gov.uk/constitution

Background Papers: None.

Appendices:

Appendix A	Contract Procedure Rules - Tracked Changes
Appendix B	Extract from Scrutiny Procedure Rules - Paragraph 11 "Chair's Letters - Tracked Changes

Contract Procedure Rules - Tracked Changes

CONTRACT PROCEDURE RULES

1. Scope of Contract Procedure Rules

A. Officer Responsibilities

- 1.1 Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Procedure Rules and all UK and European Union legal requirements. Officers must ensure that any agents, Consultants and contractual partners acting on their behalf also comply.
- 1.2 No contract shall be let unless the expenditure involved has been included in approved capital or revenue budgets, and any relevant policies e.g. current spending restrictions, have been complied with, or has been otherwise approved by or on behalf of the Council.
- 1.3 Officers must:
 - a. Check whether a suitable Corporate Contract exists before seeking to let another contract;
 - b. Where a suitable Corporate Contract exists, this must be used with exceptions allowed by agreement of the Strategic Procurement Manager;
 - c. Keep the records required by Contract Procedure Rule 2;
 - d. Take all necessary legal, financial and professional advice.
- 1.4 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

B. Relevant Contracts

- 1.5 All Relevant Contracts must comply with these Contract Procedure Rules. A Relevant Contract is any arrangement made by, or on behalf of, the authority (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:
 - a. The supply or disposal of goods;
 - b. The hire, rental or lease of goods or equipment;
 - c. The delivery of services, including (but not limited to) those related to:
 - The recruitment of agency staff;

- Commissioning of social care services;
- Financial and consultancy services.

1.6 Relevant Contracts do not include:

- a. Contracts of employment which make an individual a direct employee of the authority, or
- b. Agreements regarding the acquisition, disposal, or transfer of land (for which Land Procedure Rules shall apply);
- c. Advice or instruction of Counsel but no instructions will be permitted without prior approval from the Head of Legal, Democratic Services & Procurement;
- d. The engagement of costs draughtsmen or expert witnesses within or in the contemplation of legal proceedings;
- e. The engagement of designated artists, performers, productions for public entertainment purposes or items of art for public display;
- f. Transactions made in relation to investments and borrowings made by the Chief Financial Officer including those related to the Pension Fund;
- g. Works or services provided by internal departments to other internal services except to the extent that the contract relates to grant funded expenditure where compliance with grant funding rules is precedent.

2. Common Requirements

A. Records

- 2.1 Quotation and tender exercises must be kept for six years, after the end of the contract period.
- 2.2 Written documents which relate to unsuccessful quotes or tenders may be scanned or microfilmed or stored by some suitable method after 12 months from award of contract, provided that there is no dispute regarding the award.

B. Advertising

2.3 Identifying and Assessing Potential Tenderers

Officers shall ensure that, where proposed contracts, irrespective of their total value, might be of interest to potential contractors located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be.

Examples of where such advertisements may be placed include:

- a. The council's website;
- b. Sell2Wales advertising portal;
- c. National official journals, or
- d. The Official Journal of the European Union (OJEU) (even if there is no requirement within the EU Procedure).

C. Assessing Tenderers

2.6 Officers are responsible for ensuring that all tenderers for a Relevant Contract are suitably assessed. The assessment process shall ensure that the potential tenderers fulfil the following criteria as relevant:

- a. Competitive commercial offerings;
- b. Sound economic and financial standing;
- c. Technical ability and capacity to fulfil the requirements of the authority;
- d. Insurances;
- e. Health and safety policies and record;
- f. DBS certification;
- g. Equality and diversity record and service delivery through the medium of Welsh. (If applicable);
- h. Commitment to sustainability, employment, training and targeted recruitment in line with the Council's Beyond Bricks and Mortar strategy (where applicable).

D. Framework Agreements

2.7 The term of a Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

2.8 Contracts based on Framework Agreements may be awarded by either:

- a. Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or;
- b. Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
 - Fixing a time limit which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract;
 - Awarding each contract to the tenderer who has submitted the best Tender on the basis of the Award

Criteria set out in the specifications of the Framework Agreement.

E. Duration of Contracts

- 2.9 No contract shall be let for a term exceeding five years unless permitted by EU Procurement Directive or with exceptions allowed by agreement of the Strategic Procurement Manager.

3. Contract Authority Value Bands

- 3.1 The value bands determine the procurement process and level of competition required for each procurement exercise. The contract value bands are:

BAND A: Below £5,000
BAND B: £5,001 - £75,000
BAND C: £75,001-£1,000,000
BAND D: Over £1,000,000

- 3.2 The value of a contract means the total estimated value of the contract over the full contract period including possible extensions and cumulative costs. The Officer must calculate the total value. A framework agreement shall be valued as a single contract under these CPR.
- 3.3 Officers are not permitted to divide or separate contracts if the purpose or effect is to reduce the total value and / or to amend or prevent the application of these CPR.
- 3.4 All procurement including Band A shall be open to scrutiny by Internal and External Auditors.

4. Competition Requirements

- 4.1 The following procedures apply where there are no other procedures which take precedence. If in doubt, Officers must seek the advice of the Strategic Procurement Manager.
- 4.2 The Strategic Procurement Manager shall be notified on form CP1 in advance of inviting tenders or quotations of all proposed contracts whose estimated value is over £25,000.00.
- 4.3 It is recognised within the UK Contract Regulations 2006 that the requirements to advertise tenders for works is different to the requirement to advertise tenders for goods and services, and this will be reflected in these procedures.

4.4 Contracts within BAND A (Below £5,000) Obtain best value

- 4.4.1 When buying works, goods or services below £5,000.00 there will be no formal quotation process, the Officer shall demonstrate that best value has been obtained by maintaining appropriate records in accordance with CPR2. If an existing contract exists, officers must use these contracts, with exceptions allowed by agreement of the Strategic Procurement Manager.
- 4.4.2 The Officer should make enquiries of Procurement to check if there is a regular requirement for the goods / services, including other Council departments. If the goods / services are a regular requirement consideration must be given to setting up a formal contract or framework agreement. This should be done in conjunction with the relevant Category Manager.

4.5 Contracts within BAND B (£5,001 - £75,000)

- 4.5.1 For contracts with a total value estimated not to exceed BAND B (£75,000) there is no formal need to request tenders and the following requirements apply:
- 4.5.2 **Goods, Services and Works - £5,001 - £25,000** – at least four written quotations shall be sought from appropriate suppliers registered on the National Procurement Website (also known as Sell2Wales) with exceptions allowed by agreement of the Strategic Procurement Manager. Officers will need to justify their supplier selection process within their records.
- 4.5.3 **Goods and Services only - £25,001 - £75,000** – requirements shall be openly advertised on the National Procurement Website (also known as Sell2Wales) with exceptions allowed by agreement of the Strategic Procurement Manager.
- 4.5.4 **Requirements for Works only – £5,001 - £75,000** - The use of an approved portal e.g. Constructionline may be permitted subject to prior formal consultation with the Strategic Procurement Manager, Requirements can also be openly advertised on the National Procurement Website (also known as Sell2Wales).

4.6 Contracts within BAND C and D (£75,001 and over)

- 4.6.1 **Goods and Services only** - Requirements shall be openly advertised on the National Procurement Website (also known as Sell2Wales).
- 4.6.2 **Works – £75,001 – £150, 000.00** - the use of an approved portal e.g. Constructionline may be permitted subject to prior formal consultation with the Strategic Procurement Manager Requirements can also be openly advertised on the National Procurement Website (also known as Sell2Wales).

- 4.6.3 **Works £150,001~~0.00~~ and above** – Requirements shall be openly advertised on the National Procurement Website (also known as Sell2Wales).
- 4.6.4 If there are no suitable organisations on the National Procurement Website (also known as Sell2Wales) the Officer, will consult with the Strategic Procurement Manager to agree a method of identifying alternative organisations.
- 4.7 **EU Thresholds (Currently £172,514 for the supply of goods and services and £4,322,012 for works contracts. These thresholds do fluctuate and officers are to seek assurance from the Procurement Department for confirmation).**
- 4.7.1 When requirements exceed the prescribed thresholds of the UK Contract Regulations for Works, Goods and Services, including establishing framework agreements, tendering must be undertaken in consultation with the Head of Legal Service and the Strategic Procurement Manager.

5. Disposal of Assets

- 5.1 Assets for disposal (excluding land and buildings which are dealt with in the land disposals section) must be sent to public auction except where better Value for Money is likely to be obtained by inviting Quotations and Tenders. (These may be invited by advertising on the council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Chief Financial Officer.

6. Providing Services to External Purchasers

- 6.1 The Strategic Procurement Manager must be consulted where contracts to work for organisations other than the authority are contemplated.
- 6.2 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules. If in doubt, Officers must seek the advice of the Strategic Procurement Manager.

7. Consultants

- 7.1 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment. Records of consultancy appointments shall be maintained in accordance with Contract Procedure Rule 2.

7.2 Consultants shall be required to provide evidence of and maintain professional indemnity insurance policies to the satisfaction of the relevant Officer for the periods specified in the respective agreement.

8. Standards and Award Criteria

8.1 The Officer must ascertain the relevant British, European or international standards which apply to the subject matter of the contract. The Officer must include those standards which are necessary properly to describe the required quality. The Head of Legal Services must be consulted if it is proposed to use standards other than European standards.

8.2 The Officer must define Award Criteria that are appropriate to the purchase and designed to secure an outcome giving Value for Money for the authority. The basic criteria shall be:

- a. 'Lowest price' where payment is to be made by the authority or;
- b. 'Whole life cost' of the product or service where payment is to be made by the authority;
- c. 'Highest price' if payment is to be received, or;
- d. 'Most Economically Advantageous Tender', where considerations of quality and price apply.

8.3 If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include:

- a. Price;
- b. Service;
- c. Quality of goods;
- d. Running costs;
- e. Technical merit;
- f. Delivery date;
- g. Cost effectiveness;
- h. **Employment and training opportunities;**
- g-i.
- h-j. Quality;
- i-k. Relevant environmental considerations;
- j-l. Aesthetic and functional characteristics (including security and control features);
- k-m. Safety;
- l-n. After-sales services;
- m-o. Technical assistance and;
- n-p. Any other relevant matters.

8.4 Award Criteria must not include:

- a. Non-commercial Considerations;
- b. Matters which discriminate against suppliers from the European Economic Area.

9. Invitations to Tender / Quotations

- 9.1 The use of standard approved documentation must be used at all times. Wherever possible all quotations and tenders are to be undertaken through the Council's e-tendering portal. It shall be clearly stated in any quotation and tender documentation, and any related advertisement, that the Council does not bind itself to accept any quotation or tender.
- 9.2 All quotations shall be sought using the Council's standard 'Request for Quotation' form.
- 9.3 All tenders shall be sought using the Council's standard Invitation to Tender. In order to comply with CPR and be valid all Invitation to Tender documents shall include the following:
- a) The Council's standard Instructions to Tenderers which should include the following information:
 - Notification that Tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;
 - Notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender;
 - A stipulation that any Tenders submitted by fax electronic means (other than eTender) shall not be considered;
 - The title of the proposed contract;
 - The name of the relevant Officer;
 - For paper tenders only, a return envelope or pre-printed label;
 - The Council contact address for queries during the tender period;
 - A statement about the council's policies.
 - b) A description of the award procedure.
 - c) A clear specification describing the Council's requirements in sufficient detail to enable the submission of competitive offers, including drawings as required.
 - d) A Method Statement prompting the bidder to respond to specific questions as to how goods, works and services would be delivered in accordance with the specification and conditions of contract.

- e) A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose.
 - f) A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
 - g) Pricing Schedule(s).
 - h) A description of the selection and award criteria complete with the evaluation methodology to be adopted.
 - i) A statement indicating whether TUPE may apply, where appropriate.
 - j) A description of how arithmetical errors discovered in submitted tenders are to be dealt with.
 - k) A description of how abnormally low tenders are to be dealt with.
 - l) Details of the tender return date, time (not later than noon) and postal address or website as appropriate.
 - m) Details of the Terms and Conditions of Contract that shall apply including details of any performance guarantee bond and / or parent company guarantee.
- 9.4 The Invitation to Tender shall state that any Tender received after the date and time stipulated in the Invitation to Tender may be disqualified.
- 9.5 Documentation for a particular procurement shall be made available to all tenderers at the same time. This will be the case whether electronic or paper based. Any later supplementary documentation shall be issued simultaneously to all tenderers.
- 9.6 Tender documentation for contracts where the value may exceed £75,000 shall be prepared in formal consultation with the Strategic Procurement Manager.
- 9.7 All e-Tenders shall be submitted via the Council's approved secure e-tendering portal
- 9.8 Any paper/hard copy format tenders shall be addressed to the:

**Head of Legal, Democratic Services and Procurement,
Council of the City and County of Swansea,
Civic Centre,
Swansea,**

SA1 3SN.

- 9.9 The normal period for return of tenders below EU thresholds shall not be less than 28 days from the issue date of the Invitation to Tender, with exceptions allowed by agreement of the Strategic Procurement Manager.
- 9.10 For EU procurement timescales prescribed by the EU Regulations shall apply at all times.
- 9.11 Letters of intent shall only be used with the approval of the Head of Legal Services and shall be drafted by the Head of Legal Services where an organisation is required to provide services, supplies or works prior to entering into a formal written contract with the Council
- 9.12 Pre-invitation enquiries are encouraged and may assist the [Council](#) in a procurement process. Pre-invitation enquiries may be authorised by the Strategic Procurement Manager and will be undertaken in conjunction with a dedicated Category Manager.
- 9.13 No information about the Council's intentions shall be disclosed to any party which is not subsequently disclosed to all others.
- 9.14 Potential suppliers shall not be led to believe that any information they provide will lead to them being invited to bid for this contract, or be awarded this or any contract.
- 9.15 A record of all pre-invitation enquiries, including notes of any meetings held, persons present, and / or notes of any telephone conversations is to be kept by Officers.
- 9.16 Any requests for third parties to assist in the preparation of tender documents shall be made following formal consultation with the Head of Legal, Democratic Services and Procurement.

10. Opening and Shortlisting of Tenders

- 10.1 All hard copy tenders and related documentation for a contract shall be held in a safe place and opened at the same time in accordance with the method agreed by the Head of Legal, Democratic Services and Procurement. Under no circumstances should any tenders be opened before the closing date for their receipt. An accurate and contemporaneous record shall be made of the tenders received including names, overall tender sum (if available) and the date and time of opening.
- 10.2 Electronic tenders should be password released after the closing date by an officer nominated by the Strategic Procurement Manager. This instruction applies to all values of electronic tenders. Tenders received by fax or other electronic means (e.g. email) must be rejected, unless

they have been sought in accordance with an approved electronic tendering system.

- 10.3 The above procedure will apply to the submission and opening of Supplier Suitability Questionnaires and Pre-Qualification Questionnaires.
- 10.4 Any Shortlisting must have regard to the financial and technical standards relevant to the contract and the Award Criteria. Special rules apply in respect of the EU Procedure.
- 10.5 The Officer must not disclose the names of tenderers to any staff involved in the receipt, custody or opening of Tenders.

11. Clarification Procedures

11.1 Clarifications

The Officer may contact a tenderer via the secure messaging system for electronic tenders or via email/written correspondence for paper/hard copy format tenders in order to:

- a) Clarify any discrepancies;
- b) Clarify conflicting or confusing statements;
- c) Seek a better understanding of the terms used.

- 11.2 Under no circumstances shall clarification procedures be used in lieu of the negotiation processes as a means of improving offers being considered. Tenders will retained by the Council at all times.
- 11.3 When seeking clarification no reference shall be made to any other tender under any circumstances.
- 11.4 Verbal clarifications are strictly prohibited.
- 11.5 For hard copy tenders, a copy of all of the correspondence relating to the clarification shall be placed on the tender file.
- 11.6 Where e-Tenders are undertaken via the approved e-tendering system, all correspondence is automatically retained within the electronic tender folder.

11.7 Discrepancies

If during a tender evaluation an error or discrepancy is discovered -which may affect the tender price, then the tenderer shall be given details of the error or discrepancy and be given the opportunity to either:

- a) Amend the tender to correct the error / discrepancy; or
 - b) Withdraw the tender.
- 11.8 No opportunity shall be given to amend a rate other than where due to an arithmetical or interpretive error. Issues arising from arithmetical or interpretive errors shall be addressed and resolved by the Officer before tenders are considered by an [Evaluation Panel](#).
- 11.9 When considering any potential discrepancy no tenderer shall receive any detail or information of tenders submitted by other tenderers under any circumstances.
- 11.10 Full detail of any clarifications and alterations shall be included in the report prepared for the Evaluation Panel.

12. Post-Tender Negotiation

- 12.1 Discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.
- 12.2 If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall be undertaken as follows:
- 12.2.1 Where there is an adjustment in the scope or quantity included in the tender documents, negotiations shall be undertaken with all tenderers who submitted bids.
- 12.2.2 Where the intention is to secure a better commercial deal for the Council, then negotiations shall only be undertaken with the winning tenderer and after all unsuccessful tenderers have been informed.
- Officers appointed to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 12.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Head of Legal, Democratic Services and Procurement who, together with the Strategic Procurement Manager, must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two Officers, one of whom must be from the procurement team, leading the negotiations.
- 12.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

13. Evaluation and Award of Contracts and Framework Agreements

- 13.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of Quotations, Tenders and the identity of tenderers must be preserved at all times and information about one tenderer's response must not be given to another tenderer.
- 13.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

Evaluation Procedure

- 13.3 **Evaluation and Award of Quotations and Tenders in BAND A (Below £5,000)** - The Officer shall maintain a record of all quotations received in order to justify that best value has been obtained in accordance with Contract Procedure Rule 2.
- 13.4 **Evaluation and Award of Quotations and Tenders in BAND B (>£5,000~~1~~ - <£75,000)** - The evaluation procedures for quotations shall be approved by the Officer with the objective of obtaining the best, overall, long-term value to the [Council](#) and records are to be maintained in accordance with Contract Procedure Rule 2. If appropriate an Evaluation Panel shall be convened.
- 13.5 A [Contract Award Report](#) in a standard form shall be produced to be considered by the Responsible Officer and the Strategic Procurement Manager.
- 13.6 **Evaluation of Tenders valued above BAND C (>£75,001 to £1,000,000)**
- Tenders within BAND C shall be considered by an [Evaluation Panel](#).
- a) An Evaluation Panel shall be convened and managed by the client department who shall inform the Strategic Procurement Manager of the proposed arrangements.
- b) Tenders shall be evaluated in accordance with the award criteria specified in the [Invitation to Tender](#) documentation.
- 13.7 Evaluation Panels shall be composed of:
- a. A procurement officer who will chair the panel;
 - b. A Legal officer;
 - c. A Finance officer, or schools' delegated finance officer / chair of governors;
 - d. The Officer.

13.8 In addition to those persons specified above the Tender Evaluation Panel may include for example:

- a. Other officers acting as observers;
- b. Officers to provide technical advice e.g. on Health and Safety;
- c. External advisers / [consultants](#);
- d. A member of the audit team can also attend the Evaluation Panel at their election or by invitation.

13.9 The following requirements shall apply to [Evaluation Panels](#):

Panels shall be formally convened by the client department and recorded by the client department representative;

- a. All information, documentation and deliberations shall be regarded as strictly confidential;
- ~~b.~~ The decision reached shall be recorded in writing, agreed by the delegates of the Evaluation Panel and a copy placed on the client department's tender file;
- ~~b.c.~~ Virtual panels will be permissible by agreement of the Strategic Procurement Manager but all other requirements will still need to be complied with;
- ~~e.d.~~ A [Contract Award Report](#) shall be prepared by the client department representative and agreed by the delegates of the tender Evaluation Panel;
- ~~d.e.~~ The Contract Award Report must be approved by the following officers or their nominees prior to any contract being entered into:
 - The client department Head of Service;
 - The Head of Legal Democratic Services and Procurement;
 - Strategic Procurement Manager;
 - Head of Finance.

13.10 Evaluation of Tenders valued above Band D (over £1,000,000)

13.11 All tenders shall be evaluated in accordance with the procedures applicable to Band C tenders.

13.12 Acceptance of tenders shall be decided as Contract Procedure Rule 13.9, with additional sign-off obtained from the relevant Cabinet member. The Cabinet member may decide that the award decision should be considered by Cabinet if:

- a. The contract to be awarded is deemed controversial;
- b. The Value exceeds £5m;
- c. The Cabinet member recommends that the award decision should be subjected to further scrutiny.

13.13 Evaluation and Award of Framework Agreements and Contracts

- 13.13.1 The evaluation and award of a Framework Agreement established by the Council shall be in compliance with the procedures applicable to Band C. If the value of the framework exceeds £1,000,000 then contract award will be decided in accordance with 13.12.
- 13.13.2 The award of call-off contracts from a Framework Agreement established by the Council or from a Framework Agreement established by another public body shall be in compliance with this Contract Procedure Rule 13.

14. Briefing of Unsuccessful Bidders

- 14.1 An Officer, on receipt of a written request, shall provide a briefing to an unsuccessful bidder.
- 14.2 The briefing may be in the form of a letter or a minuted meeting.
- 14.3 For EU tender processes the Officer shall draft a standstill letter to comply with the requirements of EU legislation. A template standstill letter will be provided by the Procurement Section.

15. Terms and Conditions, Signing and Sealing of Contracts

- 15.1 No work shall commence until the contract is signed, and sealed if necessary, by all parties. Failure to comply with this requirement may result in disciplinary proceedings.
- 15.2 All contracts shall be entered into using the Council's Standard Terms and Conditions for the Supply of Goods or Services or form of contract for works, which shall be noted on each Purchase Order and included in all Invitation to Tender documentation.
 - 15.2.1 Any exceptions to this must be approved by the Monitoring Officer prior to invitation to Tender documents being prepared.
- 15.3 Contracts up to (£140,000) shall be signed by a Responsible Officer.
- 15.4 Contracts (£140,001 and above) shall be made under the Common Seal of the Council.
- 15.5 Contracts awarded from a Framework Agreement established by the Council or another public body shall be signed or sealed in accordance with this Contract Procedure Rule.

16. Suspension and Termination of Contracts and Changes to Contracts

16.1 No contract shall be suspended or terminated without formal consultation with the Strategic Procurement Manager.

A. Changes to Contract Scope, Terms or Conditions

16.2 Any variation to the terms and conditions of an existing contract shall be referred to the Head of Legal, Democratic Services and Procurement and the Strategic Procurement Manager for approval. This does not apply to price fluctuation clauses in contracts.

16.3 The duration of a contract may be extended by the Responsible Officer after consultation with the Strategic Procurement Manager.

17. Contracts Register

17.1 The Head of Legal, Democratic Services and Procurement shall maintain a register of all contracts entered into by the Council valued above ~~Band B (above £25,000)~~.

~~17.2 For contracts below Band B (below £5,000) a register shall be maintained by the Responsible Officer of each client department.~~

18. Financial Monitoring

18.1 The Officer is responsible for monitoring the expenditure on contracts let. If the value is expected to exceed the original cost by more than the lower of 15% or £100,000 a report shall be made to the Head of Finance and the Head of Legal, Democratic Services and Procurement setting out the reasons as to why this has occurred.

19. Managing Contracts

19.1 Heads of Service are to name contract managers for all new contracts. All contracts must be managed in conjunction with the procurement department to ensure that the risk, and value is managed within the terms of the original agreement. Heads of Service must name an officer to work with the procurement department to manage the contract through its life.

19.2 All Contract managers including officers nominated by the Strategic Procurement Manager must follow the best practice advice available on the Procurement Intranet.

19.3 As a minimum, contract managers must:

- a. Maintain a risk register during the contract period;
- b. Undertake appropriate risk assessments and for identified risks;
- c. Ensure contingency measures are in place;

- d. Ensure that value is obtained throughout the life of the contract;
- e. Ensure performance;
- f. Ensure compliance with specification and contract;
- g. Ensure any value for money requirements are met;
- h. Maintain user satisfaction, and manage risk.

A. Risk Assessment and Contingency Planning

- 19.4 The standard business case template must be prepared for all procurements with a potential value over the EU Threshold. Provision for resources for the management of the contract, for its entirety, must be identified in the business case and undertaken in accordance with Contract Procedure Rule 19.1, 19.2, and 19.3.

B. Contract Monitoring, Evaluation and Review

- 19.5 All contracts which have a value higher than the EU Threshold limits, or which are high risk, are to be subject to formal periodic review with the contractor, as defined in the standard business case template and undertaken with a Category Manager delegated by the Strategic Procurement Manager.

19.6 For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the relevant Category Hub, who may consider escalation to the Commercial Board if deemed necessary.

20. Dispensations, Single Tender Procedures and Waivers

- 20.1 In circumstances defined in paragraph 20.1.2 it may be possible to dispense with the tendering and [quotation](#) processes required by these Contract Procedure Rules.

Where the nature and estimated value of a contract bring it below the current threshold of an EU Procurement process the requirements for tendering may only be dispensed with as set out below.

20.1.2 A dispensation may be available where:

- a) A Contract for emergency work or services or urgent supplies is necessary:
 - o For the protection of life or property;
 - o For the protection of the interest of the [Council](#);
 - o To comply with any statutory obligations of the Council for which there is no provision in an existing contract.

- 20.1.3 Dispensations will be considered by the Monitoring Officer, if approved, the dispensation will be recorded in a register kept for audit purposes.

20.1.4 In exceptional circumstances it may be necessary to grant a retrospective dispensation. Any application for a dispensation shall be submitted for approval within five (5) working days of having commissioned the required goods, works or services and Procurement shall be informed accordingly.

20.2 **Single Tender Procedure**

Single tender procedures will apply where:

- a) Contracts for goods, services and works where effective competition is prevented under current legislation;
- b) Contracts for goods, services and works where only a single supplier can reasonably be identified;
- c) Contracts where the work to be executed or the goods or services to be supplied consist of maintenance of or repairs to or the supply of parts or attachments for existing proprietary equipment where the supplier in question is the sole supplier.

20.2.1 Where it is proposed to use a single tender procedure for contracts in excess of £5000 the Responsible Officer shall submit the application to the relevant Head of Service and the Strategic Procurement Manager who will seek approval from the Monitoring Officer. Contract award will not be permitted until formal approval has been granted. The Monitoring Officer may insist that a competitive process is conducted.

20.2.3 Single tender procedures may not be used to facilitate urgent or time critical contracts.

20.2.4 The Monitoring Officer shall keep a register of all approved applications and all retrospective single tender applications and contracts in contravention of Contract Procedure Rule 20.2.

20.3 **Waivers from Contract Procedure Rules**

20.3.1 In exceptional circumstances the Monitoring Officer may waive a requirement of these rules in respect of an individual contract after considering a written report which will set out the factual background and justification for the request.

20.3.2 The Monitoring Officer shall keep a register of all approved applications.

Glossary

- Within the performance;
- Compliance with specification and contract;
- Cost;
- Any value for money requirements;
- User satisfaction and risk management.

See Contract Procedure Rules (CPR) the terms listed below shall have the following meanings:

Award Criteria - The criteria used to evaluate tenders and defined in CPR 8.

Cabinet - The Cabinet of the City and County of Swansea as set out in the Constitution under Executive Arrangements.

Category Hub – Hubs developed to manage all procurement activities for defined works, goods and services.

Chief Financial Officer - Section 151 of the Local Government Act 1972 requires each council to make one of its officers responsible for the proper administration of its financial affairs. Later legislation requires this person to be a qualified accountant.

Commercial Board – Officers empowered by the Director of Corporate Services to scrutinise and challenge procurement decision making and custodians of the Commercial Strategy.

Commercial Strategy - A formal corporate strategy which sets out the approach the Council will take to strategic procurement and which must be adhered to at all times.

Consultant - A person engaged to advise the Council.

Contract - A legally binding agreement between the Council and another party.

Contract Award Report - A report produced in a standard form by an Evaluation Panel, detailing the procurement process adopted and the recommendation for award relating to a particular contract.

Corporate Contract - A contract made by the Council which serves, or is capable of serving, the purposes of more than one department of the Council and for which approval to enter into and be contractually bound has first been obtained. This includes Framework Agreements established by the Council and other public bodies.

Council - The Council of the City and County of Swansea.

Council Constitution - The Constitution of the City and County of Swansea sets out the basic rules governing the Council's business, including Terms of Reference, Contract Procedure Rules and Financial Procedure Rules.

Contract Procedure Rules (CPR)

Contract Procedure Rules Document - For the purpose of these CPR, the term document refers to either paper or electronic versions, both of which are acceptable.

e-Auction - As part of a tendering process, following supplier qualification, an e-Auction is a procedure by which suppliers are able to place financial bids in secure, controlled conditions within the Council's contracted e-tendering system.

e-Tendering - The carrying out of a tendering process using the Council's contracted e-tendering system. It includes advertising the requirements for works, goods and services, registering suppliers, and issuing and receiving tender documents via the Council's contracted e-tendering system, as well as automating the evaluation of responses to a tender.

EU (European Union) Procurement Legislation - The EU Regulations and Directives provide the procedure framework that must be followed for public sector procurement processes above set financial thresholds. Their objective is to ensure public purchases achieve value for money following open competition and compliance with good procurement practice.

Evaluation Panel - A group of officers designated by the relevant Responsible Officers to examine and evaluate tenders.

Framework Agreement - Any agreement for a fixed period against which one or more orders can be placed at any given time during the term of that agreement. Framework Agreements can be established by the Council or another public body.

Invitation to Tender (ITT) - A set of documents constituting a formal request from the Council to an organisation to submit a legally binding offer. There are standard documents that must be used at all times, which can be requested from the procurement team.

Most Economically Advantageous Tender (MEAT) - A basis for the evaluation of quotations or tenders where both price and quality are taken into account in assessing quotations or tenders.

Monitoring Officer - The person designated by the Council to act in this role.

Officer - A duly appointed employee of the Council or a person employed by a school.

OJEU - The Official Journal of the European Union is the location where all contracts that exceed the EU Procurement Threshold must be published.

Partner - An external person or organisation with which the Council works under a formal arrangement.

Purchase Order - Any electronic or written statement including description, price and other essential terms relating to particular works, goods or services which under the terms of a contract one party has agreed to carry out or provide for another.

Quotation (also known as Request for Quotation – RFQ) - A written offer to enter into a contractual relationship for the supply / disposal of goods, the provision of services or the carrying out of works as specified including such information about price and performance and other terms and conditions as may be required or appropriate for the particular proposed contract. Quotations may be returned to the originating officer.

A verbal quotation is not acceptable in any circumstances.

Relevant Contract - A contract which must comply with these CPR and is defined in CPR 1.5.

Responsible Officer - Any officer with budgetary, statutory or operational responsibility (usually Head of Service) and any officer duly authorised by this person. In the case of school based employees, it means the Head Teacher and anyone authorised by that person.

Standard Form of Contract - A contract in writing for the carrying out of works or the performance of services or the provision of goods or materials which is recognised and accepted for general use in respect of a particular trade or particular type of works e.g. industry standard documentation. No variations to these contracts are permitted unless agreed by the Head of Legal, Democratic Services & Procurement or his nominated officer.

Statutory Undertakers - Persons or bodies authorised by statute to provide public utilities, services or supplies.

Tender - A written offer to enter into a contractual relationship for the supply / disposal of goods, the provision of services or the carrying out of works as specified including such information about price and performance and other terms and conditions as may be required or appropriate for the particular proposed contract.

Value Band - Contract value ranges as defined in CPR 3.

Value for Money – there are many definitions of Value for Money but for the purpose of these procedures it will be defined as; The optimum balance of Price, Quality, and Risk.

Written - Throughout these Contract Procedure Rules, the term “written” means documents on paper (hard copy) or electronically transmitted documents.

Appendix B

Extract from Scrutiny Procedure Rules - Paragraph 11 “Chair’s Letters” Current Version and Proposed Amendments - Tracked Changes

11 Chair’s Scrutiny Letters

- 11.1 The Committee, Scrutiny / Panels and Working Groups can also correspond directly with Cabinet Members in order to communicate their views. It is expected that ~~a Chair’s Scrutiny Letters~~ will be produced by Chairs / Convenors detailing the conclusions and any recommendations arising from any meeting that would be otherwise not to be included in another report. This will enable Scrutiny the committee/panels to engage with Cabinet Members on a regular and structured basis.
- 11.2 Chair’s Scrutiny Letters provide an important benefit to the overview & scrutiny process. They:
- a) Allow Committee / Panels / Working Groups to formally raise concerns and make proposals to Cabinet Members;
 - b) Provide a mechanism for raising urgent concerns to be raised;
 - c) Clearly demonstrate what has been achieved by each meeting.
- 11.3 Chair’s Scrutiny Letters are intended to be short summaries usually covering not more than one or two pages.
- 11.4 Chair’s Scrutiny Letters are directed to the relevant Cabinet Member(s) in person. The Cabinet Member should respond in writing ~~to the board~~ within 21 calendar days~~one month~~. This response should indicate whether the Cabinet Member has accepted the recommendation(s), whether the recommendation(s) needs to be referred and what action (if any) they intend to take.
- 11.5 Chair’s Scrutiny Letters may also be directed at other decision-makers as appropriate.