

Draft Contract Procedure Rules ('CPR')

Definitions

Except where the context otherwise requires, the terms listed below shall have the following meanings assigned to them. The term 'person' shall include persons and anybody of persons, corporate or non-corporate.

'Agent'

Any person acting on the Council's behalf.

'Authorised Officer'

An officer of the Council authorised by a Responsible Officer to exercise some of the powers set out in these CPR.

'Award Criteria'

The criteria as defined in CPR 13 used to evaluate Tenders or Quotations or the terms of a Framework Agreement used to award a Contract under that Framework Agreement.

'Bidder'

Any person who has submitted to the Council a Tender or Quotation.

'Cabinet'

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

'Cabinet Member'

A member of the Cabinet.

'Call-Off Contract'

A Contract awarded under a Framework Agreement.

'Chief Finance Officer'

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

'Chief Legal Officer'

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

'Chief Social Services Officer / Director of Social Services'

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

'Closing Date'

The time limit specified in the Procurement Documents for the submission of Quotations or Tenders (or any later time limit that is notified to all Bidders where such notification is provided before the previous Closing Date).

'Commercial Manager'

The person designated by the Council to act in this Role.

'Consultant'

A person engaged to advise the Council.

‘Contract’

A legally binding agreement between the Council and one or more third parties for the supply of goods, provision of services or execution of works (or a combination of these), whether the Council is acting as contractee or as a contractor to any external person and whether payment is to be made or received by the Council. Unless otherwise stated, or unless the context explicitly requires otherwise, the term ‘Contract’ shall also refer to a Framework Agreement and a Dynamic Purchasing System.

‘Contract Award Report’

A report produced in a standard form (available from Staffnet and Procurement), detailing the Procurement Process adopted and the recommendation for award relating to a particular Contract, Framework Agreement or Dynamic Purchasing System.

‘Contract Manager’

An Officer assigned by the Responsible Officer to conduct Contract Management.

‘Contract Management’

The process undertaken by Contract Managers to ensure that risk and cost are managed within the terms of a Contract, and that the intended outcomes of a Contract are delivered.

‘Contractor’

Any person awarded a Contract by the Council.

‘Contract Value Bands’ and ‘Bands’

Contract value ranges as defined in CPR 4 for the purpose of determining the procedures relating to each Procurement Process.

‘Corporate Agreement’

A Contract, Framework Agreement or Dynamic Purchasing System made by the Council or an external organisation which serves, or is capable of serving, the purposes of more than one department of the Council.

‘The Council’

The Council of the City and County of Swansea.

‘Dynamic Purchasing System’

A procurement system that is identical to a Framework Agreement, except that it shall be open throughout the full period of its operation to any Supplier that satisfies defined Pre-Qualification Criteria. Dynamic Purchasing Systems shall be awarded and operated in accordance with CPR 9.4 to 9.8.

‘Electronic Sourcing System’

An electronic system, approved for use by Officers by the Head of Commercial Services.

‘Electronic Tenders’

Tenders received by the Electronic Sourcing System.

‘EU Thresholds’

The threshold amounts applicable to Contracts for goods, services and works as defined in regulation 5 of the Public Contracts Regulations. A Contract of a value estimated to be in excess of the relevant threshold shall be subject to these regulations.

‘Evaluation Panel’

A meeting of a group of officers to consider a Contract Award Report, convened on the instruction of the Head of Commercial Services in accordance with CPR 18.6 and 18.11. Evaluation Panels shall be assembled by the Authorised Officer or the Responsible Officer in accordance with CPR 18.17 to 18.19.

‘Finance Officer’

A representative of the Chief Finance Officer.

‘Framework Agreement’

An agreement between the Council and one or more Suppliers which establishes the terms under which the Suppliers will enter into one or more Contracts with the Council in the period during which the framework agreement applies. Framework Agreements can be established by the Council or another public body.

‘Head of Commercial Services’

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

‘Internal Audit’

The Council’s Internal Audit Service Unit.

‘Invitation to Tender’

A set of documents constituting a formal invitation, from the Council to one or more suppliers, to submit a legally binding offer.

‘Invitation to Quote’

A set of documents constituting a formal invitation, from the Council to one or more suppliers, to submit a legally binding offer.

‘Legal Officer’

A representative of the Chief Legal Officer.

‘Local Area’

As defined in CPR 14.6.

‘Member’

A Member / Councillor of the Council of the City and County of Swansea.

‘Monitoring Officer’

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

‘Officers’

A duly appointed employee of the Council.

‘Pre-Qualification Criteria’ and ‘Pre-Qualification Questions’

Questions designated for the purpose of assessing the suitability of Suppliers to be invited to submit a Tender or Quotation or to be awarded a Contract.

‘Pre-Qualification Documents’

Documents consisting of Pre-Qualification Questions.

‘Procurement Documents’ and ‘Procurement Documentation’

The documents constituting an Invitation to Quote or an Invitation to Tender. This shall include Pre-Qualification Documents.

‘Procurement Notification Form’

A document in a standard form (available from Staffnet) submitted by the Authorised Officer or the Responsible Officer to the Head of Commercial Services in accordance with CPR 5, which sets out the details of a proposed Procurement Process and must be approved by the Head of Commercial Services prior to the commencement of the Procurement Process.

‘Procurement Officer’

A representative of the Head of Commercial Services.

‘Procurement Process’

A process undertaken with the aim of awarding a Contract.

‘Public Contracts Regulations’

The Public Contracts Regulations 2015, including any existing or future amendments.

‘Quotation’

A formal response to an Invitation to Quote received by the Council from a Bidder.

‘Responsible Officer’

An officer with budgetary, statutory or operational responsibility (at Head of Service level) or any Officer duly authorised by this person.

‘Sales and Tenders Proforma’

A document in a standard form (available from Staffnet) submitted by the Authorised Officer or the Responsible Officer to the Head of Commercial Services in accordance with CPR 1.14 to 1.17, which sets out details of a proposed Trade Exchange or Contract regarding advertising, sponsorship or promotions, or a proposed offer for a contract to be awarded by an external organisation.

‘School With a Delegated Budget’

A school where the governing body of the school is entitled to manage the school’s budget share.

‘Spending Restrictions’

A document published by the Council setting out specific instructions designed to control expenditure across the Council.

‘Trade Exchange’

An exchange of services or products, in lieu of a cash or invoice transaction.

‘Sell2Wales Website’

www.sell2wales.gov.wales

‘Staffnet’

The Council’s intranet.

‘Suppliers’

Any person or public entity or group of such persons and entities, which offers the supply of goods, the provision of services or the execution of works.

‘Tender’

A formal response to an Invitation to Tender received by the Council from a Bidder.

‘Value for Money’

The optimum balance of price, quality and risk.

‘Waivers/Waiver Application’

An application in a standard form to waive one or more CPR submitted in accordance with CPR 8 (Waivers) to the Head of Commercial Services.

‘Written’ or ‘in Writing’

Information conveyed in hard-copy (paper) or electronically transmitted documents. This shall not include the transmission of information via mobile telephone text messages, social media outlets or Skype for Business.

DRAFT

1. Scope of Contract Procedure Rules

Officer responsibilities

- 1.1 Officers responsible for purchasing goods, services or works must comply with these Contract Procedure Rules ('CPR'), Financial Procedure Rules ('FPR') and all UK and EU legislative requirements. Officers must ensure that any Agents and Consultants also comply.
- 1.2 These CPR do not apply to any Contract awarded by persons employed by a School with a Delegated Budget, who must comply instead with 'Contract Procedure Rules for School Governing Bodies with Delegated Budgets'.
- 1.3 These CPR apply equally to Members when they are spending Council funds.
- 1.4 No Contract shall be let unless the expenditure involved has been included in approved capital or revenue budgets and any relevant policies have been complied with, or has been otherwise approved by or on behalf of the Council.
- 1.5 Officers must:
 - (a) check with a Procurement Officer whether a suitable Corporate Agreement exists before seeking to award a Contract;
 - (b) keep the records required (please see paragraph 23 of these Contract Procedure Rules (CPR));
 - (c) take all necessary commercial, technical, legal and financial advice (officers must seek the advice of a Procurement Officer if required).
- 1.6 If the employment status of any employee of the Council or of a Contractor may be affected by any action in relation to the award or termination of any Contract, Officers must seek advice from the Chief Legal Officer as to the application of the Transfer of Undertaking (Protection of Employment) Regulations to those actions. This must, wherever possible, be undertaken prior to inviting Tenders or Quotations.

The Public Contracts Regulations

- 1.7 In respect of Contracts with a value estimated to be equal to or greater than the relevant EU Threshold, the Public Contracts Regulations shall take precedence over these CPR.
- 1.8 EU Thresholds vary from time-to-time. Officers unaware of current EU Thresholds shall verify these with a Procurement Officer prior to commencing any Procurement Process.

Grant funding conditions

- 1.9 Where a proposed Contract is to be financed, wholly or partly, by a grant offered by any organisation or person external to the Council, Officers must comply with any and all conditions attaching to the grant prior to accepting the grant or commencing any Procurement Process.

Exclusions

1.10 These CPR apply in all but the following cases:

- (a) contracts of employment which make an individual a direct employee of the Council (this shall not include agreements for the provision of agency staff or consultants);
- (b) agreements regarding the acquisition, disposal, or transfer of land (for which Land Transaction Procedure Rules shall apply);
- (c) advice or instruction of counsel but no instructions will be permitted without prior approval from the Chief Legal Officer;
- (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 Finance Officer including those related to the Pension Fund;
- (g) arrangements for the supply of goods/ provision of services/ execution works by one Council department to another (i.e. internally);
- (h) contracts awarded to any wholly owned 'arm's length' trading companies established by the Council, where it is legally permitted to do so;
- (i) contracts awarded to any organisation defined within regulation 12 of the Public Contracts Regulations ('TECKAL organisations');
- (j) the purchase of professional membership fees and any training specifically required to attain a professional membership (this shall not include any training required to continue or renew a professional membership except where this is explicitly conditional on the engagement of a specific Supplier/s);
- (k) the payment of membership fees to professional bodies;
- (l) at the discretion of the Director of Social Services only (with the Director to maintain the appropriate records for audit purposes) —
 - i. where the decision to award a social care Contract has been made on the Council's behalf (e.g. a court directed order);
 - ii. the award of an emergency social care Contract and/or individual placement if it is considered to be in the interest of the Council or necessary to meet its obligations under relevant legislation and demonstrates Value for Money.
 - iii. residential and nursing care contracts which the Council has a duty to provide if it is considered to be in the interest of the Council or necessary to meet its obligations under relevant legislation and demonstrates Value for Money.

1.11 For the avoidance of doubt, unless a proposed Contract relates to one or more of the exclusions specified in CPR 1.10, Officers must assume that the Contract is subject to the full extent of these CPR. Where in doubt, Officers must seek the advice of a Procurement Officer.

1.12 Where a requirement for goods, services or works may be met internally (i.e. provided by one Council department to another), the internal provider/s must be used unless specifically agreed with the appropriate Director and the Head of Commercial Services.

Disposal of assets

- 1.13 For procedures relating to the disposal of assets (excluding land and buildings which are dealt with by the Council's Land Transaction Procedure Rules), Officers must refer to Financial Procedure Rules.

Submitting offers for Contracts awarded by external organisations

- 1.14 Officers shall not submit an offer (for example, a tender) for a Contract to be awarded by any organisation external to the Council without the prior approval of the Head of Commercial Services.
- 1.15 For the purposes of CPR 1.14, the Authorised Officer or the Responsible Officer must submit a Sales and Tenders pro forma to the Head of Commercial Services for approval prior to submitting any offer.

Contracts for sponsorship, advertising and promotions

- 1.16 Officers shall not enter into a Trade Exchange or into any Contract regarding advertising, sponsorship or promotions of a value up to £140,000 without the prior approval of the Commercial Manager. Where the value exceeds £140,000, officers must obtain the approval of the Head of Commercial Services.
- 1.17 For the purposes of CPR 1.16, the Authorised Officer or the Responsible Officer must submit a Sales and Tenders pro forma to the Commercial Manager and or the Head of Commercial Services (where required) for approval prior to entering into any agreement.

2. Conflicts of interest

- 2.1 Responsible Officers shall take appropriate measures to prevent, identify and remedy conflicts of interest arising in the conduct of Procurement Processes or Contract Management. Conflicts of interest shall include any situation where Officers or Members involved in the procurement process directly or indirectly have a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement Process or of Contract Management.

3. Sanctions

- 3.1 Officers shall be aware that failure to comply with CPR could be construed as misconduct and may lead to disciplinary proceedings.

4. Contract Value Bands

4.1 The Contract Value Bands determine the procedures relating to each Procurement Process. The Contract Value Bands are:

'Band A': up to £10,000

'Band B': £10,001 - £140,000

'Band C': £140,001 - £1,000,000

'Band D': £1,000,001 and over

4.2 The value of a Contract means the total estimated value of the Contract over its full period, including any optional extension periods, excluding VAT. The Responsible Officer or the Authorised Officer must estimate the total value. Framework Agreements and Dynamic Purchasing Systems shall be valued as a single Contract.

4.3 Officers are not permitted to subdivide Contracts if the effect is to amend or prevent the application of these CPR, unless justified by objective reasons.

4.4 All Contracts, including those within Band A, shall be open to scrutiny by internal and external auditors.

5. Procurement Notification Form

5.1 The Authorised Officer or the Responsible Officer shall in advance of inviting quotations or tenders or utilising a Corporate Agreement for Contracts in Band B, Band C or Band D submit to the Head of Commercial Services a Procurement Notification Form (available from Staffnet).

5.2 After consideration of a Procurement Notification Form, the Head of Commercial Services shall respond in Writing to the Authorised Officer or Responsible Officer and either:

- (a) approve the Procurement Notification Form;
- (b) decline the Procurement Notification Form.

5.3 Officers shall not be permitted to commence a Procurement Process until the Head of Commercial Services has responded to the Procurement Notification Form in accordance with CPR 5.2.

5.4 The Head of Commercial Services may decline a Procurement Notification Form on the following grounds:

- (a) where it is proposed to conduct a Procurement Process in breach of these CPR;
- (b) where it is proposed to conduct a Procurement Process on the basis of technical specifications and/or contract conditions which are incomplete;
- (c) where requirements (including, but not necessarily limited to, quantities, contract periods, pricing or payment mechanisms or additional/optional purchases) are unknown or have not been precisely determined;
- (d) Any other reasons which may prevent Value for Money from being obtained.

- 5.5 Under no circumstances shall the Head of Commercial Services provide a verbal response to a Procurement Notification Form.
- 5.6 Where the use of a consultant or consultancy services is envisaged to a value exceeding £100,000 then the Authorised Officer or Responsible Officer will ensure that Procurement Notification Form has also received written approval from the relevant Cabinet Member before submission in line with 5.1 above.

6. Preliminary market consultations

- 6.1 Before commencing a Procurement Process, Officers may conduct market consultations with a view to preparing the Procurement Process and informing Suppliers of the Council's plans and requirements.
- 6.2 When conducting preliminary market consultations, Officers may seek or accept advice from Suppliers or Consultants. Such advice may subsequently be used in the planning and conduct of a Procurement Process provided that it does not have a discriminatory effect or distort competition.

7. Duration of Contracts, Framework Agreements and Dynamic Purchasing Systems

- 7.1 No Contract (excluding Framework Agreements and Dynamic Purchasing Systems) shall be let for a period exceeding five years without prior consultation with the Head of Commercial Services.
- 7.2 No Framework Agreement or Dynamic Purchasing System shall be let for a period exceeding four years without prior consultation with the Head of Commercial Services.

8. Waivers

- 8.1 Waivers enable the Authorised Officer to partly suspended CPR to authorise a particular course of action to be taken in respect of Contracts in Band B, Band C and Band D. This can include the requirement to seek market competition by obtaining a quotation or tendering. This does not remove the need to ensure that adequate and robust process is undertaken in accordance with these CPR.
- 8.2 Where the particular course of action is permitted by the Public Contract Regulations 2015 a Waiver Application is not required and the award process in CPR 18 is to be followed. Where the Waiver Application proposes actions which may be in breach of the Public Contracts Regulations 2015 the application will be declined
- 8.3 A Waiver can be sought, including approval to seek only a single quotation or tender. The grounds for justifying a waiver may include one or more of the following criteria although this list is not exhaustive:
- i. where an offer has been made to the market by the Council using the Procurement Process, but where no quotations or tenders have been submitted, or where those that have been submitted are disqualified

through the evaluation procedure. In this circumstance an exception can only be granted where the original terms of the proposed contract are not substantially altered;

- ii. the goods, services or works can only be provided by a particular contractor for reasons that are technical, or connected with the protection of exclusive rights;
- iii. extreme urgency brought about by events unforeseeable by the Council;
- iv. where the products involved are manufactured purely for the purpose of research, experimentation, study or development;
- v. for supplies quoted and purchased on a commodity market;
- vi. where a design competition is run where the rules of that competition require the contract to be awarded to one or more of the successful candidates, provided that all successful candidates are invited to negotiate;
- vii. in relation to time limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;
- viii. for the purchase of supplies on particularly advantageous terms from a supplier that is definitely winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or similar procedure;
- ix. where delay attributable to the quotation or tendering process would, in the estimation of the Responsible Officer concerned, create or increase danger to life or limb;
- x. where relevant UK or EU legislation not otherwise referred to in these CPR permits.

8.4 The Authorised Officer shall submit a Waiver Application, in the standard format and in accordance with the procedures specified on Staffnet. The Waiver Application must specify:

- (a) the reasons for the proposed waiver/s; and
- (b) evidence that the waiver/s will not prevent Value for Money from being obtained.

8.5 No Waiver Application will be considered retrospectively, except in exceptional circumstances.

8.6 A Waiver Application based on the reasons listed in CPR 8.3 may be granted in the following manner:

- i. **£10,000 - £1,000,000** – Written approval to be obtained from the Responsible Officer and Head of Commercial Services.
- ii. **Works Only £1,000,001+**: Where a Waiver Application is for a works contract with a value in excess of £1m the Authorised Officer must obtain the written approval of the Responsible Officer and Head of Commercial Services and relevant Cabinet Member. The Cabinet Member, or any of the other Officers detailed above, can refer the decision to Cabinet where they consider there are relevant issues pertaining to the Waiver Application
- iii. Where the use of a **consultant or consultancy services is envisaged to a value exceeding £100,000** then the Responsible Officer will ensure that the waiver has also received written approval from the relevant Cabinet Member before submission.

8.7 CPR 8.6 shall not apply in cases of extreme urgency. In this circumstance, the Head of Commercial Services can approve the Waiver Application.

8.8 An approved Waiver Application form constitutes authority to enter into the Contract under these Contract Procedure Rules and the Council's Constitution.

8.9 Officers shall not be permitted to implement the waiver/s proposed in a Waiver Application until the approval process in CPR 8.6 has been complied with.

8.10 Where a Waiver of one or more CPR is approved all CPR other than those waived shall remain in full force and effect. In particular the need to complete supplier suitability assessment and due diligence and to put in place a contract on the Council's standard terms and conditions will be required for all approved Waiver Applications.

8.11 The Head of Commercial Services shall keep a register of all Waiver Applications.

9. Framework Agreements and Dynamic Purchasing Systems

Framework Agreements

9.1 Contracts shall be awarded under Framework Agreements in one of the following ways:

- (a) **'direct award'**: without reopening competition, provided that the Framework Agreement specifies in full the terms (including the technical specifications, contract conditions and, where applicable, price) governing the works/ services/ supplies concerned and the Award Criteria;
- (b) **'further competition'**: by reopening competition amongst the Suppliers party to the Framework Agreement, whether or not the Framework

Agreement specifies in full the terms (including the technical specifications, contract conditions and, where applicable, price) governing the works/ services/ supplies concerned.

- 9.2 Where a Framework Agreement is awarded to only one Supplier, Contracts based on that Framework Agreement shall be awarded on a 'direct award' basis only, in accordance with CPR 9.1(a).
- 9.3 Contracts awarded under a Framework Agreement shall in no circumstances entail modifications to the terms of the Framework Agreement.

Dynamic Purchasing Systems

- 9.4 A Dynamic Purchasing System ('DPS') shall be identical to a Framework Agreement, except that any Supplier may apply for admittance to a DPS throughout the full period of its operation by satisfying defined Pre-Qualification Criteria.
- 9.5 All DPS shall be openly advertised on the Sell2Wales Website, irrespective of estimated value.
- 9.6 A Dynamic Purchasing System may be divided into categories of goods, services or works. In such cases, it is permissible to stipulate Pre-Qualification Criteria appropriate to each category.
- 9.7 At the time of inviting Tenders or Quotations under a DPS, Officers shall ensure that all applications for admittance to the DPS received by that time have been processed and all applicants have been notified of whether or not they have been admitted to the DPS.
- 9.8 Officers shall, in Writing, invite all Suppliers admitted to a DPS to respond to all Tenders/ Quotations issued under a DPS. Where the DPS has been divided into categories of goods, services or works, Officers shall invite all Suppliers having been admitted to the category corresponding to the procurement concerned to submit a Quotation/Tender.

10. Procurement Documents

- 10.1 All Quotations shall be sought using the Council's standard Invitation to Quote, obtainable from Commercial Services.
- 10.2 All Tenders shall be sought using the Council's standard Invitation to Tender, obtainable from Commercial Services.
- 10.3 Procurement Documentation shall always include a copy of the Council's relevant Contract conditions.
- 10.4 All Procurement Documentation shall be made available to all Bidders at the same time.
- 10.5 The period for the return of Quotations shall be determined by the Responsible Officer or the Authorised Officer.

- 10.6 The usual period for the return of Tenders shall not be less than 28 days from the issue date of the Invitation to Tender, with exceptions allowed by agreement of the Head of Commercial Services.

11. Competition requirements

Contracts within Band A

- 11.1 For Contracts in Band A, the Responsible Officer or the Authorised Officer shall consider that Value for Money has been obtained by maintaining appropriate records in accordance with CPR 23 (for example by providing evidence of a catalogue search or internet search).

Contracts within Band B

- 11.2 For Contracts in Band B, it is sufficient for Officers to invite Quotations.

11.3 *Goods and Services only*

- 11.3.1 *£10,001 - £25,000*: At least four written Quotations shall be sought from appropriate Suppliers using Sell2Wales; if the Responsible Officer wishes to use an alternative process this must be agreed by the Head of Commercial Services.

- 11.3.2 *£25,001 - £140,000*: requirements shall be openly advertised on Sell2Wales with exceptions allowed by agreement of the Head of Commercial Services.

- 11.4 ***Works only (£10,001 - £140,000)***: At least four Quotations shall be sought from appropriate Suppliers using Sell2Wales or constructionline.co.uk in accordance with the following procedure:

- (a) a minimum of two Suppliers shall be chosen at random using the 'generate a list' function;
- (b) a maximum of two Suppliers shall be chosen by Officers;
- (c) at least one of the four Suppliers shall be from the Local Area and Officers shall consider increasing this number in accordance with CPR 14;
- (d) Officers shall contact all Suppliers (including those chosen at random and those chosen by Officers) within 14 days prior to the commencement of the Procurement Process to determine their interest in submitting a Quotation. Officers shall substitute all Suppliers not interested in submitting a Quotation with alternative Suppliers, and shall choose those alternative in compliance with this CPR 11.4.

- 11.5 *Dynamic Purchasing Systems*: All Dynamic Purchasing Systems shall be openly advertised on the Sell2Wales Website.

Contracts within Band C and Band D

- 11.6 *Goods and services only* – For Contracts in Band C and Band D, Tenders shall be invited. All Contracts shall be openly advertised on the Sell2Wales Website.

- 11.7 *Works only – £140,001 - £500,000*: Requirements shall be openly advertised on the Sell2Wales Website. Tenders shall be invited. Alternatively, at least six Tenders shall be sought from Suppliers registered on constructionline.co.uk in accordance with the following procedures:
- (a) a minimum of four Suppliers shall be chosen at random using the 'generate a list' function;
 - (b) a maximum of two Suppliers shall be chosen by Officers;
 - (c) at least two of the six Suppliers shall be from the Local Area (where the subject of the Contract allows);
 - (d) Officers shall contact all Suppliers (including those chosen at random and those chosen by Officers) within 14 days prior to the commencement of the Procurement Process to determine their interest in submitting Tenders. Officers shall substitute all Suppliers not interested in submitting a Tenders with alternative Suppliers, and shall choose those alternative Suppliers in accordance with this CPR 11.8.
- 11.8 *Works only – £500,001 and above*: All Contracts shall be openly advertised on the Sell2Wales Website.
- 11.9 *Dynamic Purchasing Systems*: All Dynamic Purchasing Systems shall be openly advertised on the Sell2Wales Website.

12. Supplier suitability

- 12.1 Officers are responsible for ensuring that Suppliers have been suitably assessed prior to being awarded a Contract. Suppliers shall be assessed against appropriate Pre-Qualification Criteria relating to one or more of the following:
- (a) suitability to pursue a professional activity;
 - (b) economic and financial standing;
 - (c) technical and professional ability;
 - (d) social, economic and/or environmental considerations in relation to the Local Area, in accordance with CPR 14.
 - (e) the supplier's safeguarding policy
 - (f) the supplier's policies relating to ethical employment and practices
- 12.2 Prior to awarding a Contract to a Supplier, Officers shall ensure that the Supplier has adequate insurance cover in place for the performance of the Contract. Where in doubt, Officers shall seek the advice of a Finance Officer. The Responsible Officer is responsible for ensuring that the Supplier remains adequately insured for the duration of the Contract.

13. Award Criteria

- 13.1 In conjunction with a Procurement Officer, the Responsible Officer or the Authorised Officer must define Award Criteria that are appropriate to the procurement and designed to secure an outcome that will provide Value for Money for the Council. The basic criteria shall be one or more of:
- (a) 'Most Economically Advantageous Offer', where considerations of quality and price or cost apply;
 - (b) 'lowest price';

- (c) 'highest price' (if payment is to be received by the Council).

14. Community Benefits

- 14.1 Officers shall have regard to any current guidance in relation to CPR 14 issued by the Head of Commercial Services on Staffnet.
- 14.2 None of the requirements set out within CPR 14 shall prevent Officers from complying with the requirements set out within CPR 11 (Competition requirements).
- 14.3 CPR 14 shall not apply to any Contract awarded under a Framework Agreement.
- 14.4 Prior to commencing a Procurement Process, the Authorised Officer or the Responsible Officer must give consideration to how the Contract could provide social, economic and/or environmental benefits to the Local Area ('Community Benefits') and the measures that may be taken to secure these benefits. Such measures may include (as long as the measures are fair, transparent and proportionate):
 - (a) particular requirements or minimum standards within the technical specifications or Contract conditions;
 - (b) appropriate Pre-Qualification Criteria;
 - (c) appropriate Award Criteria;
 - (d) awarding a Contract in the form of separate lots.
- 14.5 For the purposes of CPR 14.4, the Authorised Officer or the Responsible Officer shall also be permitted to restrict competition for Contracts with an estimated value not exceeding £140,000 to Suppliers based in the Local Area.
- 14.6 The Local Area shall mean the area within the Swansea local authority boundary. However, taking into account factors such as the complexity of the Contract and the capacity of Suppliers based within the Swansea local authority boundary to perform the contract, Officers shall have discretion to broaden the definition of Local Area to either—
 - (a) The combined local authority boundaries of Swansea and one or more of the following: Carmarthenshire, Neath Port Talbot, Bridgend; or
 - (b) Wales.
- 14.7 For the purposes of CPR 14.4, Officers must only consider measures that are relevant and proportionate to the subject matter of the Contract. Officers are not required to comply with CPR 14.4 in the following circumstances—
 - (a) where its application would impose burdensome, excessive or disproportionate requirements on the Council, Bidders or Suppliers; or
 - (b) where the subject matter of the Contract is such that Community Benefits are not reasonably attainable; or
 - (c) where the subject matter of the Contract is such that Community Benefits are likely to materialise without the need for additional measures.

- 14.8 A Community Benefit must not be attained by the creation of a social, economic and/or environmental dis-benefit. For example, Officers must not create an economic benefit to the Local Area dependant on the creation of an environmental dis-benefit.
- 14.9 For the purposes of CPR 14, a Supplier shall be deemed to be based in the Local Area if it performs any part of the Contract from premises with an address in the Local Area.
- 14.10 Members may at any time require of any Responsible Officer a Written report setting out details of the Community Benefits they have secured pursuant to CPR 14 during the 12 months preceding the date of the request.

15. Opening of Quotations and Tenders

- 15.1 Under no circumstances should any Quotation or Tender be opened before the Closing Date.
- 15.2 Electronic Tenders shall be opened after the Closing Date by a Procurement Officer.
- 15.3 Quotations shall be opened after the Closing Date by any Officer.
- 15.4 No Tender or Quotation received after the Closing Date shall be accepted.
- 15.5 Quotations and Tenders received by any method other than by the method specified in the Procurement Documents shall be rejected.
- 15.6 The procedures set out in CPR 15 will apply to the opening of Pre-Qualification Documents except where these are submitted together with a Tender or Quotation or in accordance with the procedures specified in the Procurement Documents.

16. Clarification procedures

- 16.1 Where information or documentation submitted by a Bidder is incomplete, or where specific documents are missing, the Responsible Officer or the Authorised Officer may request the Bidder to submit or complete the relevant information or documentation within an appropriate time limit. However, Bidders shall not be permitted to submit any missing information or documentation that is subject to the Award Criteria (such as but not limited to pricing schedules and method statements).
- 16.2 No opportunity shall be given to complete or amend any information contained in a Tender or Quotation that is subject to the Award Criteria, other than where due to a demonstrable arithmetical or interpretive error attributable to the Bidder, or due to errors contained in the Procurement Documents attributable to the Council.
- 16.3 Under no circumstances shall clarification procedures be used in lieu of Post-Tender Negotiation with a view to obtaining adjustments in price, quality, delivery, quantity or scope as a means of improving offers being considered.

- 16.4 In respect of Quotations or Tenders to be received by the Electronic Sourcing System, all clarifications sought in accordance with CPR 16 must be issued and received by the Electronic Sourcing System.

17. Negotiation of Quotations and Tenders

- 17.1 Negotiation of Tenders and Quotations in accordance with CPR 17 shall only be undertaken following consultation with the Head of Commercial Services, who shall advise on the appropriate procedures to be followed.
- 17.2 Negotiations must be conducted by a team of at least two Officers, one of whom must be a Procurement Officer who shall lead the negotiations.
- 17.3 Officers appointed to carry out negotiations shall ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing. All documentation shall be retained in accordance with CPR 23.

Competitive Negotiation of Quotations or Tenders

- 17.4 Competitive Negotiation of Quotations or Tenders shall mean a Procurement Process involving the negotiation of Quotations or Tenders with Suppliers where it is determined prior to the commencement of the Procurement Process that the negotiation of Quotations or Tenders may be necessary during the course of the Procurement Process.
- 17.5 Competitive Negotiation of Quotations/Tenders may only be undertaken in the following circumstances:
- (a) the needs of the Council cannot be met without adaptation of goods/services/works available on the open market;
 - (b) the Contract will include design or innovative solutions;
 - (c) the Contract cannot be awarded without prior negotiation because of specific complexities (legal, financial or technical) relating to the Contract;
 - (d) the technical specifications cannot be established with sufficient precision without prior negotiation with Bidders.
- 17.6 The intention to undertake a Competitive Negotiation of Quotations or Tenders shall be clearly stated in the Procurement Documents.
- 17.7 When undertaking a Competitive Negotiation of Quotations or Tenders the minimum requirements of the Contract shall be specified in the Procurement Documents.
- 17.8 The minimum requirements of the Contract and the Award Criteria shall not be subject to negotiation, and this shall be specified in the Procurement Documents.

Post-Tender Negotiation

- 17.9 Post-Tender Negotiation shall be understood as negotiation with a Bidder/s after the submission of Tenders/Quotations and before the award of a Contract with a view to obtaining adjustments in price, quality, delivery, quantity or scope, and

where the need for such negotiation was not reasonably foreseeable before the commencement of the Procurement Process.

- 17.10 In general, Post-Tender Negotiation shall only be undertaken in circumstances where no suitable Quotations or Tenders have been received in response to an Invitation to Quote/ Invitation to Tender. A Quotation or Tender shall be deemed not to be suitable where it is demonstrably incapable, without adaptation, of meeting the Council's requirements as specified in the Procurement Documents.
- 17.11 Where there is an adjustment in the scope or quantity included in the Procurement Documents, negotiations shall be undertaken with all Bidders. This shall not include any Bidders having already been excluded from the Procurement Process.
- 17.12 The minimum requirements of the Contract and the Award Criteria shall not be subject to negotiation.

18. Evaluation and award of Quotations and Tenders

- 18.1 The confidentiality of Quotations and Tenders must be preserved at all times and information about one Bidder's Quotation/Tender must not be given to another Bidder.

Evaluation of Quotations and Tenders in Band A (up to £10,000)

- 18.2 Procedures for the evaluation of Quotations shall be determined by the Responsible Officer or the Authorised Officer with the aim of ensuring that Value for Money has been obtained.

Evaluation of Quotations and Tenders in Band B (£10,001 - £140,000)

- 18.3 Quotations and Tenders shall be evaluated in accordance with the Award Criteria specified in the Procurement Documents.
- 18.4 Prior to the award of a Contract, a Contract Award Report in a standard form shall be drafted by the Authorised Officer for written approval by the Responsible Officer and a Procurement Officer.
- 18.5 The Authorised Officer shall obtain written approval of the Contract Award Report as required by CPR 18.4 prior to awarding a Contract.
- 18.6 If deemed necessary by the Head of Commercial Services, and in particular where complex legal, financial or technical issues attach to the award of the Contract, an Evaluation Panel shall be convened in accordance with CPR 18.17 to 18.19.

Evaluation of Quotations and Tenders in Band C (£140,001 - £1,000,000)

- 18.7 Quotations and Tenders shall be evaluated in accordance with the Award Criteria specified in the Procurement Documents.
- 18.8 Prior to the award of a Contract, a Contract Award Report in a standard form shall be drafted by the Responsible Officer or the Authorised Officer for Written approval by the following persons:
- (a) a Procurement Officer;
 - (b) a Legal Officer.
 - (c) a Finance Officer
- 18.9 After the Contract Award Report has been approved in accordance with CPR 18.7 and 18.8, the Responsible Officer or the Authorised Officer shall obtain Written approval of the Contract Award Report from the following persons:
- (d) the Responsible Officer;
 - (e) the Head of Commercial Services;
 - (f) the Chief Legal Officer.
 - (g) The Chief Finance Officer
- 18.10 The Authorised Officer shall obtain written approval of the Contract Award Report as required by CPR 18.8 and 18.9.
- 18.11 If deemed necessary by the Head of Commercial Services, and in particular where complex legal, financial or technical issues attach to the award of the Contract, an Evaluation Panel shall be convened in accordance with CPR 18.17 to 18.19.

Evaluation of Tenders in Band D (£1,000,001 and over)

- 18.12 All Tenders shall be evaluated in accordance with the procedures applicable to Band C, with approval of the Contract Award Report also to be obtained from the relevant Cabinet Member.
- 18.13 In the event that any of the officers with delegated authority or Cabinet Member referred to in CPR 18.12 decline to approve the Contract Award Report, then the Contract Award Report shall be referred to Cabinet for approval.

Evaluation of Framework Agreements, Dynamic Purchasing Systems and Call-Off Contracts

- 18.14 The evaluation of Quotations and Tenders for Framework Agreements and Dynamic Purchasing Systems awarded by the Council shall be in compliance with CPR 18.
- 18.15 The evaluation of Quotations and Tenders invited under a Framework Agreement or Dynamic Purchasing System ('Call-Off Contracts') shall be in compliance with CPR 18.
- 18.16 Where it is anticipated that a series of Call-Off Contracts are to be awarded over the term of a Framework Agreement or Dynamic Purchasing System, it is

permissible for a single Contract Award Report to authorise the award of those Contracts provided that the Contract Award Report is in compliance with the relevant provisions of CPR 18.

Evaluation Panels

18.17 Subject to CPR 18.6 and 18.11 Evaluation Panels shall be assembled by the Responsible Officer or the Authorised Officer who shall inform the Procurement Officer of the proposed arrangements.

18.18 Evaluation Panels may include:

- (a) a Procurement Officer;
- (b) the Authorised Officer;
- (c) the Responsible Officer;
- (d) a Legal Officer;
- (e) a Finance Officer;
- (f) any other person/s requested to attend by invitation of the Authorised Officer, the Responsible Officer or the Procurement Officer.

18.19 The Responsible Officer or the Authorised Officer shall ensure any actions agreed by the Evaluation Panel are recorded in the Contract Award Report to be approved in accordance with CPR 18.

19. Notifying successful and unsuccessful Bidders

19.1 Prior to awarding a Contract, the Head of Commercial Services shall forward a copy of the Contract Award Report to the Head of Democratic Services for publication. The threshold contract value for publication shall be determined by the Monitoring Officer and communicated to the Head of Commercial Services. Following publication and subject to the outcome of any "call-in" procedure the Responsible Officer may proceed to award the contract.

19.2 Following the publication of the award, the Responsible Officer or the Authorised Officer shall in writing notify all Bidders of the outcome of the Procurement Process using notification letters approved by a Procurement Officer. This shall not include any Bidders that have already been excluded from the Procurement Process.

19.3 The Responsible Officer or the Authorised Officer may, on receipt of a written request from an unsuccessful Bidder, provide that Bidder with a debriefing, verbally or in writing. When being conducted verbally, a written record of all discussions shall be made and such record shall be retained in accordance with CPR 23.

20. Terms and conditions, and signing and sealing of Contracts

20.1 Subject to CPR 20.6, no work shall commence until the Contract is signed by all parties and (if required by CPR 20.3) sealed.

- 20.2 The relevant Contract conditions of the Council shall form the basis of Contracts. No conditions attached to Quotations or Tenders, and no modifications to the relevant Contract conditions of the Council, shall be accepted without consultation with the Chief Legal Officer and the Head of Commercial Services.
- 20.3 Contracts of a value of up to £140,000 shall be signed by the Responsible Officer or the Authorised Officer. Contracts of a value exceeding £140,000 shall be made under the Common Seal of the Council, except for Contracts awarded by external organisations where different rules may apply.
- 20.4 Contracts of a value exceeding £140,000 shall be prepared by a Legal Officer.
- 20.5 Call-Off Contracts, whether awarded under a Framework Agreement or Dynamic Purchasing System established by the Council or an external organisation, shall be signed and sealed in accordance with CPR 20.
- 20.6 Where a Bidder is required to provide goods, services or works prior to entering into a formal written Contract with the Council a letter of intent may be submitted to the Bidder with the agreement of the Responsible Officer. A letter of intent shall not be submitted without prior consultation with the Chief Legal Officer and until an award decision has been made in accordance with CPR 18.

21. Suspension and termination of Contracts and Modifications to Contracts

- 21.1 No Contract in Band B, Band C or Band D shall be suspended or terminated without prior written consultation with the Head of Commercial Services and the Chief Legal Officer.
- 21.2 No modifications shall be made to the terms of an existing Contract without the approval of the Head of Commercial Services and the Responsible Officer unless provided for in the initial procurement documents, irrespective of value.
- 21.3 The relevant Cabinet Member must also approve where the proposed modification exceeds £1 million.

22. Contract management

- 22.1 Responsible Officers must assign an Officer or Officers designated as Contract Manager/s for all new Contracts. Responsible Officers and Authorised Officers are responsible for monitoring the expenditure on Contracts.
- 22.2 Contract Managers must ensure that all appropriate contract documentation is maintained and available for review, so for example where a contract specifies Key Performance Indicators or Service Levels then appropriate performance monitoring data relating to these will be maintained and managed by the Contract Manager and the contract's Responsible Officer (this data will be needed to be reviewed, for example, should the product or service need to be retendered at a future date, so a history of the contract performance is essential).

23. Record keeping

- 23.1 All documentation relating to successful Quotations and Tenders must be retained for six years following the end date of the Contract.
- 23.2 All documentation relating to unsuccessful Quotations and Tenders must be retained for 12 months from award of Contract, provided that there is no dispute regarding the award, in which case all such documentation shall be retained until the date that the dispute has been fully concluded plus a further 12 months.

24. Contracts register

- 24.1 The Head of Commercial Services shall maintain a register of all Contracts in and above Band B. Relevant information shall include:
- (a) Contract title
 - (b) name of Contractor/s;
 - (c) Contract period (including any optional extension periods) and value;
 - (d) if applicable, details of the Framework Agreement or Dynamic Purchasing System under which the Contract was awarded;
 - (e) the name of the Contract Manager.
- 24.2 A register of all Contracts in Band A shall be maintained by the relevant Responsible Officer for the procurement.