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PART 3G: ~~RULES FOR CONTRACT~~PROCEDURE RULES

1. Introduction

1.1 ~~The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts.~~ These Contract Procedure Rules (CPRs) for Contract are the standing orders required by the Local Government Act 1972 Act. They are part of the Council's Constitution and are, in effect, the instructions of the Council to officers and councillors for making contracts on behalf of the Council. The purpose of these CPRsRules for Contracts is to set clear rules for the procurement of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly, these CPRsRules for Contracts must be followed for **all** contracts (but excluding the categories listed in Rule 67.2, grants and land contracts which are dealt with under different rules) for:-

- the supply of goods to the Council;
- the supply of services to the Council; and
- the execution of works for the Council.

1.2 The Council has a Procurement Strategy, setting out how the Council intends to go about procuring works, goods and services. Conformity to these CPRsRules for Contracts, and the Council's Employee Code of Conduct, will ensure that contracts are let in accordance with the *Procurement Strategy*, ~~the Compliant Procurement Process~~ and any associated User Guides and Procedures.

1.3 The Council is subject also to the United Kingdom Public Contracts Regulations 2015 (SI 2015/102)06, the legislation which reflects the EU Public Procurement Directives. This legislation requires contract letting procedures to be open, fair and transparent. These CPRsRules for Contracts provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with the legislation.

2. Definitions

~~In these Rules for Contracts:~~

~~Assistant Director Procurement means Assistant Director Procurement or his or her authorised representative.~~

~~*Authorising Officer* means: an officer authorised to approve the placement of orders or invoices for payment.~~

~~*Cabinet* means: the Leader of the Council and the other members of the Council's Executive.~~

~~*Contract* means: the agreement between the Council and a contractor for the supply of works, goods or services, or for any activity that generates income for the Council.~~

~~*Contractor* means: a supplier or provider of works, goods or services to the Council.~~

~~*Contract change note* means: the document that describes changes to the original contract which have been agreed by both parties.~~

~~*Contract package* means: the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value.~~

~~*Corporate contract* means: a contract or framework agreement for the supply of works, goods or services to the Council e.g. for computer consumables, stationery, legal and financial services.~~

~~*Decision making body* means: the body responsible for decisions in the described situation under the Council's Constitution.~~

~~*Director(s)* means: a member(s) of the Council's Strategic Management Board.~~

~~*Framework Agreement* means: an agreement between the Council and a contractor for the provision of estimated quantities of goods or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.~~

~~*Monitoring Officer* means: the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or her deputy.~~

~~*Outcome based specifications* means: a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third party provider.~~

~~*Panels* means: the People or Place or Resource Panel.~~

~~*People Panel* means: the officer panel responsible for adult and children's social care, housing, public health and public safety.~~

~~*Performance Specifications* means: a specification that provides details of the methods to be adopted when delivering the requirements.~~

~~*Place Panel* means: the officer panel responsible for built environment, highways street scene, transport, waste, facilities management and operational property.~~

~~*Procurement Board* means: the officer board responsible for all procurement decisions.~~

~~*Procurement Service* means: the centralised procurement and commissioning service for Coventry City Council.~~

~~*Public procurement legislation* means: the Remedies Directive 1992, The Public Contracts Regulations 2006, the EC Directives from which they are derived, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.~~

~~*Quotation* means: an offer to undertake a contract of £10,000 or more but less than £50,000 in value.~~

~~*Resource Panel* means: the officer panel responsible for financial, ICT/Telecoms, consumables and professional services.~~

~~*Right to challenge* means: the right to challenge for services under the Localism Act 2011.~~

~~*Services contract* means: a contract or framework agreement for the provision of services to the Council.~~

~~*Chief Finance Officer* means: the officer appointed under section 151 of the Local Government Act 1972.~~

~~*Supplies contract* means: a contract or framework agreement for the sale or hire of goods to the Council and includes, where appropriate, installation of goods.~~

~~*Tender* means: an offer to undertake a contract of £50,000 or more in value.~~

~~*TUPE Regulations* means: the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of the same.~~

~~*Works contract* means: a contract for the construction, repair or maintenance of a physical asset not defined as Services in the Public Contract Regulations.~~

2. Summary of CPR's – Governance Process

<u>Column 1</u> <u>Financial</u> <u>Value (per</u> <u>Contract) for</u> <u>Governance</u>	<u>Column 2</u> <u>Approval to</u> <u>Procure</u>	<u>Column 3</u> <u>Process</u>	<u>Column 4</u> <u>Contract</u> <u>Terms</u>	<u>Column 5</u> <u>Opening of</u> <u>tenders</u>	<u>Column 6</u> <u>Authority to</u> <u>Award Contract</u>	<u>Column 7</u> <u>Contract</u> <u>Signing</u>
<u>£1,000,000</u> <u>and above</u>	<u>Procurement</u> <u>Board and in</u> <u>addition if</u> <u>more than</u> <u>£1m, Cabinet</u>	<u>Competitive</u> <u>tenders</u> <u>in compliance</u> <u>with Public</u> <u>Contract</u> <u>Regulations</u> <u>2015</u> <u>(Note 1 below)</u>	<u>Standard or</u> <u>Bespoke Form of</u> <u>Contract. Where</u> <u>contracts are in the</u> <u>form of Deeds, they</u> <u>must be sealed by</u> <u>Legal Services.</u> <u>Contracts over £1m</u> <u>will need to be in</u> <u>the form of a Deed</u>	<u>Electronic</u> <u>tenders via</u> <u>CSW- JETS</u>	<u>If within</u> <u>approved</u> <u>tolerance</u> <u>agreed at</u> <u>Column 2, e.g.</u> <u><10% above</u> <u>estimated price,</u> <u>or report back</u> <u>to relevant</u> <u>body in Colum</u> <u>2 for approval</u>	<u>Head of Legal</u> <u>Services or</u> <u>authorised</u> <u>deputy</u>
<u>Over £100,000</u> <u>up to</u> <u>£999,999</u>	<u>Category</u> <u>Panel</u>		<u>Standard or</u> <u>Bespoke Form of</u> <u>Contract</u> <u>Where contracts</u> <u>are in the form of</u> <u>Deeds, they must</u> <u>be sealed by Legal</u> <u>Services.</u>			<u>Director and/or</u> <u>Head of</u> <u>Procurement</u>
<u>£10,000 to</u> <u>£99,999</u>	<u>Director</u> <u>approval or</u> <u>delegated</u> <u>authority to</u> <u>budget</u> <u>holder</u> <u>(Copies of</u> <u>Quotations</u> <u>MUST be</u> <u>forwarded to</u> <u>Procurement</u> <u>Services for</u> <u>order to be</u> <u>approved)</u>	<u>Minimum of 3</u> <u>written or oral</u> <u>quotations</u> <u>(see 3 below</u> <u>for</u> <u>thresholds).</u> <u>Where</u> <u>appropriate, a</u> <u>minimum of 2</u> <u>should be</u> <u>from local</u> <u>suppliers or</u> <u>social</u> <u>enterprises</u>	<u>Official order form</u> <u>or Standard Form</u> <u>of Contract</u>	<u>N/A -</u> <u>quotes</u>	<u>Director or</u> <u>authorised</u> <u>deputy</u>	<u>Endorsed/Signed</u> <u>by Director or</u> <u>authorised</u> <u>deputy</u>
<u>Below £10,000</u>	<u>Budget</u> <u>holder</u>	<u>Use of</u> <u>corporate</u> <u>contract or</u> <u>demonstrable</u> <u>value for</u> <u>money</u>	<u>Official order form</u> <u>(or Council</u> <u>Procurement Card)</u>	<u>N/A</u>	<u>Authorised by</u> <u>Budget Holder</u>	<u>Authorised by</u> <u>Budget Holder</u>

Note 1 – Where PCR 2015 thresholds are not exceeded, minimum of 3 competitive tenders must be sought with the tender advertised on Contracts Finder

3. Financial Thresholds for Procedure

~~RULES FOR CONTRACTS~~ **Contract Procedure Rules (CPR's)**

Quick Reference Guide Table – Financial Thresholds

Above PCR 2015 thresholds (as detailed under)

<u>£4,551,413+ (€5,548,000)</u>	Competitive tenders <u>in compliance with the</u> and Public Contracts Regulations 2015 06 required for <u>W</u> works, goods and services and <u>Concession</u> contracts. Contracts in the form of Deeds must be prepared in Legal Services and sealed formally for the Council and witnessed by an authorised signatory in Place Directorate.
<u>£615,278 (€750,000)</u>	Competitive tenders <u>in compliance with the</u> and Public Contracts Regulations 2015 06 required for <u>Supplies</u> goods and <u>S</u> services contracts <u>that are subject to Regulation 74 (Light Touch Regime) for Health and Social Care contracts.</u> Contracts in the form of Deeds must be prepared in Legal Services and sealed formally and witnessed by an authorised Signatory in Place Directorate.
<u>Below PCR 2015 thresholds</u>	
<u>£100,000 – up to values listed above relevant to spend type, e.g Works, Supplies or Services</u>	Competitive tenders required. <u>Minimum 3 tenders, MUST be advertised on Contracts Finder.</u> Contract on standard form of contract or bespoke form of contract. Contract signed by officers with delegated powers to do so (see Part 2M, paragraph 5.1.18)
<u>£10,000 - £99,999</u>	Competitive quotations required. Contract on official order form or standard form of contract. Contract signed by officers with delegated powers to do so (see Part 2M, paragraph 5.1.18) <u>Competitive quotations</u> <u>Over £10,000 and up to £24,999 - Oral quotations (which should be confirmed by email) can be sought - quotation pack use is optional.</u> <u>Over £25,000- quotations MUST be received in writing using quotation pack.</u>
<u>Below £10,000</u>	No need for competitive quotations but M <u>must either</u> use corporate contracts where one exists or show value for money. Use official order form.
<u>NB EU Thresholds</u>	Use (a) corporate contract where one exists unless there is good reason not to; or (b) refer the requirement to the Procurement Service <u>EU Thresholds are revised every 2 years on 1st January. Figures quoted above for Works and Concessions (£4,551,413), Light Touch Regime Services (£615,278) and Supplies and Services (£181,302) are applicable from 1st January 2018 – 31st December 2020.</u>

4. Summary of Rules for Contracts – Quick Reference Guide including Approval Levels

Procurement Process	Above £1million in value	Over £50,000 – and under £1million	£10,000 and under £50,000	Below £10,000
Requirement to be referred to	Procurement Board	Panels	Procurement Service	N/A
Approval	Through budget setting and compliance with Rules for Contracts, Procurement Board approval in consultation with Cabinet Member and Chair of Audit and Procurement Committee. Where the <i>annual value</i> is higher than £1million approval must be obtained from Cabinet	Panel approval. In consultation with Cabinet Member and Chair of Audit and Procurement Committee.	Director approval or delegated authority to budget holder	Budget holder
Invitation to tender	Supplies and Services – Public Contract Regulations 2006 Works > £3.9m Public Contract Regulations 2006	Competitive tenders. Minimum of 3, which must be advertised.	Minimum of 3 written competitive quotations in addition, where appropriate, a minimum of 2 should be local.	Use of corporate contract or demonstrate value for money
Opening of tenders	Electronic or Legal Services in presence of Procurement Service.	Electronic or Legal Services in presence of Procurement Services.	N/A – quotes	N/A

Form of Contract	Standard or bespoke Form of Contract. Contracts in the form of Deeds must be prepared and sealed in Legal Services	Standard or bespoke Form of Contract as advised by Legal Services/ Procurement Service.	Official order form or standard Form of Contract	Official order form or Council procurement card
Contract to be endorsed/signed by	Under seal by the Council in the presence of Authorised signatory in Resources Directorate.	Under seal by the Council in the presence of Authorised signatory in Place Directorate if contract value is £150,000 or over. For contracts under £150,000, signed by officers with delegated powers to do so (see Part 2M, paragraph 5.1.18)	Signed by officers with delegated powers to do so (see Part 2M, paragraph 5.1.18)	Budget holder
N.B. Contracts to be signed before expenditure incurred				

34.1 The Director responsible for the Procurement Service and the Chief Finance Officer (if they are not the same officer) or his/or her authorised deputy, subject to conditions, may grant authorise a contract as an exception to the ~~Rules for Contracts~~CPRs if the works or services are below PCR-EU thresholds. An exception cannot be granted where a breach of any UK ~~or EU~~ legislation would be incurred.

45. **Objectives**

45.1 The ~~CPRs~~Rules for Contracts exist to achieve the aims set out below and to assist and protect the interests of the Council and individual Officers.

It is important that they are viewed as ***an aid to good management and not as a hindrance***. Followed properly they provide protection for Officers against criticism and support good procurement practice.

Officers must be able to demonstrate that they followed procedure or had obtained the necessary authority for not doing so, in order to:-

- ✓ ensure value for money is obtained;
- ✓ ensure probity in the award of Council contracts;
- ✓ ensure fairness, equity, openness and transparency in the

treatment of contractors/suppliers;

- ✓ ensure that procedures for placing contracts/orders comply with legislation;
- ✓ ensure records are kept which demonstrate compliance with Rules for Contracts.

56. **Scope of ~~CPRs~~Rules for Contracts**

56.1 All purchases and contracts made in the name of and binding the Council must comply with these ~~CPRs~~Rules for Contracts, and also any contract that involves income to the Council. This includes contracts where the expenditure is grant aided by a third party. These rules also apply to a company which is owned or controlled by the Council or is funded by public money. Any arrangement where the Council pays or receives money or equivalent value, other than a contract to employ staff, must comply with these Rules. This includes contracts for:

- (a) buying and selling goods;
- (b) any work being carried out;
- (c) services (including financial and consultancy services);
- (d) hire, rental or lease (of goods)
- (e) concession agreements

56.2 To receive and deal with expressions of interest (through the Procurement Board or the Panels as appropriate) from relevant bodies in providing or assisting in providing a relevant service on behalf of the Council in accordance with Part 5, Chapter 2 of the Localism Act 2011 and to consult with the relevant Cabinet member on each expression of interest that is received.

67. **Compliance**

67.1 Every contract entered into on behalf of the Council must comply with these ~~CPRs~~Rules for Contracts and all relevant UK ~~and EU~~ legislation.

67.2 The only areas excluded from these rules are:

- (a) Internally recharged services;
- (b) Schemes where the Council has delegated a function to a third party to perform and where a contract makes separate provision for procurement rules
- (c) Test purchasing in the course of an Officer's duty. (e.g. Trading Standards).
- (d) Land transactions ~~which have their own rules~~

~~(d) (e)~~ — Grants ~~which have their own rules~~

67.3 All contracts must be in writing. Whenever possible, contracts under £1050,000 in value must be made on an official Council order form or standard form of contract, as appropriate, approved by a designated Authorising Officer, with the Council's standard terms of trading endorsed or referred to. For works contracts, one of the standard forms of contract, such as the NEC, JCT or ICE forms may be appropriate. The Procurement Service, in consultation with Legal Services, will advise on other suitable forms of contract.

67.4 Responsibility for compliance with ~~CPRs~~**Rules for Contracts** remains at all times with Council officers. Directors and the **Assistant Director Head of Procurement** will be responsible for monitoring compliance against these rules, aided by internal or external audits or inspections which will be carried out as appropriate.

67.5 See Rule **89** regarding approvals required before a Relevant Procedure (as defined in Rule **89.1.1**) may be commenced.

~~78.~~ Justification of Need and the Common Commissioning Framework and Commissioning Cycle

78.1 Before any Relevant Procedure (as defined in Rule **89.1.1**) is commenced consideration must be given to:

- (a) whether the expenditure is really necessary;
- (b) whether a critical review has been carried out to identify if the requirement can be met from within existing resources or whether it is being funded through grants or other approved income sources;
- (c) the revenue consequences of any capital investment; and
- (d) in any case, whether the necessary approvals in Rule **89** have been obtained.

~~**8.2** If the purchase is justified then for goods, the exact requirements must be defined, and an appropriate specification drawn up. For Services and Works, the full commissioning cycle must be followed i.e. plan, understanding where we are now and where we want to get to, engage, involving key stakeholders, Secure, sourcing the right services or works to meet need, manage, ensuring good performance.~~

89. Approvals required before certain Relevant Procedures are commenced

89.1 Rule **89** applies to any Relevant Procedure:

89.1.1 *Relevant Procedure*: means any procedure conducted by or on behalf of the Council for the genuine purpose of the Council (alone or with others) entering into a contract for the purchase of goods, services

and/or works, subject to the following:

- (a) This shall include (without limitation), the seeking of quotations, the conduct of any tender exercise, the conduct of any mini-competition exercised d under a framework agreement, the making of a purchase under a dynamic purchasing system or off an approved list (or the like), and the conduct of a negotiated procedure by or on behalf of the Council.
- (b) This shall not include any genuine exercise to research market conditions (including without limitation, any soft market testing or benchmarking exercise) which is not in itself genuinely intended to directly result in the Council entering into a contract for the purchase of goods, services and/or works.

89.1.2 This Rule ~~89~~ only applies to conduct involving Council members and its officers and does not apply as between the Council and the public at large. Accordingly (and without limiting the implications of this), non-compliance by the Council or by any of its members or officers with all or any part of this Rule ~~89~~ shall not in itself result in any of the following:

- (a) Any act by or on behalf of the Council resulting from that non-compliance being invalid for any reason (including without limitation, any assertion that the Council has acted beyond its powers).
- (b) Any member of the public (including any person ~~to~~ who takes part in a Relevant Procedure which is conducted in breach of this Rule ~~89~~) having any claim of any kind whatsoever against the Council, including any claim for compensation.

89.2 *Requirements before a Relevant Procedure may be commenced:*

All of the following, to the extent relevant, and without limiting other requirements elsewhere in the Council's Constitution but subject to the exceptions in Rule ~~89.5~~ must be completed before a Relevant Procedure may be commenced:

- (a) The expenditure must be within approved budget and policy framework which has been approved by Members.
- (b) The use of expenditure must have been approved by the Procurement Board (or on the Procurement Board's behalf by the Panels where relevant) in accordance with Rule ~~89.3~~.
- (c) Where the Relevant Procedure is a sensitive matter (see Rule ~~89.4~~), the Procurement Board shall consider and give its approval or delegate the approval to the Panels.

89.3 *Delegation by the Procurement Board of the task of considering whether to approve a prospective Relevant Procedure for the purposes of Rule ~~89.2~~(b).*

The Procurement Board may (but shall not be obliged to) delegate that task to any of its Panels (or ~~any its~~ other relevant subcommittees the Procurement Board has in place from time to time), **but only if both of the following conditions** apply to the prospective Relevant Procedure under consideration:

- (a) The reasonably estimated total value of the contract or contracts for goods, services and/or works expected to be entered by the Council at the conclusion of the Relevant Procedure (whether under a single contract, as aggregated under a framework agreement across its full term, across two (2) or more lots contained in the same Relevant Procedure, or as aggregated under a series of reasonably connected contracts) is **less than** £1,000,000 (one million pounds). Where there is reasonable doubt about whether the value is to exceed that figure, there shall be a presumption for the purposes of this Rule ~~89.3~~ (a) that it does exceed that figure; **and**
- (b) The Relevant Procedure is **not** a sensitive matter (see Rule ~~89.4~~).

~~8.4~~ 8.4 Any of the following may constitute a 'sensitive matter' for the purposes of this Rule ~~89~~ but the Procurement Board or Panels will make the decision.

- (a) There is a significant risk (on a reasonable view) that the Relevant Procedure (and/or any purchase of goods, services and/or works resulting from it) will create serious adverse publicity for the Council.
- (b) Under the proposed contract for the purchase of goods, services and/or works expected to result from the Relevant Procedure, the Council would be required to deal with a particular supplier or provider on an exclusive basis.

~~89.5~~ 89.5 *Exceptions to obtaining any of the approvals required in Rule ~~89~~: only with the written consent of the Director responsible for the Procurement and Commissioning Service and the Chief Finance Officer (if they are not the same person).*

~~940.~~ 940. **The Procurement Board and Panels**

~~940.1.~~ 940.1. Composition of the Procurement Board:

- (a) *Appointment and removal of Procurement Board members:* from time to time in accordance with its approved terms of reference and its members must include the ~~Chief Executive~~, the Chief Finance Officer, a minimum of three Directors and the Head of Procurement Executive Directors.
- (b) *How the Procurement Board is to conduct itself:* as determined by the Procurement Board from time to time, acting reasonably and in good faith, and in any case, lawfully.

~~(c) (e)~~ The Panels shall include: ~~Deputy~~ Directors, Heads of Function Assistant Directors and other officers of the Council appointed or removed in accordance with its approved terms of reference.

910.2 The Procurement Board shall have the following powers:

- (a) To determine whether to approve or refuse any proposed Relevant Procedures which it has not otherwise delegated according to Rule 89.3;
- (b) To monitor compliance with contract rules and monitor spend and contracts; to achieve savings;
- (c) The status of a Panel in place from time to time shall be as a sub-committee of the Procurement Board;
- (d) To establish and dissolve the Panels or similar sub-committee;
- (e) To establish the composition of members of the Panels or similar sub-committee, ~~which must include Deputy Directors and/or Assistant Directors~~, including appointment and removal of members, including any alternates;
- (f) The conduct of the proceedings of the Panels or similar sub-committee from time to time;
- (g) Any act of the Panels or similar sub-committee (including any approval or refusal of a Relevant Procedure) shall be regarded as if it were the direct act of the Procurement Board itself;
- (h) To deal with expressions of interest from a relevant body exercising the right to challenge for a relevant service under Part 5, Chapter 2 of the Localism Act 2011;
- (i) To provide an annual six-monthly report on the activities of the Procurement Board and Panels to Cabinet Member Portfolio Holder ~~and an annual report to the Audit and Procurement Committee~~; and
- (j) The Chief Finance Officer has the power to vary the terms of reference of the Procurement Board and Panels, ~~and the right to vary the Rules for Contracts~~.

910.3 The Panels shall have the following powers:

- (a) (b) (d) (e) (g) (h) and (i) detailed in Rule 910.2.

101. **Exceptions to CPRs Rules for Contracts**

101.1 An exception to the CPRs Rules for Contracts is a permission to let a

contract without complying with one or more of the Rules. An exception to ~~CPRs~~Rules for Contracts may be granted subject to conditions. An exception cannot be granted where a breach of any UK ~~or EU~~ legislation would be incurred.

~~101.2~~ ~~Any~~Only the Director ~~responsible for the Procurement Service or his authorised deputy~~ may grant an exception to these ~~CPRs~~Rules for Contracts up to a value of £50,000. Any exception to CPRs over £50,000 will need the approval of the Director responsible for the Procurement Service or his authorised deputy who may grant an exception to these CPRs. Applications for exceptions must be made in writing to the appropriate Director ~~responsible for the Procurement Service~~ and include the exception that is requested and the justification for the exception. All Directors granting an exception or exceptions will notify the Council's Procurement Service of all exceptions granted at a frequency to be determined by the Director responsible for the Procurement Service.

~~101.3~~ The Director responsible for the Procurement Service will keep a register of all exceptions to Rules for Contracts, which shall be available by appointment for inspection by members of the Council and the public. ~~In April, A~~an annual report on exceptions granted in the previous financial year will be presented to the Procurement Board. Cabinet Member (Strategic Finance and Resources).

~~101.4~~ An application for an exception to ~~CPRs~~Rules for Contracts to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to ~~CPRs~~Rules for Contracts. If an application is granted, the Director responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.

~~101.5~~ Where an exception has been granted in line with these rules, ~~the Director will seek~~ a further exception must be sought if the value of the original exception has been exceeded or the time period granted for the exception has elapsed.

~~101.6~~ An exception to the requirements to follow the tender or quotation procedure may be granted in the following circumstances:

- (a) an unforeseeable emergency involving danger to life or health or serious damage to property, in which the work, goods or services are required more urgently than would be possible if the tender or quotation procedure were followed;
- (b) for justifiable technical reasons, the works, goods or services can be obtained from only one supplier;
- (c) acquiring goods or services from a different supplier would result in incompatibility with existing goods or service or disproportionate

technical difficulties;

- (d) the proposed contract is an extension to or variation of the scope of an existing contract, if permitted by the public procurement legislation i.e. below the required EU limit, *unless* the existing contract provides for an extension;
- (e) ~~the purchase of works of art, museum artefacts, manuscripts or archive collection items;~~
- (f) there is a need to develop and influence the market by extending the range and provision of services, provided the contract is for a fixed term of no more than three years;
- (g) it is necessary to enable the continuation of a new service, development of which was initially grant-aided, provided the contract is for a fixed term of no more than three years;
- (h) value for money can be achieved by the purchase of used vehicles, plant or materials;
- (g) when a grant from a public body includes a recommendation as to the supplier or is time limited;
- (i) in furtherance of the Council's social enterprise policy, or other economic development aims, subject to the prevailing financial support limits for this type of activity and without breaching public procurement rules;
- (i) if there are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure or another ~~Rule for Contract~~ Procedure Rule;

104.7 An exception to ~~Rules for Contracts~~ Procedure Rules is granted and separate authorisation is not required in the following circumstances:

(a) placing an order with a single supplier under an existing corporate contract or framework agreement where the value is below £50,000; If above £50,000, approval should be sought via the appropriate Procurement Panel or Procurement Board; placing an order against a contract/framework agreement let by another Public Body where contracts have been let to allow collaboration, e.g. Eastern Shires Purchasing Organisation (ESPO), Central Buying Consortium (CBC, Buying Solutions, etc.), where the value is below £50,000. If above £50,000, approval should be sought via the appropriate Procurement Panel or Procurement Board;

~~(a)(b)~~ _____;

~~(b) placing an order against a contract/framework agreement let by another Public Body where contracts have been let to allow collaboration, e.g. Eastern Shires Purchasing Organisation (ESPO), Central Buying Consortium (CBC, Buying Solutions, etc.~~

(c) as part of a partnering contract that contemplates a series of contracts with a single supplier;

(d) legislation requires the Council to let a contract differently from these ~~Rules for Contracts~~ Procedure Rules;

(e) value for money can be achieved by the purchase of second hand/used vehicles, plant or materials

(f) the purchase of works of art, museum artefacts, manuscripts, archive collection items or the services of artistic and cultural performers;

(g) Residential Placements for an individual with a registered care provider of their choice under the Care Act 2014; and

~~(e)~~(h) for decision making on utilities contracts. Due to the volatile nature of utilities markets and the need for expedient decision making, authority has been delegated through the approval of these rules to the Director responsible for the Procurement Service in consultation with the Chief Finance Officer. If the Chief Finance Officer is also the Director responsible for the Procurement Service, then the decision will be made by the Chief Finance Officer in consultation with the Chief Executive or his nominated representative. All utilities contracts will be let through the Procurement Service and in line with the procedures dictated by the ~~Head of Assistant Director~~ Procurement.

112. Valuation of Contracts and Aggregation of Requirements

112.1 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.

112.2 The total value of ~~the~~ contract is the total amount that the Council expects to pay for the contract, either in a single sum or periodically over time, and should be calculated in accordance with the most appropriate of the following:

(a) Capital and fixed term contracts – the total price which is expected to be paid during the whole life of the contract period, including all extension options and contingency allowance

(b) where the contract period is uncertain, multiply the price estimated to be paid each month by 48

(c) If the purchase is one of a series of regular transactions for the same type of item, the 'Total Value' is the expected aggregate value of all of those transactions over a 12-month period

(d) for feasibility studies, it is the value of the scheme or contracts which may be awarded as a result

~~112.3~~ Contracts for the same works, goods or services must not be split into smaller, separate contracts to avoid compliance with these ~~CPRs~~Rules for Contracts or the Public Contracts Regulations 2015 EU public procurement legislation. ~~If it will achieve best value for money, contracts for the same or similar works, goods or services must be aggregated into a single contract of greater value or be let as a series of contracts based on the appropriate process for the total value.~~

~~123.~~ **Duties of Directors and the Head of Assistant Director Procurement**

~~123.1~~ The Director is responsible for ensuring that all expenditure involving procurement activity complies with the ~~CPRs~~Rules for Contracts, and is in conjunction with the Assistant Director Procurement. He/she is also responsible for ensuring that contracts within his/her division are managed and operated within the terms of the contracts themselves.

~~123.2~~ The ~~Head of Assistant Director~~ Procurement is responsible for maintaining a register of contracts and for providing an up-to-date copy of the register, at the end of each financial year. Contracts for less than £2510,000 or one off contracts need not be recorded in the register. The contracts register is to be published on the Council's website in accordance with the Local Government Transparency Code. Directors responsible for entering into contracts for £25,000 or more must notify the Director responsible for the Procurement Service of contracts entered into at a frequency determined by the Director responsible for the Procurement Service.

~~123.3~~ As soon as practicable after the Council's budget has been set and in any event before the end of March in each financial year, the Director must notify the ~~Head of Assistant Director~~ Procurement of all contracts (including their values) that his/her division plans to enter into during the following financial year. ~~This will enable the Assistant Director Procurement to publish the Council's Prior Information Notice (PIN) in accordance with the EU regulations. This has the benefit of reducing the EU tendering timescales.~~

~~123.4~~ The Director must use corporate contracts, where they are in place. To do otherwise would be unlikely to give value for money for the Council and may be in breach of the Public Contract Regulations 2015.

~~123.5~~ If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications (e.g. TUPE implications and/or redundancies for directly employed staff), must be considered as part of the best value assessment.

~~134.~~ **Selection of Procurement Route**

134.1 When selecting the most appropriate procurement route to secure value for money, the Director, in consultation with the Head of Assistant Director-Procurement, shall adhere to the following principles:

- (a) All practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most economically advantageous bid.
- (b) The scope of contract packages should take into account cross-cutting themes and outcomes identified by strategic, policy and service reviews. Stakeholders within and outside the Council should be consulted about service standards and specifications and investigation of the market undertaken. Performance under any current contract should be appraised and prospective performance considered in the light of consultations and investigations.
- (c) The contract package should seek to stimulate diversity and innovation, enhance choice for service users and attract new suppliers.
- (d) Partnerships between the public, private and voluntary sectors should be sought, which demonstrate a shared commitment to objectives that benefit users of the Council's services.

~~(e) The requirements of the Common Commissioning framework defined under the Sustainable Community Strategy, with the objective of achieving a contract that best serves the needs of service users and contributes to sustainable development, whilst achieving value for money for the Council.~~

~~14.2 The Council is developing a *Compliant Procurement Process* which will replace the current Procurement Manual that sets out minimum requirements for reporting and decision-making with regard to contracts and the key stages and actions the Council requires major procurements to follow, including market assessment and analysis, user consultation, risk analysis and project planning and management. The Compliant Procurement Process will detail how 13.4 The Director must use corporate contracts, where they are in place. To do otherwise would be unlikely to give value for money for the Council and may be in breach of the Public Contract Regulations.~~

~~13.5 If there is an in-house service available that operates as a trading unit, the Director must consider, in accordance with Value for Money principles, whether that service should be used or whether a contract should be let to an external provider, although all resource implications e.g. TUPE implications and/or redundancies for directly employed staff, must be considered as part of the best value assessment.~~

145. Authority to enter into a contract

- 15.1 Officers may only enter into a contract if authority is delegated to them or by specific decision of the Council, the Cabinet or Cabinet Member or Procurement Board or the Panels.
- 15.2 Unless an officer has been given authority to enter into a contract, all contracts involving capital expenditure must be authorised by a specific decision of the Cabinet or a Cabinet member.
- 15.3 Unless an officer has been given authority to enter into a contract, all contracts involving revenue expenditure must be authorised by a specific item in the approved revenue budget for the relevant year. A specific item in the approved revenue budget is deemed to be an authority for the relevant Director to enter into a contract up to the value estimated.
- 15.4 All contracts will be let with the involvement of the Procurement Service in consultation with service users and technical experts.

156. Specifications

- 156.1 The Director in conjunction with the ~~Head of Assistant Director~~ Procurement must ensure that an appropriate specification is prepared for every contract, which sets out clearly the Council's requirements with regard to the works, goods or services to be supplied.
- 156.2 All works, goods and services must be specified by reference to European or national standards where appropriate.
- 156.3 Specifications should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable the contract to be monitored and managed and should build in a capacity for flexibility and innovation, to secure sustained improvements and the ability to meet changing local and national circumstances.
- 156.4 Where appropriate, specifications should identify and allocate the risks inherent in the contract.
- 156.5 If a contract may involve the transfer of employees (from the Council to a contractor or from one contractor to another), the tender documents should, if the contractor has assured confidentiality of personal information, include all relevant information relating to those employees.
- 156.6 The Director must obtain all necessary professional and technical advice and assistance in preparing a specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests. Consultants or other third parties who assist

in the preparation of a specification must not be invited to tender or quote for the contract.

167. Contract procedures

167.1 If a corporate contract is in place for the supply of any works, goods or services, the Director must place orders under that contract. The Procurement Service publishes data to enable Directors to order from corporate contracts.

167.2 The Director in conjunction with the ~~Head of Assistant Director~~ Procurement must establish whether the public procurement legislation applies to a proposed contract. If in doubt, ~~the~~ Legal Services will advise whether the legislation applies. When public procurement legislation does apply, the Director/~~Head of Assistant Director~~ Procurement must use the open or restricted procedure unless ~~the~~ Legal Services agrees the use of competitive dialogue or the negotiated procedure. Whenever possible, a competitive procedure must be adopted.

167.3 The ~~Head of Assistant Director~~ Procurement will place all notices relating to contracts in the Supplement to the Official Journal of the European Union and will provide the statutory annual returns to HM Treasury of contracts let by the Council.

167.4 The Director need not obtain competitive quotations for contracts of less than £10,000 in value but must demonstrate in any event that the Council is receiving value for money (~~see the "Quick Reference Guide" Table at Rule 3). Additionally, all relevant documentation will need to be retained for audit or scrutiny purposes in line with Council policy.~~

178. Invitation to Formal Tender

178.1 If the public procurement legislation applies to a contract, the selection of suppliers to be invited to tender for the contract must follow the requirements of that legislation.

178.2 If the public procurement legislation does not apply, and the estimated contract value is greater than £1050,000 or more, at least three potential contractors, who have expressed an interest, should be invited to tender. Where appropriate those invited to tender should include at least two local suppliers. The number of contractors invited to tender should ensure full competition is achieved. Potential contractors should be selected in the following way:

- Placing an advertisement on the council's website or in one or more newspapers circulating in the West Midlands or in one or more newspapers or journals circulating among persons who undertake such contracts or sub-contracts.
- Responses to the advert may be supplemented by contractors appearing on a suitable approved list.
- The placing of the advertisement should aim to achieve maximum interest amongst contractors. If fewer less than three contractors

express an interest, ~~t~~The Director must agree to proceed, and the steps taken to try and obtain the minimum number of tenderers documented.

~~178.3~~ Companies expressing an interest in being invited to tender in response to an advertisement, must satisfy the Council as to their legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the contract by completing a pre-qualification questionnaire or tender document where the open procedure of the Public Contract Regulations is used, in a form approved by the ~~Head of Assistant Director~~ Procurement.

~~178.4~~ The ~~Head of Assistant Director~~ Procurement shall be responsible for ensuring that an "Invitation to Tender" procedure – that demonstrates public sector best practice – is available and adhered to, at all times.

~~189~~ **Opening Formal Tenders**

~~189.1~~ The information obtained at the opening of tenders is confidential to those involved in the opening process and those directly involved in evaluation of the tenders. Confidentiality must be maintained and any breach reported to the Monitoring Officer.

~~189.2~~ ~~The Council uses an *electronic tendering platform*. The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders. For *electronic tendering*: The tender opening process must be appropriate to the specific electronic software employed and its facilities for guaranteed receipt of tenders.~~

~~19.3~~ ~~For paper-based tendering: Legal Services are responsible for marking the tender envelopes or parcels with the date and time of receipt; keeping tenders in a secure place until after the last date and time for receipt and for returning tenders that are received late or identify the sender.~~

~~19.4~~ ~~Tenders must be opened one at a time by a member of the Legal Services team in the presence of a member of the Assistant Director Procurement's team. In all cases this must be an officer other than the officer running the tender process.~~

~~19.5~~ ~~The Legal Services must number all tenders in the order they are opened and all persons present must initial them.~~

~~19.6~~ ~~The representative of the Legal Services must record:~~

~~(a)~~ ~~the works, goods or services to be supplied;~~

~~(b)~~ ~~the name of each tenderer;~~

~~(c)~~ ~~the amount of each tender or such other information as may be relevant to the procurement;~~

~~(d) the date and time of opening of each tender;~~

~~(e) the names of all persons present at the time of opening.~~

~~The member of the Assistant Director Procurement's team opening the tenders must certify the record as correct.~~

1920. **The Quotation Procedure**

1920.1 For contracts of under £~~105~~0,000 in value, suppliers to be invited to quote may be selected from an appropriate approved list, ~~or~~ advertised on the Council's website or otherwise sought as appropriate.- Where the contract value is over £10,000 and up to £24,999, oral quotations (which should be confirmed by email) can be sought and the use of the quotation pack is optional. Where the contract value is over £25,000 quotations MUST be received in writing using quotation pack.

1920.2 The Authorising officer must satisfy him/herself as to the legal, financial and technical capacity of suppliers invited to quote to undertake the contract for the Council, through seeking appropriate in-house professional advice, and that they will provide value for money.

1920.3 A sufficient number of suppliers must be invited to quote to ensure genuine competition. ~~The minimum number is three.~~

1920.4 The ~~Head of Assistant Director~~ Procurement shall be responsible for all procedural aspects of seeking quotations, ensuring that probity and proper public accountability standards are in operation. Monitoring shall be carried out periodically by either the internal or external auditor.

204. **Acceptance of Formal Tenders and Quotations**

204.1 Where expenditure has been approved through the budget setting process, the Procurement Board has given approval to proceed and these ~~CPRs~~Rules for Contracts have been followed, for contracts over the EU/PCR thresholds, the Procurement Board or Panels shall receive notification of the contract award.

204.2 For contracts ~~of over~~ £~~105~~0,000 or more, contracts are to be awarded under the "most economically advantageous" criterion (see Rule 204.3) the ~~Head of Assistant Director~~ Procurement shall require a written report from the responsible officer requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing and presented to the relevant Panel. In extreme urgency the ~~Head of Assistant Director~~ Procurement, may agree a or verbal report from the responsible officer with a written report being signed off by the ~~Head of Assistant Director~~ Procurement within a fortnight of this meeting. All ~~written reports~~ papers/electronic files will be stored in line with the document retention policy.

~~204~~.3 Tenders or quotations must be evaluated on the basis of which is most economically advantageous to the Council. When using the Public Contracts Regulations 2015~~06~~, the criteria for evaluation must be set out in the invitation to tender or equivalent document depending on which procedure is used, in descending order of priority, with the weightings to be given to them. The criteria may also be set out in the OJEU and public notices. Whole life and environmental costs may be included in criteria for evaluation.

~~212~~. **Electronic tendering and quotations**

The ~~Head of Assistant Director~~ Procurement is responsible for the procedure for these processes.

- (a) tenders and quotations may be invited electronically, provided paper copies of any documents that cannot be sent on-line are sent by post and paper copies of all documents are sent to suppliers who do not specify an e-mail address for receipt of tenders or quotations. In selecting suppliers to be invited to tender or quote, the ~~Head of Assistant Director~~ Procurement must not discriminate against suppliers who do not have facilities for receiving invitations by e-mail. Where the e tendering system is the only process being used support must be found for suppliers in this category.
- (b) invitations to tender and quotes may be submitted electronically through the approved e tendering system. Where electronic submissions are made outside of the approved system, submissions must be made after the official opening deadline, and they must be supported by paper copies of all invitation documents and formally opened under the process described in sections 18 or 19 of this document.
- (c) the procedure will also include arrangements for e-auctions.

~~223~~. **Amendments and alterations to tenders and quotations**

~~223~~.1 Amendments to invitation to tender or invitation to quote documents, made after the invitations have been sent out, must be clearly headed "Tender Amendment" or "Quotation Amendment" as appropriate and sent to all suppliers who have been invited to tender or quote. If there is more than one amendment, they should be numbered consecutively. Amendments should be sent out in sufficient time to allow suppliers to adjust their tenders or quotations as appropriate.

~~223~~.2 A supplier's tender or quotation is his offer to the Council, which the Council may accept as it stands. Once a tender or quotation has been submitted, alterations will only be accepted through formal clarifications under the restricted procedure; or negotiations under the Competitive Dialogue process of the Public Contracts Regulations 2015~~06~~.

~~223.3~~ In all other situations, if a supplier attempts to alter his offer after the last date for receipt of tenders or quotations, he must be given the opportunity to stand by or withdraw his original offer. Correction of an obvious arithmetical error, which would reduce the price to be paid by the Council or increase the price to be paid to the Council, may be accepted.

~~223.4~~ Where performance specifications are used, a tender or quotation that is expressed to be conditional upon the Council's acceptance of alterations to the specification or the terms and conditions of contract, may be treated as non-compliant and rejected. This does not prevent the Council inviting variant bids (that is an invitation to submit an alternative bid that could then be considered as being to the Council's benefit provided that the condition applying to the mandatory reference bid is followed). If variant bids are invited, suppliers must be required to submit a mandatory reference bid based on the specification and terms and conditions included in the invitation to tender or invitation to quote, so that all bids may be compared fairly.

~~223.5~~ Where outcome-based specifications are used it will be for the bidder to decide the method of service delivery. Tenders or quotations will be evaluated fairly against published evaluation criteria.

~~223.6~~ A properly approved and EU-compliant competitive dialogue process or negotiated procedure will normally result in one or more Best and Final Offers as a result of negotiation with selected bidders. No alteration to the Best and Final Offer, in terms of outcomes or contract price is permitted without the specific approval of the Monitoring Officer.

~~23.7~~ ~~Before a tender or quotation has been accepted, the Assistant Director Procurement may ask all tenderers or suppliers to maintain their tendered or quoted prices for a longer period. Tenders and quotations should in any event remain open for acceptance for a period of ninety days from the last date for receipt of tenders or quotations, or such other period as the Assistant Director Procurement considers appropriate, and the form of tender or quotation should make this clear.~~

~~234.~~ **Contract extensions**

~~234.1~~ Where extensions to contracts have been included in the original advert, tender documentation and contract, subject to Panel/Procurement Board approval, the extensions may be agreed; where performance is satisfactory and the original contract terms are to continue (including price variations in line with the original contract) through the issuing of a contract change note ~~(templates to be issued by the Assistant Director Procurement)~~. The contract change note must be kept with the original contract in line with the document retention policy and must be signed by the officer who signed the original contract, or in their absence for whatever reason, by another officer authorised to sign the original contract.

24. **Contract Variations-**

24.12 Over £1050,000 and below the ~~PCREU~~ thresholds, if a contract extension is proposed where the terms and conditions of the original contract will be changed; the relevant Panel shall require a written report from the responsible officer requesting approval for acceptance and detailing the reasons for doing so. This shall be recorded in writing. In extreme urgency the Panel may agree an ~~or verbal~~ report from the responsible officer, with a written report being signed off by the Panel within a fortnight of this meeting. Once approval is received a contract change note will be issued and kept with the original contract documentation. All written reports will be stored in line with the document retention policy. If a contract is under seal a short supplemental deed may be required and this will be dealt with on request to Legal Services.

25. **Form of Contract**

25.1 Legal Services will decide whether a contract over the ~~PCREU~~ thresholds in value is to be executed as a deed under the seal of the Council or under hand as a simple contract. As a general rule, works contracts, and high value contracts (exceeding £1,0050,000) will be executed as deeds under the Council's seal.

25.2 All contracts made as deeds must be made under the Council's Common Seal, witnessed in accordance with the relevant provision of the Scheme of Functions Delegated to Employees by an Officer authorised to do so. Standing Order of the Council's Rules of Procedure (Standing Orders) by the Chief Executive or such other person appointed by the Council.

25.3 A contract under seal is retained for twelve years ~~in Place Directorate~~ to enable any action to be taken under it, if required

25.4 ~~Simple C~~contracts of between £100,000 and ~~the £150,000-£999,999~~ in value must be signed for and on behalf of the Council by either the Head of Assistant Director Procurement or the Head of Legal or an authorised deputy.

26. **Social Value**

26.1 The Public Services (Social Value) Act 2012 requires the Council to consider delivering Social Value through contracts for services. However, the Council encourages consideration of social value outcomes in all contracts above the PCR thresholds, where it can be evidenced that it is relevant to the subject matter of the contract.

26.2 For those contracts that fall below the threshold, the approach should be to maximise outcomes where possible.

26.3 In order to ensure that the Council adheres to the Act, the social value sought from a contract must be relevant and proportionate in respect of the proposed contract

276. **Contract administration and management**

276.1 The ~~Head of Assistant Director~~ Procurement shall arrange for publication of a contract award notice, no later than 45 days after contract award, if appropriate, and shall keep a register of the notified information, which shall be available for inspection by appointment by any Member of the Council, internal and external auditors and any member of the public.

276.2 The ~~Head of Assistant Director~~ Procurement shall be responsible for ensuring that a procedure on "Contract Administration and Management" is made available to all officers and partners managing contracts on the Council's behalf. This will include guidance on managing partnering or partnership contracts explaining techniques such as target costing and "open book".

287. **Prevention of fraud and corruption**

287.1 All purchases, contracts and income covered by these rules must be let in line with the Council's Anti-fraud and Corruption Policy and Strategy.

287.2 If an officer of the Council has a pecuniary interest, in a contract or proposed contract, he/she must in accordance with Section 117 of the Local Government Act 1972 register the interest with the Monitoring Officer and declare it at any meeting at which the officer is present and the contract is discussed and thereafter leave the room and take no further part in the discussion.

287.3 If an officer of the Council has a personal or non-pecuniary interest in a contract or proposed contract he/she must declare that interest to their Deputy Chief Executive or Director, as appropriate, as required by the Council's Code of Conduct for Employees.

287.4 If a Member of the Council has a disclosable pecuniary interest or other relevant interest in a contract as defined in the Code of Conduct for Elected and Co-opted Members, the member must take such action as is required by that Code.

287.5 A contract must be terminated immediately, and any losses to the Council arising from the termination recovered from the contractor, if the contractor, or anyone acting on his behalf:

- (a) offers or gives or agrees to give any member or officer of the Council any gift, benefit or consideration of any kind or value as an inducement or reward with regard to the contract; or

- (b) commits any offence under the Bribery Act 2010 or section 117 of the Local Government Act 1972.

A declaration to this effect must be contained in all invitations to tender or quote.

~~287.6~~ The attention of officers is drawn to the Council's Code of Conduct for Elected and Co-opted Members †, Whistleblowing policy, Disciplinary Policy and Procedures and the Code of Conduct for Employees. Non-compliance with these ~~CPRs~~~~Rules for Contracts~~ constitutes grounds for disciplinary action.

~~287.7~~ All of the requirements in Rule 27.1 to 27.6 above will apply to any third party acting on the Council's behalf in a contractual situation e.g. consultants and community representatives on evaluation panels.

~~298.~~ **Freedom of Information Act 2000**

~~298.1~~ When entering into contracts the Council will refuse to include contractual terms that purport to restrict the disclosure of information held by the Council and relating to the contract beyond the restrictions permitted by the Act. Unless an exemption provided for under the Act is applicable in relation to any particular information, the Council will be obliged to disclose that information in response to a request, regardless of the terms of any contract.

~~298.2~~ When entering into contracts with non-public authority contractors, the Council may be under pressure to accept confidentiality clauses so that information relating to the terms of the contract, its value and performance will be exempt from disclosure. As recommended by the Information Commissioner, the Council will reject such clauses wherever possible. Where, exceptionally, it is necessary to include non-disclosure provisions in a contract, the Council will investigate the option of agreeing with the contractor a schedule of the contract that clearly identifies information which should not be disclosed. The Council will take care when drawing up any such schedule and be aware that any restrictions on disclosure provided for could potentially be overridden by obligations under the Act, as described in the paragraph above. Any acceptance of such confidentiality provisions must be for good reasons and capable of being justified to the Information Commissioner. When entering into the above contracts the Council will make it clear that these restrictions apply to sub-contractors also and that the Secretary of State has the powers to designate them as 'public bodies' for the purpose of making them comply with the Act.

~~298.3~~ The Council will not agree to hold information 'in confidence' which is not in fact confidential in nature. Advice from the Information Commissioner indicates that the exemption provided for in section 41 only applies if information has been obtained by a public authority from another person and the disclosure of the information to the public, otherwise than under the Act, would constitute a breach of confidence

actionable by that, or any other person.

~~298.4~~ It is for the Council to disclose information pursuant to the Act, and not the non-public authority contractor. The Council will take steps to protect from disclosure by the contractor information that the authority has provided to the contractor (which would clearly be exempt from disclosure under the Act) by appropriate contractual terms. In order to avoid unnecessary secrecy, any such constraints will be drawn as narrowly as possible and according to the individual circumstances of the case. Apart from such cases, the Council will not impose terms of secrecy on contractors.

298.5 The ~~Head of Assistant Director~~ Procurement will be responsible for advising on the application of the Freedom of Information Act and contracts, in conjunction with the Council's Head of Information Governance, where circumstances arise that are not specifically covered by Council policy. He/she will also be responsible for updating procedure following any case law that materially amends or augments Council policy in this area.

3029. **Management of Risk in Contracts**

For contracts of strategic importance, a risk register will be drawn up for the contract letting process. Once the contract is awarded, a risk register to cover the implementation and successful ongoing management of the contract will be drawn up by the Head of Service or authorised deputy. This risk register will be monitored in line with the corporate guidance on risk throughout the life of the contract.

31. **Impact of Other Legislation**

In addition to what has already been mentioned in these Rules, there is other legislation that may impact on the supplies, services and works required when following a contract tender or quotation procedure such as Health & Safety, Safeguarding, Modern Slavery, to name but a few. This legislation must be incorporated where relevant and appropriate. In particular, the Director must consider whether the contract needs to include, or be subject to, a Data Sharing Agreement where the nature of the contract services is such that personal data is likely to be shared.

32. **Definitions**

In these ~~Contract Procedure Rules (CPRs)~~ Rules for Contracts:

~~Assistant Director Procurement~~ means Assistant Director Procurement or his or her authorised representative.

Authorising Officer means: an officer authorised to approve the placement of orders or invoices for payment.

Cabinet means: the Leader of the Council and the other members of the Council's Executive.

Chief Finance Officer means: the officer appointed under section 151 of the Local Government Act 1972.

Contract means: the agreement between the Council and a contractor/supplier/provider for the supply of works, goods or services, or for any activity that generates income for the Council.

Contractor means: a supplier or provider of works, goods or services to the Council.

Contract change note means: the document that describes changes to the original contract which have been agreed by both parties.

Contract package means: the scope for amalgamating like requirements/services currently operating at different parts of the organisation, to suit the supply market to achieve overall better value.

Corporate contract means: a contract or framework agreement for the supply of works, goods or services to the Council e.g. for computer consumables, stationery, legal and financial services.

Decision making body means: the body responsible for decisions in the described situation under the Council's Constitution.

Director(s) means: a member(s) of the Council's Corporate Leadership Team or Strategic Management Board.

Framework Agreement means: an agreement between the Council and a contractor for the provision of estimated quantities of goods or services. This becomes a contract when an order for a specific quantity is placed either after further competition or through the most competitive source identified in the original tender.

Head of Procurement and Commissioning means: the Head of Procurement and Commissioning or his or her authorised representative.

Monitoring Officer means: the officer designated as such under Section 5 of the Local Government and Housing Act 1989 or his or her deputy.

Outcome based specifications means: a specification that describes the required outcomes through service delivery and leaves the method of delivery to the third party provider.

Panels means: the People or Place and Corporate or Resource Panel.

People Panel means: the officer panel responsible for adult and children's social care, housing, public health and public safety.

Performance Specifications means: a specification that provides details of the methods to be adopted when delivering the requirements.

Place and Corporate Panel means: the officer panel responsible for built environment, highways street scene, transport, waste, facilities management, and operational property, financial, ICT/Telecoms, consumables and professional services.

Procurement Board means: the officer board responsible for all procurement decisions.

Procurement Service means: the centralised procurement and commissioning service for Coventry City Council.

Public procurement legislation means: the Remedies Directive 1992, The Public Contracts Regulations 2015~~2006~~, the EC Directives from which they are derived, UK legislation affecting public sector contracts and any amendment, re-enactment or replacement of any of them.

Quotation means: an offer to undertake a contract of £10,000 or more but less than £~~10~~50,000 in value.

Resource Panel means: the officer panel responsible for financial, ICT/Telecoms, consumables and professional services.

Right to challenge means: the right to challenge for services under Part 5 of the Localism Act 2011.

Services contract means: a contract or framework agreement for the provision of services to the Council.

Chief Finance Officer means: the officer appointed under section 151 of the Local Government Act 1972.

Supplies contract means: a contract or framework agreement for the sale or hire of goods to the Council and includes, where appropriate, installation of goods.

Tender means: an offer to undertake a contract of £~~10~~50,000 or more in value.

TUPE Regulations means: the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any amendment, re-enactment or replacement of the same.

Works contract means: a contract for the construction, repair or maintenance of a physical asset not defined as Services in the Public Contracts Regulations.

PROCUREMENT GOVERNANCE

