

# Public Document Pack

**Supplementary information for Scrutiny Board (Resources and Council Services) on Monday, 29<sup>th</sup> July 2013**

Pages 1-28: Agenda item 10 – Contract Procedure Rules

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# **CONTRACTS PROCEDURE RULES**

Body / Person with authority to  
change the document

Chief Officer Public Private Partnership Unit and Procurement

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# CONTRACTS PROCEDURE RULES

These Contracts Procedure Rules set out the key responsibilities and actions that Council staff must follow when undertaking procurements.

They support staff to meet legislative requirements, and to meet the Council's ambitions for procurement, the Council's procurement policy, and related policies and procedures. They support staff to deliver effective procurement.

A range of procurement templates and toolkits [\[link\]](#) is also available. These include the key documents referred to in these Contracts Procedure Rules, such as the Category Plan and Procurement Plan. A full list of templates and toolkits is available at appendix 1 of the Council's published Procurement Strategy. Council staff can access these documents through the council's intranet (InSite) and through hyperlinks in these Contracts Procedure Rules. Residents, businesses and other partners can request copies of the documents through the contact points listed in the Council's published Procurement Strategy.

There are separate Contracts Procedure Rules in place to govern procurements that are carried out by maintained schools.

## 1 Compliance

- 1.1 Every procurement undertaken by or on behalf of the Council and every contract entered into by the Council will comply with:
  - 1.1.1. The Public Contracts Regulations (see CPR 10) and all relevant statutory provisions;
  - 1.1.2. These Contracts Procedure Rules, and the Council's Financial Procedure Rules [\[link\]](#);
  - 1.1.3. The Council's strategic objectives and policies including the Procurement Strategy [\[link\]](#);
  - 1.1.4. The Council's Employee [\[link\]](#) and Member Codes of Conduct [\[link\]](#); and
  - 1.1.5. The Council's Constitution including Part 2 (Articles), Part 3 (Functions) and Part 4 Procedure Rules, particularly the Executive and Decision Making Procedure Rules) [\[links\]](#).
- 1.2 These Contract Procedure Rules will apply to all procurements except Exempt Contracts.
- 1.3 Directors and/or Chief Officers may waive the requirements of CPR 3.1.1.1, 3.1.6, 3.1.7, 3.1.15, 3.1.22, 3.1.23, 8.1, 8.2, 9.1, 9.2, and 15.2 using the process set out in CPR 27. The Chief Procurement Officer may be asked for his advice, by submitting the proposed waiver report for comment if the Director or Chief Officer believes that this is necessary.

## Contracts Procedure Rules

The Chief Procurement Officer may waive CPR 14.3.5 in accordance with the terms of that CPR..

- 1.4 The term 'procurement' in these CPRs includes any arrangement whereby a new, replacement, amended or extended contract for the supply of goods, works or services is to be put in place. This includes circumstances where more than one provider is invited to tender and also where goods, works or services are procured through a negotiation with a single provider. This includes the award of concessions. Grant funding arrangements should be considered carefully to decide whether they are in fact a procurement for the purpose of these CPRs<sup>1</sup>.
- 1.5 The following are not procurements for the purposes of these CPRs:
  - 1.5.1 use of an ISP (except where the ISP is invited to submit a tender along with other providers); and
  - 1.5.2 provided that the Public Contracts Regulations do not apply, a joint or shared services arrangement with another public body.

## 2 Responsibilities of Directors and Chief Officers

- 2.1 The relevant Chief Officer<sup>2</sup> will work with the Chief Procurement Officer to identify the total expenditure relating to a particular category of spend by completing a Category Plan<sup>3</sup> [link]. The relevant Chief Officer will ensure that the Category Plan remains up to date and is reviewed periodically (minimum of once every 12 months) in conjunction with the Chief Procurement Officer.
- 2.2 A category is an area of spend. The list of categories will be determined by the Chief Procurement Officer in consultation with Directors and Chief Officers.
- 2.3 All Chief Officers will be responsible for ensuring compliance with these Contracts Procedure Rules by their Authorised Officers.
- 2.4 All Authorised Officers must be registered on YORtender.

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<sup>1</sup> Guidance on this matter is available on the national audit office website <http://www.nao.org.uk/>

<sup>2</sup> Chief Officers will be responsible for the categories of spend that sit within their directorate. Where a category of spend is shared across directorates responsibility for the category will have to be agreed between the directors involved in consultation with the Chief Procurement Officer.

<sup>3</sup> Category Plans are being developed for all expenditure during a transitional period which ends on 31 March 2015, during which period Chief Officers are required to work towards Category Plans containing all relevant expenditure. Thereafter no procurements may be undertaken without the expenditure being identified within a Category Plan, or a waiver being obtained from the relevant Chief Officer. The template Category Plan is available on the Procurement page of the Intranet, along with a list of categories and key Category Contacts

- 2.5 All Chief Officers will ensure that contracts for which they are responsible are monitored and managed in accordance with the relevant Contract Management Plans [\[link\]](#) .
- 2.6 All Chief Officers will report all breaches of these Contract Procedure Rules and lessons learned to the Chief Procurement Officer.
- 2.7 Chief Officers must ensure that the Chief Procurement Officer is provided with all the information that is required to allow him to comply with his duties including those relating to publishing information, notices and statistical returns.
- 2.8 Where a Chief Officer is responsible for the procurement of a Contract that may be used by more than one Directorate they shall ensure that the other Directorates are consulted and involved and that the Chief Procurement Officer is provided with all the information that he requires to comply with his responsibilities at CPR 4.

### **3 Responsibilities of Authorised Officers**

- 3.1 Authorised Officers will ensure that each procurement for which they have responsibility complies with the following requirements and will record such compliance:

- 3.1.1 The proposed procurement expenditure must be

- 3.1.1.1 contained in a Category Plan (see footnote 2) and any decision to waive this rule by a Chief Officer will be in accordance with CPR27and

- 3.1.1.2 contained within an approved budget or a budget secured prior to the commencement of the procurement and in accordance with the Financial Procedure Rules. ;

- 3.1.2 All procurement activity must be undertaken by suitably skilled and experienced staff;

- 3.1.3 Authorised Officers will consult with all relevant stakeholders, including Members, prospective providers, the trade unions if TUPE may apply (in accordance with the TUPE protocol) and service users, to identify the needs and outcomes to be achieved and assess all options for meeting those needs and achieving the outcomes. A recommended template (the consultation plan [\[link\]](#))is available from the PPU/PU, along with supporting toolkits the Communication and Stakeholder Management Plan can be found here [\[link\]](#);

- 3.1.4 If there is an ISP set out in the supplier information database [\[link\]](#) who can provide the service the Authorised Officer will consult with and use such provider. If the Authorised Officer believes that the ISP should not be used they will seek to agree this with the Chief

Officer of the ISP. If agreement cannot be reached the matter will be referred to the Director of the procuring Directorate who shall take the final decision on this matter in conjunction with the Deputy Chief Executive and Director of Resources. Any decision to procure an external provider rather than use an ISP shall be recorded in writing, along with the reasons for the decision and sent to the Chief Procurement Officer for monitoring purposes;

- 3.1.5 If there is no ISP that is able to provide the service, or a decision has been taken not to use the ISP in accordance with CPR 3.1.4 Authorised Officers will consider whether the procurement is subject to Exclusive Supplier arrangements set out in the supplier information database [link] and will use such arrangements if so;
- 3.1.6 If there is no ISP that is able to provide the service, or a decision has been taken not to use the ISP in accordance with CPR 3.1.4, and there are no Exclusive Supplier arrangements in accordance with CPR 3.1.5, Authorised Officers will consider whether the procurement is subject to existing provider arrangements set out in the supplier information database [link] and will use such arrangements if so. If the Authorised Officer believes that the existing provider should not be used and the contract with the existing provider clearly states that the Council does not have to purchase the goods, works or services from the existing provider, they may waive this CPR. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27;
- 3.1.7 If there is no ISP that is able to provide the service, or a decision has been taken not to use the ISP in accordance with CPR 3.1.4 and there are no Exclusive Supplier arrangements in accordance with CPR 3.1.5, the Authorised Officer will ascertain whether there is an Approved Framework Agreement in place that can be used and will use such arrangements if so. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27. Call Offs under Approved Framework Agreements will be tendered in accordance with these Contracts Procedure Rules and/or the Approved Framework Agreement itself. Further information on Approved Framework Agreements can be found on the supplier information database [link]
- 3.1.8 The Delegated Decision to undertake a procurement, whether it is a Key, Significant Operational or Administrative Decision will be taken at the point that the procurement route is chosen and, subject to any project specific issues, this will normally be the main decision that all subsequent decisions flow from. Refer to the Assurance Manual for further detail and advice. The Authorised Officer must also check compliance with the Financial Procedure Rules if the procurement includes capital expenditure. The Authorised Officer will recommend which kind of Delegated Decision is required;



- 3.1.9 The Authorised Officer will consider the matters set out under the headings “social”, “environmental” and “economic” at appendix 1 of the Procurement Strategy throughout the life of the procurement and in accordance with all applicable legislation including the Social Value Act and the Equality Act;
- 3.1.10 For all procurements Authorised Officers will establish a written specification for the procurement requirement and (where competition is involved) evaluation criteria and methodology which must be formally approved by the relevant Chief Officer. Refer to the evaluation toolkit for further guidance. Templates are also available from PPPU/PU;
- 3.1.11 The Authorised Officer will draft the description of the goods, works or services to be purchased in the contract notice with the assistance of the Chief Procurement Officer if required.]
- 3.1.12 The Authorised Officer will consult and seek advice from the Chief Procurement Officer prior to inviting tenders in each of the following cases:
- 3.1.12.1 If the Transfer of Undertaking (Protection of Employment) (TUPE) may apply;
  - 3.1.12.2 Where the procurement value is or may exceed £100,000; and
  - 3.1.12.3 For each procurement of Consultants.
- The decision to start any of these procurements will, as a minimum, be treated as a Significant Operational Decision.
- 3.1.13 Unless the relevant Chief Officer determines otherwise the Authorised Officer will complete a Procurement Plan, to include a DSC scorecard where required. Any decision not to use a Procurement Plan will be recorded in writing, along with reasons, and sent to the Chief Procurement Officer for monitoring purposes;
- 3.1.14 The Authorised Officer will register all completed procurements (as defined at CPR 1.4 and therefore including contracts that have been negotiated with a single provider) that have a value of £1,000 or more on YORtender in accordance with the requirements of the Chief Procurement Officer and CPR 13 subject to CPR 13.24;
- 3.1.15 Subject to CPR 12, Authorised Officers will use parts 1 to 4 of the Council’s standard tender documents [link] for all tender processes. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27;

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<sup>4</sup> This rule is subject to a transition period. All Directorates must be complying with this rule by 31 March 2014.

- 3.1.16 All procurements must have a completed Contract Management Plan, unless the relevant Chief Officer determines otherwise. Any decision not to use a Contract Management Plan shall be recorded in writing, along with reasons, and sent to the Chief Procurement Officer for monitoring purposes; *[link]*
- 3.1.17 The Authorised Officer will make tender documents available to tenderers in a suitable electronic format (usually Portable Document Format (PDF)), unless there are exceptional circumstances where the use of electronic documents is not appropriate. PDF format may not be suitable for documents requiring completion or signature;
- 3.1.18 The Authorised Officer will consider all aspects of the tender and contract lifecycle with reference to guidance *[link]* issued by the Chief Procurement Officer. When calculating the price of any goods (including software) the Authorised Officer will ensure that a genuine estimate of the maintenance costs is included within the price;
- 3.1.19 The Authorised Officer will apply Procurement Checklists *[link]* to all procurements and a gateway review process *[link]* to all major procurements<sup>5</sup>. This process must be applied at key stages of the procurement process in conjunction with the Chief Procurement Officer and in line with the Procurement Plan;
- 3.1.20 All decisions relating to the procurement must have due regard to the Assurance Manual (with the exception of sections 11 (data management) and 13 (statistical returns) which are compulsory);
- 3.1.21 The Authorised Officer will ensure that, where proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU, a sufficiently accessible advertisement is published on YORtender in accordance with CPR 10 below. Generally, the greater the interest of the procurement to potential providers from other member states, the wider the coverage of the advertisement should be. Advice must be sought from the Chief Procurement Officer;
- 3.1.22 The Authorised Officer will ensure that procurements are not conducted by Consultants. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27; and
- 3.1.23 Subject to CPR 17.4, the Authorised Officer will ensure that no post tender submission negotiation takes place if the Public Contracts Regulations apply. In other cases post tender negotiations are permissible if the tender documentation states that it may take

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<sup>5</sup> A major procurement will be something that meets the DSC definition of a Major Project  
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place, and this rule is waived. Any decision to waive this rule by a Chief Officer will be in accordance with CPR17 and CPR27.

- 3.2 Where the procurement of any value is fully funded by a third party (for example a developer or funder), and if that third party so requests, then the name(s) of one or more providers may be added to the tender list or be the only providers invited provided that the Public Contracts Regulations are not contravened. The Chief Procurement Officer must be notified and advice sought if this CPR 3.2 applies.
- 3.3 The Authorised Officer will be responsible for ensuring that a fair, transparent and non-discriminatory process is followed during the procurement, and when entering into the contract.
- 3.4 The Authorised Officer will provide the evaluation results (tenderers score and winning tenderers score) to unsuccessful tenderers and will offer to carry out a debriefing. This shall be in addition to any formal processes required by the Public Contracts Regulations. The Chief Procurement Officer will attend or contribute to this process if requested to do so by the Authorised Officer.

#### **4 Responsibilities of Chief Procurement Officer**

- 4.1 At the beginning of each financial year, the Chief Procurement Officer will publish a Prior Information Notice in the Official Journal of the European Union listing the contracts for services and supplies which the Council expects to procure for the coming financial year, based on information supplied by each relevant Chief Officer.
- 4.2 The Chief Procurement Officer will be responsible for publication on behalf of the Council of all OJEU contract advertisement, award and other notices and statistical returns required by the Public Contracts Regulations. Information kept by the Chief Procurement Officer on procurements undertaken will be published on YORtender, including specifications, contract terms and contract expenditure (tender documents and award notices will be published).
- 4.3 The Chief Procurement Officer will maintain a procurement calendar indicating when contracts will expire and procurements are programmed to be undertaken, and a supplier information database, based on the information provided by Chief Officers.
- 4.4 The Chief Procurement Officer will provide procurement support and advice on the application of these CPRs in relation to all procurements covered by CPR 3.1.12 together with all other procurements which the relevant Chief Officer requests and will manage the administration of YORtender.
- 4.5 The Chief Procurement Officer will issue details of procurements where TUPE may apply (to the extent that this information has been provided by Directorates) to trade unions via the JCC along with any TUPE related

information based on work carried out and information provided under CPRs 3.1.3 and 3.1.12.

- 4.6 The Chief Procurement Officer will review these CPRs and the Council's procurement processes annually in consultation with Chief Officers.

## **5 Joint Procurement**

- 5.1 Any joint procurement for the benefit of the Council together with one or more public bodies will be formally approved by the relevant Chief Officer before the procurement commences.
- 5.2 Where the Council conducts the procurement on behalf of itself and one or more other public bodies these CPRs will apply and the Authorised Officer must ensure the other public bodies that are to be included in that arrangement are listed in the OJEU advertisement and contract documents individually or as an identified class. The estimate of contract usage given must include the potential usage of that joint arrangement by those public bodies listed.
- 5.3 Where the Council is going to take part in a procurement that is conducted by another public body the procurement must be carried out in accordance with the procuring body's procurement rules and the Public Contracts Regulations, but the Authorised Officer will in any event comply with CPRs 3.1 to 3.3 (except for 3.1.15 and 3.1.21 to 3.1.23 inclusive).
- 5.4 The Council may enter into contracts on behalf of another local authority (or another public body such as a health authority when legal advisors have confirmed that it is lawful to do so) where:
- 5.4.1 the relevant public body has given authority to do so; and
  - 5.4.2 having taken legal advice, the relevant Chief Officer has granted approval to do so.

## **6 Estimating the Contract Value**

- 6.1 Contract values should be calculated by working out the annual price and multiplying it by the contract length and, in any event, in accordance with the Public Contracts Regulations with particular regard to the rules on aggregation. For consistency, these rules should be followed even when the Public Contracts Regulations are not applicable.
- 6.2 Authorised Officers will ensure that values are not split in an attempt to avoid the applicability of these CPRs, the Public Contracts Regulations or the Executive and Decision Making Procedure Rules (Part 4 of the constitution).

## **7 Below £10k - Low Value Procurement**

- 7.1 Where no appropriate ISP, Exclusive Supplier, existing provider, or Approved Framework Agreement exists, competition (three written tenders) is required for procurements with an estimated value of below £10k. If the relevant Chief Officer believes that it represents Best Value for the Council to make a direct appointment without the need for competition, they may do so providing that a written record of the decision, along with reasons, is kept.
- 7.2 Once a Contractor is selected an order will be issued specifying the goods, works, or services to be provided and the price and terms of payments.
- 7.3 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will generally be an Administrative Decision unless the decision maker considers that it will have a significant impact. This is just general guidance and officers should have regard to the Council's constitution when deciding which kind of Delegated Decision applies.

## **8 Between £10k and £100k - Intermediate Value Procurement**

- 8.1 Where no appropriate ISP, Exclusive Supplier, existing provider, or Approved Framework Agreement exists, competition is required for procurements valued over £10k but at or below £100k.
- 8.2 At least **three** written tenders will be invited.
- 8.3 Any decision to waive this rule by a Chief Officer will be in accordance with CPR27.
- 8.4 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will generally be an Administrative Decision unless the decision maker considers that it will have a significant impact. This is just general guidance and officers should have regard to the Council's Constitution when deciding which kind of Delegated Decision applies.

## **9 Over 100k - High Value Procurements**

- 9.1 Where no appropriate internal provider, Exclusive Supplier, existing provider or Approved Framework Agreement exists, competition is required for procurements valued over £100k.
- 9.2 Where there are sufficient numbers of providers at least **four** written tenders will be invited.
- 9.3 Where the estimated contract value reaches the relevant EU threshold set out in the Public Contracts Regulations CPR 10 will also apply.

## *Contracts Procedure Rules*

- 9.4 Any decision to waive this rule by a Chief Officer will be in accordance with CPR27. Rule 9.3 cannot be waived.
- 9.5 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will either be a Significant Operational Decision or a Key Decision. Officers should have regard to the Council's Constitution particularly Article 13 when deciding which kind of Delegated Decision applies.

## **10 Contracts that are subject to the Public Contracts Regulations**

- 10.1 Where the estimated value of a contract exceeds the current EU threshold, the contract will be tendered in accordance with the Public Contracts Regulations and these CPRs. In all such circumstances appropriate advice must be sought from the Chief Procurement Officer

- 10.2 The current thresholds are:

Services	£173,934.00
Goods	£173,934.00
Works	£4,348,350.00

The thresholds are updated every two years with the next update due on the 1 January 2014.

- 10.3 There is a distinction in the Public Contracts Regulations between part A and part B services. Part A services, such as consultancy, attract the full force of the regulations whereas part B services, such as social care, attract only limited application of the regulations. The parts of the Public Contracts Regulations that apply to part B services include advertisement, providing a specification, publishing contract award details and providing statistical returns to the European Commission. In certain circumstances there may be no requirement to advertise part B services and advice should always be sought from the Chief Procurement Officer to ascertain whether the service you are procuring needs to be advertised in accordance with the Public Contracts Regulations.

## **11 Pre-qualification**

- 11.1 In all procurements with a value of over £100k (and any other circumstances when the Authorised Officer believes that it is necessary and proportionate given the risk profile of the procurement), the Council will only enter into a contract with a Contractor if it is satisfied as to the Contractor's eligibility, financial standing and technical capacity.
- 11.2 Pre-Qualification Questionnaires are used to assess a tenderer's ability to perform the contract in question (selection criteria) and must not be used to assess how a contractor will perform the contract (award criteria).

- 11.3 A template Pre-Qualification Questionnaire is available [here](#) [link] for use to determine the criteria under CPR 11.1.

## 12 The Invitation to Tender

- 12.1 The Invitation to Tender will include parts 1 to 4 of the Tender Documents completed in accordance with the template documents which can be found here [link]
- 12.2 The Authorised Officer will ensure that tenders are invited and Contracts are entered into on the Council's terms and conditions, set out at part 4 of the tender documents. [link] They will be included with each purchase order or invitation to tender. Where this is not possible, because the Council's terms and conditions are not suitable, and other terms and conditions are proposed, those terms and conditions must be formally approved in writing by the PPPU/PU before they can be accepted.
- 12.3 The above CPR 12.2 will not apply to:
- 12.3.1 Construction and/or engineering contracts where bespoke conditions based on accepted standard form contracts are used such as JCT or NEC for example; and
  - 12.3.2 Approved Framework Agreements that have been created by organisations other than the Council.
- 12.4 Where tenders for works are required the Authorised Officer will liaise with PPPU/PU to determine the most appropriate standard form of building contract to use.
- 12.5 Procurements can only be abandoned and / or re-tendered for proper justifiable reasons e.g. receipt of non-compliant tenders so genuine competition cannot be obtained or funding is withdrawn, and such proposed action must be subject of a formal decision by the relevant Chief Officer.

## 13 Pre-tender submission clarification

- 13.1 Prior to the tender submission deadline either the Council or a tenderer may seek to clarify any aspects of the issued tender documentation. Adequate time must be allowed for both the clarification question and the response. Both the clarification question and response must be in writing and recorded in a log. A minimum of 5 days must be allowed between the last clarification question or response issued by the Council and the tender submission date (although note that different timescales apply to procurements that are subject to the Public Contracts Regulations and have required the publication of a contract notice). Except for a very limited set of circumstances both the question (anonymised) and the response should be issued to everyone who has been invited to tender.

PPPU / PU can advise any officer who requires some assistance in relation to this rule.

## **14 Submission, Receipt, Opening and Registration of Tenders**

### **14.1 Electronic Tendering**

14.1.1 Invitations to Tender should be transmitted electronically using YORtender; this includes mini competitions under Approved Framework Agreements (subject to CPR 14.2 below).

14.1.2 Faxed or e-mailed Tender documents or tender submissions are not acceptable.

14.1.3 The design of the Tender documents must be such that price documentation cannot be changed or substituted following submission of the Tender.

14.2 Procurements through Approved Frameworks need not be advertised unless a mini-competition is required in which case they will be advertised in accordance with the provisions of the Approved Framework. . However, once complete, details of the contract must be registered on YORtender by the Authorised Officer.

### **14.3 Hard Copy Tendering**

14.3.1 The Council's preferred method of tendering is by electronic means. However, in very exceptional circumstances (e.g. large construction contracts where there are a large amount of drawings required or where a tenderer doesn't have the capacity to tender electronically such as small community contracts), the Authorised Officer may allow the tenderers to submit a Tender in paper format.

14.3.2 It is anticipated that national legislation will be introduced requiring hard copy tendering to be phased out by 2016. The following rules apply if hard copy tendering cannot be avoided.

14.3.3 Tender submissions will be addressed to the Chief Procurement Officer in a sealed envelope endorsed with the word "Tender" followed by the subject matter to which it relates. Tenderers must be informed that no marks may be included upon the envelope that identifies the tenderer prior to the opening of the envelope. Tender submissions will be kept in a safe place and remain unopened until the time and date specified for their opening.

14.3.4 Tender submissions will be opened by the Chief Procurement Officer and if required at least one other Officer nominated by the Director of Resources. An immediate record will be made of the



Tender submissions received including names, addresses, value and the date and time of opening. All tender envelopes must be retained on file.

- 14.3.5 No Tender submissions, or Pre-Qualification Questionnaires received after the specified date and time for their receipt can be considered by the Council unless the delay is caused by a Council error such as temporary failure of the YORtender system in which case the Chief Procurement Officer may waive this CPR 13.4.5 if he believes it is reasonable to do so in all the circumstances.
- 14.3.6 Officers who have been involved in preparing tender documents must not be involved in the recording or opening of tenders. Only persons authorised by the relevant Chief Officer (as client), and by invitation of the Chief Procurement Officer will attend tender opening.
- 14.3.7 Chief Officers may make alternative arrangements for the submission, receipt, opening and registration of hard copy tenders worth under £100k, as long as it has been approved by the Chief Procurement Officer. However, it is recommended that the system set out at set out at CPRs 14.1 to 14.4 above is used as the core requirements of these CPRs still apply.

## **15 Tender Evaluation**

- 15.1 Selection and award criteria must be distinguished and highlighted as part of the tender documentation. The evaluation criteria will be predetermined and approved by the relevant Chief Officer and disclosed to all tenderers through the Invitation to Tender documentation. The evaluation criteria should be disclosed along with weightings. In exceptional circumstances, where this is not possible, the evaluation criteria may be listed in order of importance. Published criteria may not be changed and will apply throughout all stages of a procurement. The evaluation criteria and methodology must be set in accordance with the Public Contracts Regulations and the principles set out in the tender evaluation tool kit [link]
- 15.2 The price element of evaluation will always be 40% or greater. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27 and must be justified in the circumstances.
- 15.3 All contracts, except contracts where lowest price was predetermined to be the only criteria, must be awarded on the basis of the offer which represents Best Value to the Council.

## **16 Errors in Tender Submissions**

- 16.1 Errors in tender submissions must be dealt with either by asking the tenderer to confirm that they will honour their tender submission despite the error or if not withdraw the tender from the procurement process.

Where a tenderer has made a genuine arithmetical error they may be given an opportunity to correct that error prior to tender evaluation.

- 16.2 If a tenderer uploads documents onto YORtender which cannot subsequently be opened by the Council at the tender opening ceremony, the Authorised Officer should ask the tenderer to re-submit its documents to them in a format that can be accessed by the Authorised Officer. This re-submission may be by e-mail but an Authorised Officer's individual e-mail account should not be used for this purpose. All correspondence of this nature should be sent to a regularly monitored project, team or directorate mail box.
- 16.3 Tender documents must state how errors in tenders will be dealt with, and must be transparent and fair to all tenderers.
- 16.4 If a Contractor agrees to stand by an error which will cast doubt on its ability to perform the contract, or to the standard required, or may result in legal dispute, then authority should be granted by the relevant Chief Officer before a tender is accepted on this basis. A copy of the report and decision must be sent to the Chief Procurement Officer for monitoring purposes.

## **17 Post Tender Clarification and Negotiation**

- 17.1 Post tender submission the Council may ask tenderers to clarify any aspects of the submitted tender but only if it is genuinely unclear. If the submission is clear but wrong this is not clarification. If any amended or new documentation is submitted as part of a clarification response it must only clarify the original response and not contain any new information. Anything that is submitted and goes above and beyond clarification must be disregarded in the evaluation and a note made to that effect. All clarifications and responses must be in writing and recorded in a log.
- 17.2 There are specific rules in the Public Contracts Regulations dealing with the negotiated and competitive dialogue procedures and Authorised Officers are expected to take advice from the Chief Procurement Officer when using these procedures. The Council may clarify, specify and fine tune tenders and submissions that are received through the competitive dialogue procedure.
- 17.3 Officers must ensure that CPRs 17.1 and 17.2 are not used to permit either pre or post tender submission negotiation. The PPPU/PU should be contacted if there is any doubt as to whether something is clarification or negotiation.
- 17.4 Where a procurement is conducted pursuant to the Public Contracts Regulations through either the open, restricted or competitive dialogue procedures, no post tender negotiations are permitted. Where the negotiated procedure is used the regulations relating to that procedure will be followed. Under the open and restricted procedures negotiations on price are never permitted. Where the competitive dialogue procedure is

used all aspects of the procurement can be discussed pre-tender. However, post tender the Authorised Officer may only seek to clarify, specify or fine tune tenders in accordance with (i) the Public Contracts Regulations and (ii) the tender instructions.

- 17.5 Where procurements are conducted outside the Public Contracts Regulations, such as below threshold contracts, or where the regulations application is limited such as Part B services, the Authorised Officer may seek authority to enter into negotiations if he/she considers that it is in the Council's interest to do so in which case the following rules will apply:
- 17.5.1 approval to waive CPR 3.1.23 and enter into negotiations will be sought in writing from the relevant Chief Officer through a Delegated Decision;
- 17.5.2 negotiations will be conducted on behalf of the Council by at least two appropriately trained Officers from the service directorate concerned. The Chief Procurement Officer will be invited to send a representative to the negotiation meetings. A full written record will be kept of the results of the negotiations;
- 17.5.3 an amended tender following negotiations under this rule 17 will not be accepted unless it can be shown that it provides Best Value to the Council.

## **18 Awarding Contracts**

- 18.1 A contract will only be awarded subject to the tender evaluation criteria. Where a tender is to be evaluated on price only the Contract must be awarded to the tenderer submitting the lowest price. Where a tender is to be evaluated on quality only the Contract must be awarded to the tenderer submitting the highest scoring tender.
- 18.2 Where a Contract is to be awarded on the basis of a price/quality evaluation and the difference between the value of the lowest priced tender and the highest scoring submission is more than 5%, the Authorised Officer must report this fact to the officer who is taking the Delegated Decision to award the contract. This should be done by including a clear statement in the contract award decision report.
- 18.3 Contracts with a value above £100k will be executed in accordance with Article 14.5 of the Council's Constitution which will generally mean that they must be either:
- signed by two officers or
  - sealed and attested

in each case by officers with the requisite delegated authority to do so within the PPPU/PU.

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- 18.4 Contracts with a value up to and including £100k which are based on the Council's standard terms and conditions, or on formally approved submitted terms and conditions, may be awarded and signed by an Officer with the requisite delegated authority to do so within the relevant service directorate.
- 18.5 The Delegated Decision to award a contract will be made in accordance with the Assurance Manual. This report should give details of the reasons why tenders, if any, were disqualified and the reasons for the selection of Contractor(s).
- 18.6 The Council will only award a contract where it represents Best Value. Where the Public Contracts Regulations do not apply and a 2 stage process is adopted whereby the mechanism for the costs of completing stage 2 of the Contract aren't included in the costs of completing phase 1 of the Contract the relevant Chief Officer will be entitled to allow the same Contractor that completed stage 1 to continue with stage 2 without submitting stage 2 to another formal tendering exercise providing that a Delegated Decision is taken confirming that Value for Money will be achieved by following this route and the original tender documentation made it clear that the Council reserved the right to do this.
- 18.7 Letters of Intent will only be used in very exceptional circumstances and following a Delegated Decision. Where the terms and conditions of Contract are not fully agreed no Contractor will be allowed to commence delivery of goods, works or services until a full risk assessment has been carried out by the Authorised Officer as to the possible implications to the Council of the Contractor being allowed to commence work before the Contract terms and conditions have been finalised. It is recommended that advice is taken from the Chief Procurement Officer prior to entering into a Letter of Intent.

## **19 Debriefing and Publishing**

- 19.1 A Contract subject to the Public Contracts Regulations can only be awarded following a communication to all unsuccessful tenderers and a 10 day standstill period. Failure to comply can result in a challenge and the contract being set aside. The Chief Procurement Officer is responsible for issuing such communications on instruction from the relevant Chief Officer
- 19.2 In all cases, the Authorised Officer responsible for each procurement will provide information and offer a de-briefing in accordance with CPR 3.4.
- 19.3 The Authorised Officer must provide the Chief Procurement Officer with the details of the successful tenderer, tendered price and nature of the contract to allow the Chief Procurement Officer to carry out his obligations under CPR 4.2.

## **20 Contract Management**

- 20.1 The relevant Chief Officer is responsible for ensuring that the Contract is managed in accordance with its terms and the Contract Management Plan prepared in accordance with CPR 3.1.13.

## **21 Contract Extension and Variations**

### **Extensions**

- 21.1 Contract extensions are only permitted if they are put in place before the contract expiry date and where the proposed extension is in accordance with the contract terms. Prior to seeking approval from the relevant Chief Officer to take up a contract extension the Authorised Officer must comply with the requirements of CPR 3 to establish whether the extension will deliver Best Value. This process must be recorded in writing.
- 21.2 Any Contract extension must be approved by and dealt with by the relevant Chief Officer. The Chief Procurement Officer should be consulted to the extent that the relevant Chief Officer considers necessary. The decision to extend a contract may be an Administrative or Significant Operational or Key decision, depending on the nature and scale of the goods, works or services to be received as a result of the extension.
- 21.3 All extensions to any Council contracts must be in writing and reported to the Chief Procurement Officer in order that YORtender can be updated. Extensions of a Contract that are categorised as “variations” in the Contract terms and conditions will be governed by this rule and CPR 21.1 and 21.2 will not apply.
- 21.4 Once a Contract has expired it cannot then be extended.

### **Variations**

- 21.5 Variations to capital project procurements will be dealt with in accordance with these Contracts Procedure Rules and Appendix F of the Council’s Financial Procedure Rules. Variations in relation to revenue Contracts will be dealt with in accordance with these Contract Procedure Rules and Rule 10 of the Financial Procedure Rules.
- 21.6 All Contract variations must be carried out;
- 21.6.1 within the scope of the original Contract. Contract variations that materially effect or change the scope of the original Contract are not allowed; and
- 21.6.2 following consideration as part of the Category planning process.
- 21.7 All Contract variations must be in writing and signed by both the Council and the provider except where different provisions are made within the Contract documentation. The value of each variation must be assessed by

## *Contracts Procedure Rules*

the Authorised Officer and a Delegated Decision taken by the relevant Chief Officer.

- 21.8 Where appropriate (taking into account any change in contract value, contract term, range of services provided etc) contract variations must be reported to the Chief Procurement Officer in order that YORtender can be updated.
- 21.9 A new procurement is required in case of material change where one or more of the following conditions are met:
- 21.9.1 The variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;
  - 21.9.2 The variation increases the value of the contract or the framework agreement substantially in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
  - 21.9.3 The modification extends the scope of the contract or framework agreement considerably.

Variations to the contract resulting in minor changes are possible without the need to carry out a new procurement exercise but advice from the PPPU/PU should always be sought prior to any variations being agreed.

## **22 Termination of Contract**

- 22.1 Any Contract will only be terminated early if this action is authorised by the relevant Chief Officer through a Delegated Decision. A copy of the report and decision for termination of any contract exceeding £100k in value must be sent to the Chief Procurement Officer for monitoring purposes. All termination letters under this rule will be drafted and issued via the PPPU/PU in conjunction with the Authorised Officer.

## **23 Nominated and Named Sub-Contractors**

- 23.1 If a sub-contractor or sub-consultant is to be nominated or named to a main Contractor, they must have been procured in accordance with these Contracts Procedure Rules and the terms of the tender and appointment must be compatible with the main contract.

## **24 Consultants**

### **Procurement of Consultants**

- 24.1 Rule 3.1.12 applies.

- 24.2 Consultants who are individuals, but trade as their own businesses (private service companies), must not be engaged through a contract for services to cover any temporary or permanent posts. **Procurement by Consultants**
- 24.3 A waiver of CPR 3.1.22 and a decision not to use an ISP under CPR 3.1.4 must be authorised as a Delegated Decision by the relevant Chief Officer before the Council uses consultants to act on its behalf in relation to any procurement. The report must set out why it is necessary to use consultants to manage the procurement. A copy of the report and the decision must be sent to the Chief Procurement Officer for monitoring purposes.
- 24.4 The Authorised Officer will ensure that the consultants carry out any procurement in accordance with these Contracts Procedure Rules, and that no conflict of interest arises. No consultant will make any decision on whether to award a Contract or to whom a Contract should be awarded.

## 25 Emergencies

- 25.1 In the case of emergencies that impact on a contract or a procurement, the Authorised Officer should first and foremost consider the health and safety of individuals and take action accordingly. This may involve for example, taking the necessary steps to secure a building or prevent the ingress of water. The Council has in place a series of emergency procedures set out in the Emergencies Handbook [\[link\]](#) which should be followed. At the first available opportunity the situation should be discussed with the Chief Procurement Officer and future actions agreed.

## 26 Record and Document Retention and Control

- 26.1 Authorised Officers are responsible for keeping documents and records relating to each procurement and updating YORtender and FMS in accordance with i) the Council's corporate document retention policy [\[link\]](#), and ii) the requirements of the Assurance Manual.

## 27 Waiver of Contracts Procedure Rules

- 27.1 Waivers of the Contracts Procedure Rules are only permitted in relation to those set out at CPR 1.3. The relevant service directorate Chief Officer will complete the Waiver Report and subsequent Delegated Decision in the form set out in the waiver report template [\[link\]](#). The report, when authorised, must be forwarded to the Chief Procurement Officer for monitoring purposes. The rest of the CPRs will still apply to the procurement.
- 27.2 The report of the Chief Officer will set out the financial, legal, risk and equality implications of the waiver sought<sup>6</sup>. The Chief Officer will consider whether the Chief Procurement Officer's comments and advice should be

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<sup>6</sup> If this is already set out in the Category Plan the report can cross refer to the plan.

sought in accordance with CPR 1.3. The Chief Officer should consider what sort of Delegated Decision is being taken with the starting point being that a waiver of a CPR will generally be a Significant Operational decision as a minimum.

## **28 Contract Disputes and Claims**

- 28.1 The Chief Procurement Officer and the City Solicitor will be kept informed at all times of all contractual claims worth more than £100k whether by or against the Council.
- 28.2 Planning, relationship management, risk management and active contract management should be used to keep contract disputes to a minimum. The dispute resolution procedure set out in the Contract should be followed in the event of a contract dispute arising.
- 28.3 Further guidance on how to manage contract claims can be found in [insert doc ref – spk to AE] [link].

## **29 Contract Exit**

- 29.1 An Exit Plan must be prepared for every Contract well in advance of contract expiry. It is recommended that this should be put in place at least 6 months in advance in order to allow for the approvals and pre-planning process and any re-procurement. A template exit plan is available from PPPU / PU.



## Definitions

**“Approved Framework Agreement”** means a framework agreement that has been set up either by the Council or an organisation other than the Council and has been authorised by PPPU / PU for use in Council procurements. A list of Approved Framework Agreements can be found at the Supplier Information Database [link] along with guidance on how certain Approved Framework Agreements should be used. If an Authorised Officer wishes to use a framework agreement that is not an Approved Framework Agreement they must seek approval from the Chief Procurement Officer;

**“Assurance Manual”** means the Assurance Compliance and Governance Guide for Projects and Procurement

**“Authorised Officer”** means a person authorised by the relevant Chief Officer to act on the Council’s behalf;

**“Best Value”** means the optimum combination of whole life costs, quality and benefits to meet the customer’s requirement. Selecting tenders on this basis will meet the requirement to select the most economically advantageous tender under the EU Procurement Rules

**“Category Plan”** means strategic planning of the category, at a category or sub-category level, including review of the current position, constraints and opportunities, desired outcomes, options and actions. The template plan [link] should be used in all cases except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;

**“Category”** will include each category identified in the list published from time to time at appendix 2 of the Procurement Strategy [link] by the Chief Procurement Officer

**“Chief Officer”** means the head of the procuring directorate and includes the Chief Executive, Deputy Chief Executive, Assistant Chief Executive, City Solicitor, Directors<sup>7</sup>, and Chief Officers with appropriate delegations and sub-delegations;

**“Chief Procurement Officer”** means the Chief Officer Public Private Partnership Unit and Procurement who is responsible for the procurement function on behalf of the Council.

**“Constitution”** the Council’s constitution which is available on the internet [link] and sets out the rules that the Council and all Council employees must follow

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<sup>7</sup> Any reference to a Director within these CPRs shall be deemed to include reference to all Chief Officers listed in these CPRs, except where the context requires otherwise

## *Contracts Procedure Rules*

**“Consultant”** means a provider of professional services or expertise engaged to:

- (a) provide expert analysis and advice which facilitates decision making or could potentially result in new business, funding or service transformation;
- (b) provide a specific, one-off task or set of tasks; and
- (c) perform a task involving skills or perspectives which would not normally be expected to reside within the Council.

**“Contract”** means an agreement between the Council and any Contractor made by formal agreement or by issue of a letter of acceptance or official order for goods, works or services;

**“Contract Management Plan”** means a practical plan for the contract period for a single contract or group of similar contracts which includes key responsibilities, milestone dates, escalation, communication and performance management arrangements. A template is available from PPPU / PU. The Contract Management Plan will be in such format as prescribed by the Chief Procurement Officer except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements

**“(The) Council”** means Leeds City Council;

**“CPR”** means these Contracts Procedure Rules

**“Delegated Decision”** means a formal decision taken in accordance with the Council’s Constitution and sub-delegation schemes. It is for the Officer seeking the Delegated Decision to decide which type of decision is required in accordance with the Constitution and the Assurance Manual;

**“Emergency”** means an urgent situation or crisis created as a result of a natural disaster (such as flooding or an earthquake) or tragedy (such as an explosion or plane crash)

**“Exclusive Supplier”** means [define, to include Strategic Partners]

**“Exempt Contracts”** are

- (a) employment contracts;
- (b) contracts relating solely to disposal or acquisition of an interest in land;
- (c) concessions relating to street traders and market stalls;
- (d) urgent special educational needs or social care contracts, provided that the relevant Chief Officer has (in consultation with the Chief Procurement Officer) determined and recorded through a written report and Delegated Decision

notice that the exemption is in the Council's interests or necessary to meet its obligations under relevant legislation and demonstrates Best Value;

- (e) residential and nursing care contracts which the Council has a duty to provide under S21 and S29(4) National Assistance Act 1948, S117 Mental Health Act 1983, S17 Children Act 1989 and S2 Local Government Act 2000, provided that the Relevant Chief Officer has (in consultation with the Chief Procurement Officer) determined and recorded through a written report and Delegated Decision notice) that it is in the Council's interests and demonstrates Best Value.

**“Exit Plan”** means the practical plan for dealing with the end of the Contract including milestone dates and handover activities. Its complexity and detail will depend on the nature of the procurement. A template is available from PPPU / PU.

**“ISP”** means Internal Service Provider for example Commercial Services; Legal Services etc

**“The List of Forthcoming Key Decisions”** means the plan published on the Council's internet site showing proposed Key decisions 28 clear calendar days before they are taken..

**“Letter of Intent”** means a letter setting out the parties' intentions to enter into a contract at a later date. However, the fact that the parties envisage that the letter is to be superseded by a more formal contract does not, of itself, prevent it from taking effect as a contract.

**“Member(s)”** means elected member(s) of the Council;

**“Officer(s)”** means employee(s) of the Council;

**“OJEU”** means the Official Journal of the European Union;

**“PIN”** means Prior Information Notice for publication in the OJEU

**“Procurement Checklist”** see template [link]

**“Procurement Plan”** means practical planning of the procurement, or group of similar procurements, including approach, resourcing and timetable. This involves identifying major projects within each category of spend to be maintained by the relevant Chief Officer. It also provides a basis for information for the Procurement Unit to meet the Council's reporting obligations. The Procurement Plan will be in such format as prescribed by the Chief Procurement Officer except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;

**“Procurement Strategy”** means the Council's published Procurement Strategy setting out its ambition for procurement and confirming a category management and whole lifecycle approach to procurement;

## *Contracts Procedure Rules*

“PPPU / PU” means the Council’s Public Private Partnership and Procurement Units

“**Public Contracts Regulations**” means the Public Contracts Regulations 2006 as amended by the Public Contracts (Amendment) Regulations 2009, the Public Procurement (Miscellaneous Amendments) Regulations 2011 and any successor, amending or enabling legislation.

“**Strategic Partner**” means an organisation that the Council has a long term arrangement with for the provision of goods, works and / or services. A list of Strategic Partners can be found here at the [SID] [link].

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

“**Waiver Report**” means a report of the relevant Chief Officer in the form of the Waiver Report set out at this template document.

“**YORtender**” means the Council’s provider and contract management system maintained by the PPPU / PU;



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