

Report of the Chief Officer PPPU

Report to Scrutiny Board (Strategy and Resources)

Date: 19 September 2016

Subject: Effective Procurement

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

This report seeks to provide an update to Scrutiny on the ongoing work within the Projects, Programmes and Procurement Unit (PPPU). The report covers:

1. An update on PPPU's access to council feeder systems following the intervention of the Scrutiny Board
2. Improvements to the council's financial management system (FMS) to reduce off contract spend
3. Ongoing work to reduce non-contract spend
4. An analysis of the use of Waivers of the Contracts Procedure Rules (CPRs) April 2015 to March 2016

Recommendations

Members of Scrutiny Board (Strategy and Resources) are asked to note the contents of this report and to comment on any areas where they would like further information.

1 Purpose of this report

- 1.1 To provide a further report to the Board as requested.

2 Background information

- 2.1 The council's Contracts Procedure Rules (CPRs) confirm that each directorate is accountable for the procurements that they need in order to deliver the services and secure the outcomes that they are responsible for. The central procurement function is accountable for providing a central source of expertise, advice and support, providing check and challenge as appropriate.
- 2.2 The Portfolio Management Office (PMO) within PPPU asked for Scrutiny Board's assistance to access the council's feeder systems. Access was sought in order to assist in the identification of ¹off and ²non-contract spend across the council and to ensure council colleagues comply with CPRs.
- 2.3 Improvements to FMS such as an improved search facility for finding contracts and internal service providers (ISPs) were made on 26th January 2016 to assist order raisers in being able to select the correct contract and therefore reduce off-contract spend.
- 2.4 In PPPU's report to Scrutiny on 21 December 2015, there was a commitment to provide an analysis of waivers of CPRs. This report provides an update of the use of Waivers of CPRs in financial year 2015/16.
- 2.5 The PMO and Category Managers within PPPU have collaborated with colleagues in the wider council including the Business Support Centre, Corporate Finance, and the directorates in order to identify and influence a reduction in off or non-contract spend.

3 Main issues

3.1 Feeder systems

- 3.1.1 Where invoices/payments are processed via the council's financial management system (FMS Leeds), contract and other procurement information is captured at the point when the order is raised and non-contract/off-contract spend can be monitored via FMS Leeds reporting.
- 3.1.2 Where orders for goods and services originate from other departmental ordering systems, these are processed through FMS Leeds for payment. The feeder files uploaded to FMS do not contain contract and other procurement information. As such, it is not possible to report contract/off-contract spend from these feeder systems from FMS Leeds without manual intervention.

¹ Off contract is where a contract for the goods or service being ordered exists but has not been used.

² Non-contract spend is where there is not a contract in place for the goods or services. If the spend is over £10k, CPRs state there should be a contract

- 3.1.3 Where invoices are raised without an associated order and input into FMS for payment by Central Payments, there is no automated way of matching the spend through FMS Leeds to establish whether it is against a contract or not.
- 3.1.4 PMO have engaged with several directorates that are responsible for feeder systems, to identify if the systems can contain and output contract information into FMS and if it is possible to be granted access to the systems.
- 3.1.5 PMO have liaised with technical and financial staff within directorates and have been granted access to some of the systems, with training being offered. The CIS system for Adult Social Care was deemed to be too sensitive to be accessed due to personal and sensitive data. The Total R (Repairs system) used by Building Services is now able to include contract references into the description field for property management, which will help to easily identify expenditure against a contract when it is exported to FMS.
- 3.1.6 A major barrier preventing the integration of contract data from feeder systems into FMS, is that the contract field within FMS is only available when an FMS order is raised. For this field to be available for feeder systems any direct invoice input would be a major system development requiring resources that the FMS development team currently do not have. There would also be a financial cost for this work.
- 3.1.7 PMO will continue to explore ways in which contract data can be captured in the feeder systems which will aid the automation of data matching. Training will be undertaken on the feeder systems where access has been granted. Expenditure generated via the feeder systems with suppliers who do not hold a valid council contract will continue to be interrogated.

3.2 Improvements to FMS

- 3.2.1 The PMO worked with Alan Simmons (Principal Systems Manager) to implement improvements within FMS to assist in reducing off contract spend. The improvements went live on 26th January 2016 and make it easier for orders to be raised against contracts on FMS.
- 3.2.2 Improvements were made to the categories of spend, contract search functionality and contract descriptions.
- 3.2.3 The search function within FMS displays the Internal Service Provider first if there is one available. This signposts order raisers to use the internal service provider where possible, retaining money within the council.
- 3.2.4 Users are able to easily locate contracts using keywords which increases 'on contract' spend (Target of 95% for 2016/17) and gives a higher level of accuracy. This saves time for the order raiser and decreases time

spent by the PMO on having to check contract information for data transparency and spend analysis.

- 3.2.5 When a user searches on a supplier name, FMS returns the contracts held by that supplier or identifies if they do not hold any contracts. If a supplier does not have a contract, then the order raiser is required to provide justification for using that supplier. This process promotes spending money wisely, because the user has to evidence 'best value'.
- 3.2.6 Improved accuracy of reporting of on, off and non-contract spend. The information provided by the order raiser can reduce the need to contact them in order to justify spend as they have indicated that CPRs have been followed in the narrative they have supplied.
- 3.2.7 The new category structure provides accurate categorisation of spend directly linking contracts and expenditure to the category teams within PPPU. This enables Category Managers to identify procurements and contracts that may generate future savings.
- 3.2.8 The information now visible on the orders has greater transparency and provides information to satisfy the council's audit function that CPRs have been adhered to, without the need to contact the service department.
- 3.2.9 Users must now provide justification as to why they are spending off contract, which gives greater transparency. In the case of non-contract spend the justification identifies where a new procurement may be needed.
- 3.2.10 If the reasons and description given for a non or off-contract order do not appear to follow CPRs, the order is challenged with the order raiser by return email. All orders over £10k are checked as a priority, then subject to time available checks are made on orders over £5k and below if there is capacity. If a satisfactory response is not received in relation to the query raised by the PMO, the appropriate Category Manager within PPPU is notified, so that they can liaise with the directorate. The Category Manager will discuss with the department the reasons why the expenditure is being incurred and the process used to source the providers. The Category Managers will also provide advice and guidance regarding the contracts that are available.
- 3.2.11 In January 2016 (before the changes to FMS were implemented) the on contract orders accounted for **88.73%** of orders placed. The latest figure for 2016/17 year to date is **97.2%** of orders are on contract against a target of 95% of on contract orders. There has been a reduction in FMS helpline calls due to order raisers being able to locate the correct contracts and suppliers more easily.

3.3 **Non and off-contract Spend**

- 3.3.1 The PMO is actively collaborating with colleagues in the wider council including the Business Support Centre, Corporate Finance and

directorates (via their feeder systems) in order to have visibility of non and off-contract spend.

- 3.3.2 The PMO produce monthly and quarterly reports detailing non and off-contract spend. These reports are used to inform monthly meetings with PPPU Category Managers and their meetings with directorate contacts.

3.4 **Waivers**

- 3.4.1 Contracts Procedure Rules allow certain rules to be waived in circumstances where Chief Officers consider that course of action to be justified, provided that a decision to waive Contracts Procedure Rules (CPRs – attached as appendix 3) is always at least a Significant Operational Decision for the purposes of the Constitution (therefore requiring publication). The Chief Procurement Officer should be informed when waivers are approved by Chief Officers.
- 3.4.2 PPPU issued updated CPRs in August 2016. PPPU are maintaining a log of waivers of CPRs. The attached appendices show the analysis of 102 waivers of **CPRs 8.1 and 8.2 and 9.1 and 9.2** in the period April 2015 to March 2016 and appendices 1 & 2 detail the high level analysis relating to these waivers.
- 3.4.3 The PMO will continue to monitor the use of waivers and will provide Scrutiny Board with an analysis for 2016/2017. There will then be the opportunity to advise Scrutiny Board if there are consistent breaches of CPRs with respect to the use of waivers.

3.5 **Local Government Association Procurement Strategy**

- 3.5.1 The Local Government Association (LGA) National Procurement Strategy was published in 2014. That strategy set a vision in four key areas, making savings (through category management, partnering, and contract, performance, risk and demand management), supporting local economies (through social value and SME engagement), leadership (commitment from the top and seeing procurement as part of a strategic commissioning cycle), and modernising procurement (through commercial approaches to activity, e-procurement, and new opportunities through the 2015 Public Contracts Regulations). PPPU's Effective Procurement approach seeks to support all of these areas.

4 **Corporate Considerations**

4.1 **Consultation and Engagement**

The previous reports to this Scrutiny Board detailed the extensive consultation and engagement undertaken under the Effective Procurement Programme.

4.2 **Equality and Diversity/Cohesion and Integration**

The Effective Procurement Programme includes equality issues as one of its workstreams and has undertaken a formal screening, which was published

alongside the 24 April 2013 Executive Board report. The screening highlighted the importance of screening categories and procurements for their equality impacts and responding accordingly in line with the council's equality and diversity policies. There have been no major changes at a policy level. Contracts Procedure Rules require consideration of equality matters when undertaking procurements and the key template documents that Contracts Procedure Rules refer to provide specific prompts in this respect.

4.3 Council policies and City Priorities

Contracts Procedure Rules and the Effective Procurement documentation support the council value of 'spending money wisely', and seek to ensure that the council's other values are embedded in all of the council's procurement activities.

4.4 Resources and value for money

This report outlines ongoing work within PPPU to ensure the council is spending money wisely.

4.5 Legal Implications, Access to Information and Call In

None.

4.6 Risk Management

Monthly on/off contract spend is shared with category teams, directorates and internal audit. Tools are in place to support the activities covered in this report.

5 Conclusions

5.1 Directorates are accountable for their own procurement activity with support provided by PPPU.

5.2 Work is ongoing in relation to feeder systems with a view to increasing visibility on all spend.

5.3 The introduction of changes to FMS has increased on contract spend by 8.5% since January 2016 and work is ongoing to increase visibility and to check and challenge areas of non and off contract spend.

5.4 The analysis of the use of waivers for CPRS 8.1 and 8.2 and 9.1 and 9.2 shows that for the financial year 2015/2016 there were 102 waivers identified. Ongoing analysis of financial year 2016/2017 will provide trend data which will be used to measure compliance with CPRs.

5.5 Members of Scrutiny Board (Strategy and Resources) are asked to note the contents of this report, and to comment on any areas where they would wish the PMO to focus on.

6 Background documents³

6.6 Previous report to Strategy and Resources Scrutiny Board, December 2015.

³ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Appendix 1

Analysis of the 102 Waivers of CPRs in the period April 2015 to March 2016

There were 102 waivers of CPRs by directorates in 2015/2016. Of these, the largest use of waivers was by Children's Services accounting for 39 of the 102 (38%).

Of the total of 102 waivers of CPRs during the last financial year, 50 of these (49%) were to remain with an existing contractor.

Seven waivers (6.9%) did not have a value stated. It is important to have a value stated to ensure that if the contract exceeds the current EU threshold of £172,514 that Public Contracts Regulations are adhered to. Three waivers (2.9%) did not have a contractor stated.

CPRs 8.1 and 8.2

There were 68 waivers of CPRs 8.1 and 8.2 by directorates and of these, 25 (37%) were for Children's Services.

CPRs 9.1 and 9.2

There were 30 waivers of CPRs 9.1 and 9.2, and of these 12 (40%) were for Children's Services.

A waiver of CPRs 8.1 and 8.2 and 9.1 and 9.2 should be accompanied by a contract entry on YORtender, the council's electronic tendering system which creates the public facing contract register. This is a requirement of data transparency legislation. Of the 102 waivers of these rules, only 70 (69%) could be identified on YORtender. All council contracts should be logged on YORtender.

Log of the use of Waivers April 2015 - March 2016
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Table 1 - Waiver of CPRs (8.1 and 8.2, 9.1 and 9.2)

CPR rule being waived	Directorate								Total	Percentage of total no. of waivers:
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health		
CPR 8.1 and 8.2	9	25	4	11	2	12	3	2	68	67%
CPR 9.1 and 9.2	8	12	0	3	2	4	0	1	30	29%
CPR 9.1/9.2 and 8.1/8.2	1	2	1	0	0	0	0	0	4	4%
Total	18	39	5	14	4	16	3	3	102	100%

Table 2 - Waivers of CPRs (8.1 and 8.2, 9.1 and 9.2) with a contract added on to YORtender

CPR rule being waived	Directorate								Total
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health	
CPR 8.1 and 8.2	7	21	4	5	2	3	3	1	46
CPR 9.1 and 9.2	5	9	0	1	2	4	0	1	22
CPR 9.1/9.2 and 8.1/8.2	1	1	0	0	0	0	0	0	2
Total	13	31	4	6	4	7	3	2	70
% of waivers with a contract	19%	44%	6%	9%	6%	10%	4%	3%	100%

Table 3 - Waivers of CPRs (8.1 and 8.2, 9.1 and 9.2) without a value stated

CPR rule being waived	Directorate								Total
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health	
CPR 8.1 and 8.2	0	0	0	1	0	3	1	0	5
CPR 9.1 and 9.2	0	0	0	0	0	1	0	0	1
CPR 9.1/9.2 and 8.1/8.2	0	0	1	0	0	0	0	0	1
Total	0	0	1	1	0	4	1	0	7
% of waivers without a value stated	0%	0%	14%	14%	0%	57%	14%	0%	100%

Table 4 - Waivers of CPRs (8.1 and 8.2, 9.1 and 9.2) without a contractor stated

CPR rule being waived	Directorate								Total
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health	
CPR 8.1 and 8.2	0	0	0	3	0	0	0	0	3
CPR 9.1 and 9.2	0	0	0	0	0	0	0	0	0
CPR 9.1/9.2 and 8.1/8.2	0	0	0	0	0	0	0	0	0
Total	0	0	0	3	0	0	0	0	3
% of waivers without a contractor stated	0%	0%	0%	100%	0%	0%	0%	0%	100%

Table 5 - Waivers of CPRs (8.1 and 8.2, 9.1 and 9.2) without contract dates

CPR rule being waived	Directorate								Total
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health	
CPR 8.1 and 8.2	0	0	0	3	0	3	1	0	7
CPR 9.1 and 9.2	0	0	0	0	0	0	0	0	0
CPR 9.1/9.2 and 8.1/8.2	0	0	1	0	0	0	0	0	1
Total	0	0	1	3	0	3	1	0	8

Table 6 - Waivers of CPRs (8.1 and 8.2, 9.1 and 9.2) to remain with existing contractor

CPR rule being waived	Directorate								Total
	Adult Social Care	Children's Services	Citizens and Communities	City Development	Civic Enterprise Leads	Environment and Housing	Strategy and Resources	Public Health	
CPR 8.1 and 8.2	4	13	3	2	1	4	1	1	29
CPR 9.1 and 9.2	6	7	0	2	0	3	0	0	18
CPR 9.1/9.2 and 8.1/8.2	1	2	0	0	0	0	0	0	3
Total	11	22	3	4	1	7	1	1	50
% of waivers stating existing contractor	22%	44%	6%	8%	2%	14%	2%	2%	100%

CONTRACTS PROCEDURE RULES

Body / Person with authority to
change the document

Contents

Contracts Procedure Rules	3
1. Compliance	3
2. Responsibilities of Directors and Chief Officers.....	4
3. Responsibilities of Authorised Officers	5
4. Responsibilities of Chief Procurement Officer	10
5. Joint Procurement	11
6. Estimating the Contract Value	12
7. Below £10k - Low Value Procurement.....	12
8. Between £10k and £100k - Intermediate Value Procurement	12
9. Over £100k - High Value Procurements.....	13
10. Contracts that are subject to the Public Contracts Regulations.....	14
11. Pre-qualification.....	15
12. Invitation to Tender.....	15
13. Pre-tender submission clarification.....	16
14. Submission, Receipt, Opening and Registration of Tenders	16
15. Tender Evaluation	18
16. Errors in Tender Submissions	18
17. Post Tender Clarification and Negotiation	19
18. Awarding Contracts	20
19. Debriefing and Publishing.....	22
20. Contract Management	22
21. Contract Extension and Variations	22
22. Termination of Contract.....	24
23. Nominated and Named Sub-Contractors.....	24
24. Consultants	24
25. Emergencies	25
26. Record and Document Retention and Control.....	25
27. Waiver of Contracts Procedure Rules	25
28. Contract Disputes and Claims	26
29. Contract Exit.....	26
30. Concessions.....	26
Definitions	27

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](#) 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.

These CPRs constitute standing orders for the purpose of s135 of the Local Government Act 1972.

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 guidance and statutory provisions;
 - 1.1.2. These Contracts Procedure Rules, and the [Council's Financial Procedure Rules](#).
 - 1.1.3. The Council's strategic objectives and policies including the [Procurement Strategy](#) .The [Council's Employee](#) and [Member Codes of Conduct](#) .
 - 1.1.4. The [Council's Constitution](#) including Part 2 (Articles), Part 3 (Functions), Part 4 Procedure Rules, particularly the Executive and Decision Making Procedure Rules and Part 5 (codes and protocols).

- 1.2. These Contract Procedure Rules will apply to all procurements except Exempt Contracts. In respect to Exempt Contracts covered by limbs (d), (e) and (f) of the definition (urgent health and social care and personal choice) the Chief Officer's obligation to demonstrate Best Value shall include due consideration of CPRs 3.1.1.1, 3.1.1.2, 3.1.10, 3.1.14, 3.1.16, 12 and 14.
- 1.3. Directors and/or Chief Officers may waive the requirements of CPR 3.1.1.1, 3.1.6, 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. Chief Officers should seek advice from the Chief Procurement Officer where the Chief Officer considers it necessary by submitting the proposed waiver report for comment. The Chief Procurement Officer may waive CPR 14.1.5 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 (a concession contract is the grant by the Council of the right to exploit something that the Council owns or controls. The Council will receive some form of benefit and the person who is granted the concession will exploit the opportunity at their own risk). Grant funding arrangements should be considered carefully to decide whether they are in fact a procurement for the purpose of these CPRs¹. A genuine grant funding arrangement is not a procurement. However, officers should consider whether the purpose that the grant is being provided for could be achieved through a procurement.
- 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);
 - 1.5.2. provided that the Public Contracts Regulations do not apply, a joint or shared services arrangement with another public body;
 - 1.5.3. an arrangement with a statutory body (e.g. the police) to provide a service that only the statutory body can legally provide; and
 - 1.5.4. a contract or other arrangement with a company that is controlled by the Council (whether wholly or jointly with another public body.)

2. Responsibilities of Directors and Chief Officers

¹ Guidance on this matter is available on the national audit office website <http://www.nao.org.uk/successful-commissioning/successful-commissioning-home/sourcing-providers/>

- 2.1. The relevant Chief Officer² will work with the Chief Procurement Officer to identify the total expenditure relating to a particular category of spend by completing a Category Plan. 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.
- 2.5. All Chief Officers will ensure that contracts for which they are responsible are monitored and managed appropriately and, if applicable, in accordance with the relevant [Contract Management Plans](#).
- 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 must 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](#) and any decision to waive this rule by a Chief Officer will be in accordance with CPR27 and

² 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.

- 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 [communication and engagement plan](#)) is available from the PPPU and the intranet , along with supporting toolkits.
- 3.1.4. If there is an ISP who can provide the service the Authorised Officer will consult with and use such provider. A list of all available ISPs is available on the Council's Financial Management System (FMS) and the Authorised Officer should always check FMS prior to undertaking any procurement activity to see if there is an ISP available. This is also a requirement before the Authorised Officer places an order via any feeder system (such as Orchard) to ensure that use of the ISP is always considered. 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 will take the final decision on this matter in conjunction with the Deputy Chief Executive. Any decision to procure an external provider rather than use an ISP must 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 (see PPPU) 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 and will use such arrangements if so. . A list of all available existing provider arrangements is available on the Council's Financial Management System (FMS) and the Authorised Officer should always check FMS prior to undertaking any procurement

activity to see if there is an existing provider arrangement available. This is also a requirement before the Authorised Officer places an order via any feeder system (such as Orchard) to ensure that use of the existing provider arrangement is always considered. 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. NOT USED

3.1.8. The Delegated Decision to undertake a procurement (including a decision on what is being procured, the procurement route, the programme, the scope and the budget), whether it is a Key, Significant Operational or Administrative Decision ([see link to Article 13](#)) 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 from³. Refer to the Assurance Guide 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. Decisions to place a call-off under a framework agreement will not be treated as consequential decisions. A Delegated Decision based on the value (estimated if necessary) and impact of the procurement will be taken both at the point that a procurement route for a framework agreement is chosen and for each call-off (or linked bundle of call-offs). CPR 21 sets out the decision making rules for contract extensions⁴;

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 Public Services (Social Value Act) 2012 and the Equality Act 2010. Where the Public Services (Social Value Act) 2012 may apply, the Authorised Officer shall record how social value has been considered in the procurement strategy report;

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 as an administrative

³ Note that the decision making rules in the Constitution including article 13 still apply.

⁴ Officers are reminded that decisions may be sub-delegated as long as this is done in accordance with the Council's Constitution.

decision. Refer to the evaluation guidance for further guidance. Templates are also available from PPPU and the intranet;

- 3.1.11. The Authorised Officer will draft the description of the goods, works or services to be purchased in the contract advertisement 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 beginning a procurement in each of the following cases:
 - 3.1.12.1 if the Transfer of Undertaking (Protection of Employment) (TUPE) may apply; or
the value is or may exceed £100,000; or
the procurement is a Midscale or Complex Project; or
the procurement involves the use of the competitive dialogue, competitive dialogue with negotiation, a dynamic purchasing system or innovation partnership procedures each as described in the Public Contracts Regulations.
- 3.1.13. Unless the relevant Chief Officer determines otherwise the Authorised Officer will complete a [Procurement Plan](#) (which can cover one or more procurements). The Authorised Officer will register the procurement through the Project Registration Process. Any decision not to use a [Procurement Plan](#) will be an administrative decision recorded in writing, along with reasons, and sent to the Chief Procurement Officer for monitoring purposes whether a Procurement Plan is required or not the procurement must be registered through the Council's Project Registration Process;
- 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 £10,000 or more on YORtender in accordance with the requirements of the Chief Procurement Officer and CPR 19.3;
- 3.1.15. Subject to CPR 12, Authorised Officers will use parts 1 to 3 of the Council's standard tender documents for all [tender processes](#). Any decision to waive this rule by a Chief Officer will be in accordance with CPR27;
- 3.1.16. All procurements must have a completed [Contract Management Plan](#) (which can be used for one or more procurements), unless the relevant Chief Officer determines otherwise. Any decision not to use a [Contract Management Plan](#) will be an administrative decision recorded in

writing, along with reasons, and sent to the Chief Procurement Officer for monitoring purposes.

- 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](#) 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 to all procurements and a gateway review process (see PPPU) to all mid-scale or complex procurements⁵. 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 Guide](#) (with the exception of sections 12 (data management) and 14 (statistical returns) which are compulsory);
- 3.1.21. The Authorised Officer must consider whether proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in other member states of the EU. A written record should be kept of the decision and the reasons for it. If it is considered that there may be cross border interest a sufficiently accessible advertisement must be published in OJEU and 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 if there is any doubt about the application of this CPR;
- 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 place,

⁵ As defined by the Project Registration Process

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 provide further written feedback. Requests for a de-brief will be considered on a case by case basis. This will 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.
- 3.5. Prior to taking the decision to commence a procurement in line with CPR 3.1.8 the Authorised Officer will complete part 1 of a privacy impact assessment which is a screening exercise. If indicated by the screening exercise a full privacy impact assessment must also be carried out in accordance with part 2 of the privacy impact assessment. The Authorised Officer will carry out the assessments, keep a written record of the assessments on file and take action in line with the assessments throughout the process. Further details can be found here [\[link\]](#).

4. Responsibilities of Chief Procurement Officer

- 4.1. At the beginning of each financial year, the Chief Procurement Officer may 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 contracts register 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 Council employees or former Council employees (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 as a Delegated Decision 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:
 - 5.4.1.1. the relevant public body has given authority to do so; and
 - 5.4.1.2. having taken legal advice, the relevant Chief Officer has granted approval to do so as a Delegated Decision.

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 (including any possible contract extensions) 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 Third Party 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. However, officers should have regard to the Article 13 of 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 Third Party Framework Agreement exists, competition is required for procurements valued at or over £10k but at or below £100k.
- 8.2. At least **three** written tenders will be invited. These tenders may be invited by publishing either an open or a restricted tendering opportunity (restricted meaning that only selected suppliers are invited to tender) on the YORtender portal or inviting tenders from suppliers using Construction line (if applicable, please see the construction and housing category team for advice). Authorised Officers should consider CPR 1.1.3 when deciding which approach to take.

- 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. However, officers should have regard to the Council's Constitution when deciding which kind of Delegated Decision applies.
- 8.5. If an open advert is placed on the YORtender portal for a procurement worth £10k or more the option to publish on Contracts Finder must be selected.

9. Over £100k - High Value Procurements

- 9.1. Where no appropriate internal provider, Exclusive Supplier, existing provider Third Party 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. Tenders must be invited by publishing either a restricted opportunity inviting a minimum of four tenders or, an open opportunity, on the YORtender portal or inviting tenders from suppliers using Constructionline (if applicable, please see the construction and housing category team for advice). Authorised Officers should consider CPR 1.1.3 when deciding which approach to take. Authorised Officers should only procure through a restricted opportunity when they have sufficient knowledge of the market to enable them to take this view, and shall record how that approach will achieve Best Value.
- 9.3. CPRs 9.1 and 9.2 are subject to CPR 10.2. Where the estimated contract value reaches the relevant EU threshold set out in the Public Contracts Regulations CPR 10 will also apply.
- 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. The Delegated Decision to undertake a procurement of this value must be taken in accordance with the [Council's Constitution](#) particularly Article 13. At this level of spend it should be considered whether the decision is a Significant Operational or Key Decision.
- 9.6. If an open advert is placed on the YORtender portal the option to publish on Contracts Finder must be selected.

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. Where the Chief Officer and the Chief Procurement Officer agree that the negotiated procedure without publication of a contract notice applies there is no requirement to obtain a waiver of CPRs 9.1 and 9.2.

10.3. All OJEU contract notices must also be published on Contracts Finder.

10.4. The current thresholds are:

Services	£164,176.00
Goods	£164,176.00
Works	£4,104,394.00
Contracts for Social and other specific services	£589,148.00

The thresholds are updated every two years with the next update due on the 1 January 2018.

10.5. Officers should note that there are specific rules in the Public Contracts Regulations covering Contracts for Social and other specific services. These include certain health, social, educational and other services. Above the threshold set out in CPR 10.4 these services must be procured following the placement of an OJEU contract notice or prior information notice and using a selection process that follows the principles of transparency and equal treatment and in particular covers the following:

10.5.1. conditions for participation must be clear;

10.5.2. time limits must be clear; and

10.5.3. the award procedure must be clear.

10.6. 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 and how a procurement for these services should be run.

10.7. Officers conducting above threshold procurements of goods, works and services should note that they must consider dividing contracts in to lots and

justify any decision not to do so in either the procurement documents or the evaluation report and that all procurement documents must be published at the time that the OJEU contract notice is published in accordance with the Public Contracts Regulations.

11. Pre-qualification

- 11.1. In all procurements with a value of £164,176 or more 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 and CPRs 11.2 and 11.3 need to be followed when making this assessment.
- 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 for use to determine the criteria under CPR 11.1.
- 11.4. In all procurements with a value of less than £164,176 Authorised Officers need to decide whether it is necessary to assess a supplier's eligibility, financial standing and technical capacity. If the Authorised Officer decides that this assessment is necessary it must be carried out in compliance with CPRs 11.5. and 11.6.
- 11.5. Pre-Qualification Questionnaires are not allowed at this level of spend. Instead, suitability assessment questions must be included as part of the tender assessment.
- 11.6. A suitability assessment checklist table can be found [here](#) for guidance.

12. Invitation to Tender

- 12.1. The invitation to tender will include parts 1 to 3 of the tender documents completed in accordance with the template documents. Note that there are different tender documents for use on [Midscale and Complex Projects](#) (as assessed under PM Lite) and Small projects (as assessed under PM Lite) or projects that have a value of £100k or less that are suitable for non-complex procurement documentation.
- 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 3 of the tender documents](#). 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 or the Director wishes to use a Third Party Framework Agreement, and other terms and conditions are proposed, those

terms and conditions must be approved in writing by the PPPU before they can be accepted.

12.3. The above CPRs 12.1 and 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 (the headings in volumes 1 and 2 must be considered but the documents themselves need not be used); and

12.3.2. Third Party Framework Agreements that have been approved under clause 12.2 in the past.

12.4. Where tenders for works are required the Authorised Officer will liaise with PPPU 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 to a formal decision categorised in accordance with Article 13 of the Constitution 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. All tenders

14.1.1. Invitations to Tender for procurements that have a value of £10k or more must be transmitted electronically using YORtender; this includes mini competitions under Third Party Framework Agreements

(subject to CPR 14.1.4 below). The use of YORtender is encouraged for all procurements.

- 14.1.2. Faxed or e-mailed [Tender documents](#) or tender submissions are not acceptable for procurements that have a value of £10k or more.
- 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.
- 14.1.4. Procurements through framework agreements need not be advertised unless a mini-competition is required in which case they will be advertised in accordance with the provisions of the framework. However, once complete, details of the contract must be registered on YORtender by the Authorised Officer.
- 14.1.5. Subject to CPR 16 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 14.1.5 if he believes it is reasonable to do so in all the circumstances.
- 14.1.6. Officers who have been involved in preparing [tender documents](#) for procurements that have a value of over £100k 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.
- 14.1.7. Tender submissions for procurements that have a value of over £100k will be opened by the Chief Procurement Officer and if required at least one other Officer nominated by the Deputy Chief Executive. 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.
- 14.1.8. Chief Officers must ensure that appropriate arrangements are in place for the recording and opening of tenders that have a value of £100k or less.⁶

14.2. Hard Copy Tendering

- 14.2.1. The Council's 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

⁶ In order to reduce the risk of procurement challenge and ensure propriety Chief Officers are encouraged to put tender recording and opening arrangements in place that treat all procurements in the same way as those in the over £100k threshold.

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. When conducting procurements under CPR 10 Authorised Officers must comply with regulations 22 and 53 of the [Public Contracts Regulations](#).

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 (as an administrative decision) 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 (including an assessment of cost effectiveness such as lifecycle costing) and the principles set out in the [tender evaluation guidance](#).
- 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. Authorised Officers should always consider whether a 'price –quality separated' approach may be applicable. This involves the first stage being a quality assessment which tenderers either pass or fail. Tenderers who pass are then assessed purely on price.
- 15.3. All contracts must be awarded on the basis of the offer which represents Best Value⁷ to the Council and in accordance with CPR 18.

16. Errors in Tender Submissions

- 16.1. Where a tenderer has made a genuine error they may be given an opportunity to correct that error prior to tender evaluation. If correction is permitted the tenderer must submit, supplement, clarify or complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make the correction.
- 16.2. If a tender submission is incomplete or has specific documents missing and correction is permitted the tenderer must submit, supplement, clarify or

⁷ Note that this does not prohibit "price only" if a price only assessment will provide Best Value on that particular procurement.

complete the relevant information or documentation within a strict time limit that represents the minimum time that a tenderer needs to make the correction.

- 16.3. Other 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.
- 16.4. 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.
- 16.5. [Tender documents](#) must state how errors in tenders will be dealt with. Whichever process is followed it must be transparent and fair to all tenderers.
- 16.6. 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 procedure without publication of a notice, the competitive procedure with negotiation, the competitive dialogue procedures and the procurement of Social and Other Specific Services (as defined in the Public Contracts Regulations) 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 final 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 final tender submission negotiation. The PPPU 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/final tender negotiations (including negotiations on price) are permitted. Where the negotiated procedure is used the regulations relating to that procedure will be followed. Where Social and other Specific Services (as defined in the Public Contracts Regulations) are being procured the regulations relating to that procedure will be followed. Where the competitive dialogue procedure is used all aspects of the procurement can be discussed pre final 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. Where the competitive procedure with negotiation is used all aspects of the initial tender, other than the minimum requirements and award criteria, shall be subject to negotiation. Where the innovation partnership procedure is used all aspects of the tenders submitted can be discussed pre final tender.
- 17.5. Where procurements are conducted outside the Public Contracts Regulations, such as below threshold contracts, 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 by officers with the requisite delegated authority to do so within the PPPU.
- 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 Guide](#) and the sub-delegation schemes that are in place. This report should give details of the reasons why tenders, if any, were disqualified and the reasons for the selection of Contractor(s). If the procurement is being carried out under CPR 10 regulation 84 of the [Public Contracts Regulations](#) must be adhered to. Find guidance on the reports requirements [here](#).
- 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 appropriately and in accordance with its terms and any [Contract Management Plan](#) that has been prepared in accordance with CPR 3.1.16.

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 must be consulted if the extension relates to a Midscale or Complex Project. However, this is optional at the relevant Chief Officer's discretion for other projects. The decision to extend a contract will be treated as a new decision that is not a consequence of the initial decision to procure, it may be an Administrative or Significant Operational or Key decision, depending on value and impact of the decision (refer to Article 13).
- 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 rules 21.5 to 21.9 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 affect 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 the Authorised Officer and a Delegated Decision taken by the relevant Chief Officer. The Chief Procurement Officer must be consulted if: (i) the variation relates to a Midscale or Complex Project and involves a change to the terms and conditions of the contract (rather than the scope or price); and (ii) if there is any possibility that CPR 21.9 might apply. This is optional at the relevant Chief Officer's discretion for other projects.

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 provider 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.

21.10. You must consult the Chief Procurement Officer if you are considering varying a Contract that you have procured under CPR 10.

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 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. 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

24.2. 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.

24.3. 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](#) 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 and ii) the requirements of the [Assurance Guide](#).

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 take the Delegated Decision by completing a delegated decision notice following the receipt of a Waiver Report in the form set out in the [Waiver Report Template](#). A copy of the report and the delegated decision notice 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 sought⁸. The Chief Officer will consider whether the Chief Procurement Officer's comments and advice should be sought in accordance with CPR 1.3. The Chief Officer should consider what sort of Delegated Decision is being taken. Any decision to procure that includes a waiver of the CPRs will be a Significant Operational decision as a minimum.

⁸ If this is already set out in the Category Plan the report can cross refer to the plan.

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 obtained from PPPU.

29. Contract Exit

An Exit Plan, which can cover one or more Contracts, 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 the [intranet](#).

30 Concessions

- 30.1 The Concession Contracts Regulations 2016 apply to concessions with a value exceeding approximately five million euros and can be found here: <http://www.legislation.gov.uk/uksi/2016/273/introduction/made>
- 30.2 Officers should note that if the resulting contract would be a mix of services, works and a concession, the Public Contracts Regulations shall apply.
- 30.3 When letting concessions you must comply with the Concession Contracts Regulations 2016 where they apply. If there is any inconsistency between the CPRs and these regulations, the regulations apply.

Definitions

“**Assurance Guide**” 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](#) 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](#) 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, and Chief Officers with appropriate delegations and sub-delegations;

“**Chief Procurement Officer**” means the Chief Officer Projects Programmes and Procurement Unit who is responsible for the procurement function on behalf of the Council;

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

“**Constructionline**” a list of construction contractors that have been pre-approved by a UK government certification service. Constructionline can be accessed through the construction and housing category team;

“**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;

“**Contracts Finder**” means a national website used to advertise public sector procurements. See this link: <https://www.gov.uk/contracts-finder>;

“**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 the intranet. 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 Guide](#);

“**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 providers with the right to provide certain goods, works or services through a contract. This includes Strategic Partners. See PPPU for further information;

“**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 S117 Mental Health Act 1983, S17, s17A, s17B and s17ZA – ZI 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;
- (f) health and care contracts where the recipient of care has a personal choice or direct payment including under sections 18 – 36 of the Care Act 2014, section 57 - s 58 of the Health and Social Care Act 2001, section 12A of the NHS Act 2006 and section 17A of the Children Act 1989, 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; and
- (g) legal services contracts and arbitration services provided they fall within the exemptions set out in Regulation 10 of the Public Contracts Regulations;

“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 the [intranet](#);

“ISP” means Internal Service Provider for example Commercial Services; Legal Services etc. [please see this link](#) [link to FMS list]

“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;

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

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

“Midscale and Complex Projects” means a project that is allocated as such under the PM Lite project registration process;

“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;

“**PM Lite**” means the Council’s project management methodology as further described [here](#).

“**Procurement Checklist**” see template available from PPPU;

“**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;

“**Project Registration Process**” means registering on the [Project Register](#) which then allocates the procurement to either a light touch process or the development of a more detailed project brief;

“**PPPU**” means the Council’s Projects Programmes and Procurement Unit;

“**Public Contracts Regulations**” means the Public Contracts Regulations 2015 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;

“**Third Party Framework Agreement**” means a framework agreement that has been set up by an organisation other than the Council see CPR 12 for information on the use of these agreements;

“**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; and

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

