

CONTRACTS PROCEDURE RULES

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Contracts Procedure Rules

These Contracts Procedure Rules (**CPRs**) 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 strategy, and related policies and procedures. They support staff to deliver effective procurement.

A full range of procurement templates and toolkits is also available on Insite in the Procurement and Category Management Toolkit which Council staff can access. These include the key documents referred to in these CPRs, such as the Procurement Plan. Residents, businesses and other partners can request copies of the documents from PACS.Administration@leeds.gov.uk.

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

CPRs **are a legal requirement and** constitute standing orders for the purpose of s135 of the Local Government Act 1972.

Non-compliance with CPRs, Financial Regulations or UK and European Union legal requirements can have serious consequences for the Council. Following CPRs allows the Council to comply with both procurement and data transparency legislation and Officers should be aware that any non-compliance may result in disciplinary action by the Relevant Chief Officer.

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 Regulations.
 - 1.1.3. The Council's strategic objectives and policies including the Procurement Strategy can be found on Insite.

- 1.1.4. The Council's Constitution including Part 2 (Articles), Part 3 (Responsibility for Function), Part 4 (Rules of Procedure), particularly the Executive and Decision Making Procedure Rules and Part 5 (Codes and Protocols).
- 1.2. These CPRs 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, 3.1.8, 3.1.12, 3.1.14, 12 and 14.
- 1.3. In very exceptional circumstances Chief Officers may waive the following rules using the process set out in CPR 27 –
- Contracts Procedure Rule No 3.1.14 – Requirement to use the Council's standard tender documents
- Contracts Procedure Rule No 3.1.21 – Procurements not to be undertaken by consultants
- Contracts Procedure Rules No 8.1 and 8.2 – Competition for Intermediate value procurements
- Contracts Procedure Rules No 9.1 and 9.2 – Competition for High Value Procurements
- Contracts Procedure Rule 15.2 – Tender evaluation
- Prior to submitting a report to the relevant Chief Officer asking them to take a decision to waive these CPRs the Authorised Officer must seek advice from the Chief Officer - Financial Services by submitting the proposed report to Procurement and Commercial Services (PACS) for comment via ProcurementandFinance@leeds.gov.uk. Guidance on drafting a report when seeking a waiver can be found on Insite.
- 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

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/>

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 (co-operation agreement) 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

- 2.1. The relevant Chief Officer² will work with the Chief Officer - Financial Services via consultation with the appropriate Category Manager within PACS to identify the anticipated procurement activity and spend in their service area which shall be kept up to date and reviewed periodically (minimum of once every 12 months).
- 2.2. All Chief Officers will be responsible for ensuring compliance with these Contracts Procedure Rules by their Authorised Officers.
- 2.3. All Authorised Officers must be registered on YORtender.
- 2.4. All Chief Officers will ensure that contracts for which they are responsible are monitored and managed appropriately
- 2.5. All Chief Officers will report all breaches of these Contract Procedure Rules and lessons learned to PACS via ProcurementandFinance@leeds.gov.uk.
- 2.6. Chief Officers must ensure that the Chief Officer - Financial Services is provided with all the information that is required to allow them to comply with their duties including those relating to publishing information, notices and statistical returns.

² Chief Officers are responsible for the categories of spend that sit within their directorate. Where a category of spend is shared across directorates Chief Officers will work with the Chief Officer - Financial Services via PACS in order to identify the level of spend undertaken by the relevant directorate.

2.7. 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 that the Chief Officer - Financial Services is provided with all the information³ that they require to comply with their 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 within the service areas 12 month anticipated spend plan; and

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 Regulations;

3.1.2. All procurement activity must be undertaken by suitably skilled and experienced staff. Prior to undertaking any procurement activity you should consider seeking advice and assistance from PACS in relation to the procurement process to follow and the outcomes required;

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 community engagement plan on Insite) is available from PACS 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 Insite and the Council's Financial Management System (FMS) which should always be checked by the Authorised Officer 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 relevant 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 Director of Resources and Housing. Any decision to procure an external

³ including total potential value

provider rather than use an ISP must be recorded in writing, along with the reasons for the decision and sent to PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk;

- 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 their requirements are subject to existing contractual arrangements⁴ and will use such arrangements if so. A list of all available existing contractual arrangements is available on 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 has justifiable reasons to believe that the existing contract should not be used and the contract clearly states that the Council does not have to purchase the goods, works or services from the existing provider (such as with a framework agreement), they may do so provided approval has been sought from the relevant Chief Officer. Any decision not to use an existing provider must be recorded in writing as an Administrative Decision by the relevant Chief Officer, along with the reasons for the decision and sent to PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk;
- 3.1.6. 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 Article 13 of the Council's Constitution) 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 procurement decisions flow from⁵. Refer to the Assurance Guide on Insite for further detail and advice. The Authorised Officer must also check compliance with the Financial Regulations if the procurement includes capital expenditure. The Authorised Officer will recommend which kind of Delegated Decision is required. Unless expressly provided for in the original decision, a decision to place a call-off under a framework agreement will not be treated as consequential upon the decision to enter into the framework agreement. 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 extensions⁶;

⁴ Note that these include Third Party Framework Agreements which have been checked and approved by PACS in addition to agreements that have been entered into by the Council.

⁵ Note that the decision making rules in the Constitution including article 13 still apply.

⁶ Officers are reminded that decisions may be sub-delegated as long as this is done in accordance with the Council's Constitution.

- 3.1.7. The Authorised Officer will consider the matters set out under the headings “Social value and Foundation Living wage”, “Commercial opportunities and innovation” and “Strategic supplier engagement and contract management ” at section 4 and appendix 2 and 3 of the Procurement Strategy throughout the life of the procurement and in accordance with all applicable legislation. In particular the Authorised Officer must take into account the Social Value Guidelines for Leeds City Council Commissioners and look to incorporate social value (in particular employment, education and the environment) into all contracts regardless of value. The guidance can be found on Insite. The Authorised Officer shall record how these matters have been considered and where relevant set out clearly why social value cannot be incorporated into a contract in the procurement strategy report;
- 3.1.8. For all procurements Authorised Officers will establish a written specification for the procurement required and (where competition is involved) evaluation criteria and methodology which must be formally approved by the relevant Chief Officer as part of a Delegated Decision. Refer to the evaluation guidance on Insite for further information. Templates are also available from PACS and via Insite;
- 3.1.9. 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 PACS if required;
- 3.1.10. The Authorised Officer will consult and seek advice from PACS prior to beginning a procurement in each of the following cases:
- 3.1.10.1 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, negotiation without publication of a notice, a dynamic purchasing system or innovation partnership procedures each as described in the Public Contracts Regulations;
- 3.1.11. Where any procurement contains, or is likely to contain, any ICT component the Authorised Officer shall consult the Digital and Information Service to ensure that appropriate skilled resource is engaged. For the avoidance of doubt, this includes those procurements where the ICT element is consequential to the primary objective of the procurement and whether those elements are to be

incorporated into the Council's ICT Infrastructure or operated by an external provider;

- 3.1.12. High value (over £100K), mid-scale and complex procurements must use a Procurement Plan (which can cover one or more procurements). The Authorised Officer will register the procurement through the Project Registration Process. All other procurements must be planned and approved in advance in accordance with CPR 3.1.6;
- 3.1.13. The Authorised Officer will register all prospective procurements (as defined at CPR 1.4 and therefore including contracts that will be negotiated with a single provider) that have a value of £10,000 or more on YORtender. Once registered the Authorised Officer will conduct the procurement process via Yortender only, in accordance with the requirements of the Chief Officer - Financial Services and CPR 19.4;
- 3.1.14. Subject to CPR 12, Authorised Officers will use parts 1 to 3 of the Council's standard tender documents for all procurements above £100K, and the simplified tender documents (e.g. short form terms and conditions) for procurements below £100K. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27. Authorised Officers should not underestimate the time required to prepare the tender documents. Quality time spent on preparation will result in a better contract and achievable outcomes. Authorised Officers are encouraged to review the tender documentation at the earliest opportunity, seeking advice and assistance from PACS where necessary;
- 3.1.15. Authorised Officers must consider any guidance issued by PACS in relation to the management of contracts including the use of a Contract Management Plan;
- 3.1.16. 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;
- 3.1.17. The Authorised Officer will consider all aspects of the tender and contract lifecycle with reference to the procurement strategy. 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 overall contract price;
- 3.1.18. The Authorised Officer will apply Procurement Checklists to all procurements and a gateway review process (contact PACS) to all

mid-scale or complex procurements⁷. This process must be applied at key stages of the procurement process in conjunction with PACS and in line with the Procurement Plan;

- 3.1.19. All decisions relating to the procurement must have due regard to the Assurance Guide (with the exception of sections 11 (data management) and 13 (statistical returns) which are compulsory);
 - 3.1.20. The Authorised Officer must consider whether proposed procurements, irrespective of their total value, might be of interest to potential Contractors located in 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 member states of the EU, the wider the coverage of the advertisement should be. Advice must be sought from PACS if there is any doubt about the application of this CPR;
 - 3.1.21. 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
 - 3.1.22. Subject to CPR 17.2, 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. Any decision to undertake such negotiations must be recorded in writing, along with the reasons for the decision and a copy kept on file for audit purposes.
- 3.2. Where the procurement of any value is fully funded by a third party (for example a developer or funder), if that third party so requests, 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. PACS must be notified and advice sought via ProcurementandFinance@leeds.gov.uk 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(s) and winning tenderers score(s)) 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

⁷ As defined by the Project Registration Process

required by the Public Contracts Regulations. PACS 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 3.1.6 the Authorised Officer will complete part 1 of a data protection impact assessment which is a screening exercise to determine whether the Data Protection Legislation applies to the contract you are wanting to procure. If indicated by the screening exercise a full data protection impact assessment must also be carried out in accordance with part 2 of the privacy impact assessment which will determine whether the winning bidder will be acting as a Data Processor or Data Controller. 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 on Insite.

4. Responsibilities of Chief Officer - Financial Services via PACS

- 4.1. All responsibilities of the Chief Officer – Financial Services under these CPRs will be undertaken by PACS unless the rules specifically state otherwise.
- 4.2. At the beginning of each financial year, the Chief Officer - Financial Services 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.
- 4.3. The Chief Officer - Financial Services 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 Officer - Financial Services on procurements undertaken will be published on YORtender and Contracts Finder, including specifications, contract terms and contract expenditure (tender documents and award notices will be published).
- 4.4. The Chief Officer - Financial Services 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.
- 4.5. The Chief Officer - Financial Services will provide procurement support and advice on the application of these CPRs in relation to all procurements covered by CPR 3.1.10 and 3.1.12 as a minimum together with all other procurements which the relevant Chief Officer requests and will manage the administration of YORtender.
- 4.6. The Chief Officer - Financial Services 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 3.1.10.

4.7. The Chief Officer - Financial Services 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 notice or 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 3.1.13, 3.1.19 and 3.1.20).

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 part of 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 contract values for goods, works or services of a similar nature are not split and procured individually 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 £25k - Low Value Procurement

- 7.1. Where no appropriate ISP, existing provider or Third Party Framework Agreement exists, competition (three written tenders) is required for procurements with an estimated value of below £25k. The Authorised Officer must always consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would and there are sufficient numbers, at least 2 of the organisations invited to tender must be local suppliers and/or third sector organisations.
- 7.2. Where the relevant Chief Officer believes that it represents Best Value for the Council to make a direct appointment or considers there is genuinely no competition such that only a particular organisation or provider can meet the Council's specific requirements (e.g. when commissioning a unique product or service) three written tenders as required by CPR 7.1 need not be obtained. However, before making any decision the relevant Chief Officer must consult with PACS and the lack of competition must be formally evidenced and approved by the relevant Chief Officer before the contract is entered into.
- 7.3. For the avoidance of doubt CPR 3.5 applies and the Authorised Officer must complete part 1 of a data protection impact assessment for all procurements undertaken in line with CPR 7.1 and 7.2.
- 7.4. CPR 3.1.13 applies where CPR 7.1 and 7.2 is used, all completed prospective procurements to be undertaken in accordance with CPR 7.1 and 7.2 over the value of £10K must be registered on YORtender and Contracts Finder prior to the procurement process commencing. Failure to publish on YORtender and Contracts Finder will lead to the Council being in breach of data transparency legislation. In addition, where the procurement exercise results in a decision to appoint a successful supplier a formal contract must be awarded regardless of value.
- 7.5. 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 £25k and £100k - Intermediate Value Procurement

- 8.1. Where no appropriate ISP, existing provider or Third Party Framework Agreement exists, competition is required for procurements valued at or over £25k but at or below £100k.
- 8.2. Where there are a sufficient number of providers, at least **three** written tenders will be invited. The Authorised Officer must always consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would and there are sufficient numbers, at least 2 of the organisations invited to tender must be local suppliers and/or third sector organisations. These tenders must (unless it is a requirement of a Third Party Framework Agreement that another portal must be used) 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. For the avoidance of doubt the return of a single bid does not require the Authorised Officer to seek a waiver of this CPR.
- 8.3. Where the relevant Chief Officer considers there is genuinely no competition such that only a particular organisation or provider can meet the Council's specific requirements (e.g. when commissioning a unique product or service) a waiver of CPRs 8.1 and 8.2 need not be obtained. However, before making any decision the relevant Chief Officer must consult with PACS and the lack of competition must be formally evidenced in writing and approved by the relevant Chief Officer as part of a Delegated Decision before the contract is entered into.
- 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. Any decision to waive rules 8.1 and 8.2 by a Chief Officer will be a Significant Operational Decision in accordance with CPR 27.
- 8.5. Where an open advert is placed on the YORtender portal the option to publish on Contracts Finder must be selected. Should the interface between YORtender and Contracts Finder be unavailable for any reason the Authorised Officer must still publish the opportunity on Contracts Finder which can be found at <https://www.gov.uk/contracts-finder>.
- 8.6. In accordance with CPR 3.1.13 all completed procurements undertaken (including by way of a waiver) must result in the award of a formal contract, the details of which must be published on YORtender and Contracts Finder. Failure to publish details of the award on YORtender and Contracts Finder will lead to the Council being in breach of data transparency legislation.

9. Over £100k - High Value Procurements

- 9.1. Where no appropriate internal provider, existing provider or 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. The Authorised Officer must always consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would and there are sufficient numbers, at least 2 of the organisations invited to tender must be local suppliers and/or third sector organisations. Tenders must (unless it is a requirement of a Third Party Framework Agreement that another portal must be used) 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. For the avoidance of doubt the return of a single bid does not require the Authorised Officer to seek a waiver of this CPR.
- 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. This Rule 9.3 cannot be waived.
- 9.4. Any decision to waive rule 9.1 and 9.2 by a Chief Officer will be in accordance with CPR27. Rule 9.3 cannot be waived.
- 9.5. Where the relevant Chief Officer considers there is genuinely no competition such that only a particular organisation or provider can meet the Council's specific requirements (e.g. when commissioning a piece of art) a waiver of CPRs 9.1 and 9.2 need not be obtained. However, before making any decision the relevant Chief Officer must consult with PACS and the lack of competition must be formally evidenced and approved by the relevant Chief Officer before the contract is entered into.
- 9.6. 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.
- 9.7. If an open advert is placed on the YORtender portal the option to publish on Contracts Finder must be selected. Should the interface between YORtender and Contracts Finder be unavailable for any reason the Authorised Officer must still publish the opportunity on Contracts Finder which can be found at <https://www.gov.uk/contracts-finder>.

- 9.8. In accordance with CPR 3.1.13 all completed procurements undertaken (including by way of a waiver) must result in the award of a formal contract, the details of which must be published on YORtender and Contracts Finder. Failure to publish details of the award on YORtender and Contracts Finder will lead to the Council being in breach of data transparency legislation.

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 PACS.
- 10.2. Where the Chief Officer in consultation with PACS 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. However, the grounds for using this procedure must be evidenced in the authority to procure report under CPR 3.1.6 above.
- 10.3. All OJEU contract notices must also be published on Contracts Finder.
- 10.4. The current thresholds are:

Services	£189,330.00
Goods	£189,330.00
Works	£4,733,252.00
Contracts for Social and other specific services	£663,540.00
Works and services concessions	£4,733,252.00

The thresholds are updated every two years with the next update due on the 1 January 2022.

- 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 which 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 PACS 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 into lots and justify any decision not to do so in either the procurement documents or the evaluation report. 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 £189,330.00 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. A Standard Selection Questionnaire is 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 Selection Questionnaire is available on Insite for use to determine the criteria under CPR 11.1.
- 11.4. In all procurements with a value of less than £189,330.00 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. Standard Selection Questionnaires are not allowed for procurements with a value of less than £189,330.00. Instead, suitability assessment questions must be included as part of the tender assessment.
- 11.6. A suitability assessment checklist table can be found on Insite for guidance.
- 11.7. Further guidance can be found at Appendix 2 of these CPRs in relation to Company Financial Health Checks and Profit Warnings. This guidance should be used if there are any financial concerns in relation to a potential contractor irrespective of contract value.

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 high value (over £100K) and complex procurements (as assessed under PM Lite) and intermediate/low value procurements of £100k or less.
- 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, or referred to on, each purchase order or invitation to tender. Where this is not possible, because the Council's terms and conditions are not suitable or the Chief Officer 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 PACS 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 PACS 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. PACS 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. 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 and evaluated in accordance with the provisions of the framework agreement. 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 Standard Selection 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 written approval to accept the submission must be sought by the Authorised Officer from PACS. Approval shall only be given if 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 opening and recording of tender submissions.
- 14.1.7. Tender submissions for procurements that have a value of over £100k will be opened by PACS. Tender submissions below this value may be opened by the relevant directorate. An immediate record will be made of the Tender submissions received including names, addresses, value, any qualifications made and the date and time of opening. Any qualified tenders must be highlighted and brought to the

attention of the relevant Category Manager immediately to ensure that such qualification can be appropriately dealt with as soon as possible.

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 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 only after consultation with PACS has taken place. 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 Where an established framework agreement (including a Third Party Framework Agreement) is being used, this must be evaluated in accordance with the framework agreement terms. In all other circumstances Authorised Officers must consider the evaluation criteria in the following order –

- (a) When evaluating tenders on both price and quality the Authorised Officers must in the first instance look to evaluate tenders on a 'price – quality separated' approach unless the use of (b) to (d) below can be justified. This involves the first stage being a quality assessment which tenderers either pass or fail. Tenderers who pass are then assessed purely on price;
- (b) In appropriate very limited circumstances (e.g. there is a set budget and the council is looking to obtain the best quality service available for its money) the evaluation criteria can be set at 100% quality;
- (c) Use of the combined price/quality split approach. In such circumstances, 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;
- (d) Price only;

Where a departure from the “price-quality” separated approach is justified a record shall be kept on file and included in the approval report to the relevant Chief Officer under CPR 15.1 above who will ultimately be responsible for the evaluation criteria approach. For the avoidance of doubt justification for a departure from the “price-quality” separated approach will not require a waiver of this Contract Procedure Rule.

- 15.3 All tender evaluation panel members must complete and sign a Declaration of Interest form which can be found on Insite in the Evaluations in Procurement toolkit. Should a panel member declare an interest it may not be appropriate to allow them to be involved in the evaluation process and the Authorised Officer (in consultation with the relevant Chief Officer) should consider this, taking into account all the individual circumstances of the case.
- 15.4 All contracts must be awarded on the basis of the offer which represents Best Value⁸ 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 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 when tenders are opened, the Authorised Officer should ask the tenderer to re-submit its documents to them in the minimum amount of time reasonably practicable and 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.

⁸ Note that this does not prohibit “price only” if a price only assessment will provide Best Value on that particular procurement.

- 16.5. Tender Documents must clearly 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 PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk.

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 procedure, the innovation partnership procedure and the procurement of Social and Other Specific Services (as defined in the Public Contracts Regulations). Authorised Officers are expected to take advice from PACS when using these procedures. The Council may clarify, specify and fine tune final tenders and submissions that are received through the competitive dialogue procedure and (for this procedure only) can enter into negotiations with the best value tenderer to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, provided this does not have the effect of materially modifying essential aspects of the tender and does not distort competition or cause discrimination.
- 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. PACS should be contacted if there is any doubt as to whether something is clarification or negotiation.
- 17.4. 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:
 - 17.4.1. following consultation with PACS, approval to enter into negotiations will be sought in writing from the relevant Chief Officer through a Delegated Decision;

17.4.2. negotiations will be conducted on behalf of the Council by at least two appropriately trained Officers from the service directorate concerned. PACS will be invited to send a representative to the negotiation meetings. A full written record will be kept of the results of the negotiations;

17.4.3. 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.

17.5 In all cases, where an additional uplift to a tendered price is sought due to a delay in accepting a bid of more than 90 days, a delegated decision must be obtained from the relevant Chief Officer following receipt of a report which details how this delayed acceptance has been handled to minimise additional costs, maintains value for money, highlights all negotiations undertaken and takes into consideration any procurement challenge risk to ensure a clear and transparent process is followed.

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 there is a difference between the value of the lowest priced tender and the highest scoring submission, 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. Where the winning Contractor has identified itself as being within the scope of IR35 Legislation via the tender process the Authorised Officer must check the Contractors [employment status for tax](#) on the [HMRC website](#) to determine whether the Contractor should be paid via the Council's payroll system or via the raising of an invoice on the Financial Management System⁹. Advice must be sought from the Taxation Manager if there is any doubt about the application of this CPR.

18.4. 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

⁹ See appendix 1 to these CPRs which summarise the process to be followed by the Authorised Officer in these circumstances.

delegated authority to do so (e.g. officers within PACS with authority delegated from the City Solicitor).

- 18.5. 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.
- 18.6. 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 on Insite.
- 18.7. 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.
- 18.8. Once awarded, in order to ensure off contract spend is not incurred, the Authorised Officer must advise commissioners within all relevant directorates as to which organisation the contract has been awarded to. Once advised by the Authorised Officer Commissioners must only place orders with the contracted organisation. In addition where the Contract relates to the purchase of desirable/valuable goods which are to be stored on the Council's premises, the Authorised Officer must inform Internal Audit to enable the stock management and security arrangements to be considered.
- 18.9. 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. Advice must be sought from PACS 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 observed. Failure to comply can result in a legal challenge and the contract being set aside. The Chief Officer - Financial Services via PACS 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. If following standstill/debrief the contract award is revised such that the original tenderer is no longer to be awarded the contract, any decision to award to a different bidder will be only be made after consultation with PACS and such decision will be a Significant Operational Decision as a minimum and a new standstill/debrief must be undertaken.
- 19.4. The Authorised Officer must provide PACS with the details of the successful tenderer, tendered price and nature of the contract to allow the Chief Officer - Financial Services to carry out their obligations under CPR 4.3.

20. Contract Management

- 20.1. The relevant Chief Officer is responsible for ensuring that the Contract is managed appropriately (both internally and externally) and to consider any guidance issued by PACS in relation to contract management plans, including the guidance on Company Financial Health Checks and Profit Warnings found at Appendix 2 of these CPRs.

21. Contract Extension and Variations

Extensions

- 21.1. Once a Contract has expired it cannot be extended.
- 21.2. The decision to extend a Contract must be taken before the contract expires so as to enable the extension 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.
- 21.3. Any Contract extension must be approved by and dealt with by the relevant Chief Officer. PACS must be consulted if the extension relates to a high value Contract (over £100K). However, this is optional at the relevant Chief Officer's discretion for other Contracts. The decision to extend a Contract which exceeds the threshold of a Key Decision may be treated as a direct consequence of the initial decision to procure provided it was in the

contemplation of the decision maker at the time the initial decision to procure was taken. The decision to extend will therefore be a Significant Operational or Administrative Decision, depending on value and impact of the decision (refer to Article 13).

21.4. All extensions to any Council Contracts must be in writing and reported to PACS in order that YORtender can be updated. Extensions of a Contract that are categorised as “variations” under 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.

Variations

21.5. Variations to capital project procurements will be dealt with in accordance with these Contracts Procedure Rules and Rule 10 (Capital Expenditure) of the Council’s Financial Regulations. Variations in relation to revenue Contracts will be dealt with in accordance with these Contract Procedure Rules and Rule 1 (Purchase and Payment for Goods and Services) of the Financial Regulations.

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 procurement 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. PACS must be consulted if: (i) the variation relates to a high value Contract (over £100K) and involves a change to the terms and conditions of the Contract; 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 Contracts.

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 PACS in order that YORtender can be updated.

21.9. Unless there are exceptional circumstances not to do so which have been agreed in consultation with PACS, for contracts below the thresholds set out at CPR 10.4, 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. Where a Contract is above the financial thresholds set out in CPR 10.4 you must always consult with PACS if you are considering varying the Contract.

Transfer of contracts – novation and assignment

21.11 Transfer, assignment and novation of contracts can only be carried out by PACS. The Authorised Officer should contact the relevant category manager in PACS in the first instance.

22. Termination of Contract

22.1. Any Contract will only be terminated early if, following consultation with PACS, this action is authorised by the relevant Chief Officer through a Delegated Decision, which could be Key, Significant Operational or Administrative depending on the circumstances of termination. A copy of the report and decision for termination of any contract exceeding £100k in value at the time it was awarded must be sent to PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk. All termination letters under this rule will be drafted and issued via PACS 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 3.1.21 and a decision not to use an ISP under CPR 3.1.4 must be authorised as an Significant Operational 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 PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk.

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 PACS 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 very exceptional circumstances and only the rules set out at CPR 1.3 can be waived. The Delegated Decision must demonstrate clearly the exceptionality of the circumstances. 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 Guidance on Insite. A copy of the report and the delegated decision notice must be forwarded to PACS for monitoring purposes via ProcurementandFinance@leeds.gov.uk. The rest of the CPRs will still apply to the procurement including the requirement to enter into a formal contract and if it has a value of £10k or more to register it on YORtender.

27.2. The report of the Chief Officer will set out the financial, legal, risk and equality implications of the waiver sought¹⁰. The Authorised Officer will consult with PACS in accordance with CPR 1.3 before any decision to waive these CPRs is taken. 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.

28. Contract Disputes and Claims

28.1. The Chief Officer - Financial Services 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 PACS.

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 on Insite.

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/ukxi/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

¹⁰ If this is already set out in the procurement calendar the report can cross refer to this.

CPRs and the Concession Contracts Regulations 2016, the Contract Concession Regulations 2016 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 their behalf which for the avoidance of doubt includes relevant budget holders within directorates;

“**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**” will include each category identified in the list published from time to time at appendix 2 of the Procurement Strategy by the Chief Officer - Financial Services;

“**Chief Officer**” means the head of the procuring directorate and includes the Chief Executive, Assistant Chief Executive, City Solicitor, Directors, Chief Officers and any other Officers with appropriate delegations and sub-delegations;

“**Chief Officer - Financial Services**” means the Chief Officer - Financial Services who is responsible for the procurement function on behalf of the Council and includes any Officer within PACS who carries out the functions of the Chief Officer - Financial Services under these CPRs;

“**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 on Insite. The Contract Management Plan will be in such format as prescribed by the Chief Officer - Financial Services 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;

“Data Protection Legislation” means the Data Protection Act 2018, the Data Protection Directive (95/46/EC), Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 (commonly known as the General Data Protection Regulation), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), and all other applicable laws and regulations relating to the processing of personal data and privacy and any subordinate legislation relating to the processing of personal data and privacy from time to time together with any applicable guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;”.

“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);

“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 PACS) 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 s75 and / or s76 of the Care Act 2014, 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 PACS) 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 PACS) 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 on Insite;

“Formal Contract” means a contract in writing on terms that accord with the requirements of the CPRs;

“IR35 Legislation” means Chapter 10 Part 2 of the Income Tax (Earnings and Pensions Act) (ITEPA) 2003

“ISP” means Internal Service Provider for example Commercial Services; Legal Services etc. The list of ISP's can be found on Insite.

“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 on Insite.

“**Procurement Checklist**” see template available from [PACS];

“**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 PACS to meet the Council’s reporting obligations. The Procurement Plan will be in such format as prescribed by the Chief Officer - Financial Services 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 on Insite which then allocates the procurement to either a light touch process or the development of a more detailed project brief;

“**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 [PACS].

Appendix 1

Employment Status for Tax

1 to 4 below summarise the process Authorised Officers must follow where the winning Contractor has identified itself as an “in scope” organisation via the New Contract Supplier Declaration form in the tender documents:-

- 1) When a new supplier to the Council is selected a creditor creation form should be completed by the Authorised Officer. This should be sent to BSC (central payments) with the new supplier request form, so a creditor can be set up on the system and the flag can be added to say inside or outside scope. If they are “in scope” and not to be paid via payroll complete a PSC002 form.
- 2) Where the supplier selected is an existing supplier, the supplier record should be checked to see if the declaration has already been done (i.e. whether the flag is already on their record saying inside or outside of the scope). If it isn't there, then again a declaration form should be completed and sent to BSC (central payments) so they can update the creditor record accordingly.
- 3) If they are to be paid by payroll, this should be sent to BSC (central payments) so a stop can be put on the creditor, and to BSC (payroll) with a PSC001 form so they can set the supplier up on SAP.
- 4) The Authorised Officer must notify the supplier of how we are going to pay them prior to them commencing the work.

Appendix 2

Guidance on Company Financial Health Checks and Profit Warnings

(a) Prior to entering into a contract

For high value procurements (above £189,330) commissioners must use the Standard Selection Questionnaire (SSQ) as part of the tender documents, and require tenderers to provide information to determine whether a Contractor has adequate financial standing prior to any contract being awarded. In this regard:

- Annual Turnover should be at least 2 times larger than the annual estimated contract value (or where appropriate the maximum exposure the Council is prepared to accept).
- The net worth quoted on the latest year of the balance sheet should be positive.
- There should be technical/historical evidence that the organisation has successfully delivered projects of a similar scope and value to the advertised contract. In relation to this tenderers should be specifically asked about the actual price they bid for these contracts; what the final costs were and the reasons for any difference in the two sums.
- Credit safe check is carried out to obtain an independent credit rating of the Contractor (if rating is low then further analysis may be undertaken by the Commercial Team within PACS).

For procurements below the above threshold, any questions around financial viability must be proportionate to the contract value and it may be that financial information will only be required for such procurements in exceptional cases. Commissioners should consult with Procurement & Commercial Services (**PACS**) to determine what may be proportionate on a case by case basis.

If the outcome of these checks is that there are **no financial issues** then the contract can be awarded to the successful bidder.

If the outcome of these checks is that, or any other information is received which suggests that, there may be some **serious financial concerns** or even **medium financial concerns** due consideration should be given as to the appropriateness of awarding a contract to the relevant tenderer.

Commissioners should consult with PACS to determine the appropriate approach on a case by case basis.

Options may include:

- Not to award the contract to the relevant tenderer (and to either award to the runner-up or re-procure); or
- Award the contract to the relevant tenderer, but put in place appropriate mitigation measures. These may include:

- Requiring performance or insolvency Bonds to secure payment if there is a default (a prudent approach being to require bonds for all contracts with a value of £10m or higher).
- Requiring a Parent Company Guarantee, personal guarantee or other guarantee from a party of sufficient financial standing.
- Requiring Collateral Warranties creating a direct link to sub-contractors, and consideration of the extent to which work is sub-contracted (can the contract be “rescued” by stepping into sub-contracting arrangements).
- Requiring appropriate insurances to be put in place, with the Council as a named party.
- Only paying for work satisfactorily completed on site.
- Only paying for off-site goods in exceptional circumstances and with arrangements in place to ensure that the Council owns the off-site goods it has paid for, and appropriately monitors such arrangements (including appropriate labelling and quantities).
- Enforcing Contract terms and monitoring to ensure that the main contractor pays subcontractors within 30 days (failure to pay sub-contractors on time can be a clear warning of financial distress).

In addition, the Council’s suite of standard contracts and standard construction contract amendments (which include a number of mitigations to protect the Council in the instance of financial distress of a contractor) should be used other than in exceptional circumstances.

Commissioners should consult with PACS for advice as to the specific contractual protections that may be put in place, and to consider what the most appropriate approach to mitigating insolvency risk is for a particular contract, on a case by case basis.

(b) During the Contract Period

To mitigate against financial distress of a contractor during the contract period it is the responsibility of the relevant Chief Officer to ensure that the Contract is managed in line with Contract Procedure Rule 20.1 above and to consider any guidance issued by PACS in relation to contract management plans, including the guidance on Company Financial Health Checks and Profit Warnings found within this Appendix 2.

If at any stage during the contract period there are serious concerns around high risk/high value contracts the individual contract managers should immediately consult with PACS.

Additional financial checks can be completed by PACS as and when issues become known or otherwise upon request.

In the event that there are found to be financial concerns over a contractor, contract managers should consult with PACS to consider appropriate mitigation strategies (including enforcing relevant contractual rights, or increasing monitoring/making additional enquiries) and any other mitigation measures which may be appropriate to put in place (including those referred to in section (a), above).

(c) Reporting Procedures for Health Checks

“The Central Control of Due Diligence Arrangements” Audit Report published in November 2019 recommended that a standard reporting and audit system should be set up for all financial health checks (ref Appendix A, action 5 to the report).

To comply with this requirement the following actions will be introduced with immediate effect;

- All requests for financial health checks must be submitted by e-mail to ;
procurementandfinance@leeds.gov.uk

- Following receipt of any request PACS Finance Team will;
 - Monitor the inbox,
 - Keep a record of all requested checks,
 - Complete the company financial appraisal and due diligence,
 - Keep all records for audit purposes,
 - Notify the person making the request of the results and any subsequent actions required.

This data-base will be maintained within PACS to capture all information highlighted by the financial health checks. In addition, Council Officers will also be able to update the data-base with supplier intelligence via the e-mail address above.