

**KIRKLEES COUNCIL**  
**CONTRACT PROCEDURE RULES**

**JUNE 2019**

## **CONTRACT PROCEDURE RULES**

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## **DEFINITIONS**

<b>Award Criteria</b>	Relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council's requirements for the Supply, in particular the Specification.
<b>Chief Executive</b>	The Chief Executive is the head of the Council's paid staff and its principal adviser on policy matters and leads the discharge of Council strategy and responsibilities.
<b>Chief Finance Officer</b>	Means the Service Director – Finance, Professional & Transactional Services.
<b>Commissioning</b>	The relationship between commissioning and procurement is described in the diagram in Appendix 4.
<b>Conflict of Interest</b>	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise his or her impartiality and independence in the context of a Procurement or sale procedure.
<b>Concession</b>	Is where a Supplier is remunerated mostly through being permitted to run and exploit the work or service and is exposed to a potential loss on its investment.
<b>CPR</b>	Means these Contract Procedure Rules.
<b>Data Protection Legislation</b>	Means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, and all other laws and regulations relating to the processing of personal data and privacy, and also where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Dynamic Purchasing System</b>	Is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for contracts, and it should be set up using the restricted procedure.
<b>European Single Procurement Document</b>	Is a standard electronic document that a tenderer for a contract to which the EU Procurement Rules apply may use to declare that none of the exclusion grounds apply to it and that it meets the necessary regulatory criteria or relevant commercial capability requirements. Only the preferred bidder will be required to submit all documentation to evidence the content of the form.

<b>EU Procurement Rules</b>	The rules on procurement for Supplies above the EU Threshold prescribed by the EU in Directives relating to public contracts - as amended and supplemented by the European Court of Justice. These rules also normally extend to the WTO Government Procurement Agreement signatories, which (in 2016) are Armenia, Aruba, Canada, the EU, Iceland, Israel, Japan, Hong Kong China, Liechtenstein, Montenegro, New Zealand, Norway, Singapore, South Korea, Switzerland, Chinese Taipei, and the US.
<b>EU Threshold (or *)</b>	The financial threshold from time to time at which the EU Procurement Rules are applicable to a Supply. Current EU Thresholds are set out in Appendix 2.
<b>Financial Ratio</b>	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
<b>FPR</b>	The Financial Procedure Rules.
<b>Framework Agreement</b>	Means an agreement between the Council and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Framework Agreements which deal with Supplies that are above, or aggregate above, the EU Threshold are subject to the EU Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework' and 'Framework Suppliers' shall be construed accordingly.
<b>GDPR</b>	The General Data Protection Regulations. The General Data Protection Regulation 2016/679 is a regulation in EU law on data protection and privacy for all individuals within the European Union and the European Economic Area. These are now incorporated into the Data Protection Act 2018.
<b>Head of Corporate Property Management</b>	Means the officer appointed by the Service Director who is responsible for corporate property management functions.
<b>Head of Internal Audit</b>	Means the officer appointed by the Chief Executive who is responsible for internal audit.
<b>Head of Procurement</b>	Means the officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
<b>Local Government Transparency Requirements</b>	Means the statutory codes and legislation requiring the Council to publish information, such as <sup>†</sup> the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.

<b>Income Contract</b>	An Income Contract is one where the main object of the contract is that the Council does something listed in CPR 8.1.1 – 8.1.2 in relation to a Council asset <sup>1</sup> and includes situations where the Council does so at nil value (subject to this not being a Grant – see CPR 8.2).
<b>Official Council Order</b>	A standard form of contract for a Supply for a value of less than the current EU supplies and services threshold approved by the Solicitor to the Council whether attached electronically or by paper to an order for Supplies.
<b>Personal Data</b>	Means data which relate to a living individual who can be identified— <ul style="list-style-type: none"> <li>(a) from those data, or</li> <li>(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,</li> </ul> and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.
<b>Procurement</b>	The purchase, contract hire, lease, rental <sup>2</sup> or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Framework Agreements and Dynamic Purchasing Systems. ‘Procurement’ and ‘Procured’ shall be construed accordingly.
<b>Reasonable Means</b>	Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written Tenders or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.
<b>Service</b>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director (see Appendix 5).
<b>Senior Manager</b>	Means an officer who reports directly to a Head of Service.
<b>Service Director</b>	Means the most senior officer responsible for the day to day functions of each Service.
<b>Solicitor to the Council</b>	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
<b>Specification</b>	A written document detailing the Council’s requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.

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<sup>1</sup> For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<sup>2</sup> Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or his delegate [See the FPR].

<b>Special Purpose Vehicle</b>	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
<b>Standing List</b>	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
<b>Suitability Criteria</b>	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. ' <b>Suitability</b> ' shall be interpreted accordingly.
<b>Supply</b>	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
<b>Supplier</b>	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
<b>Tender</b>	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
<b>Value for Money</b>	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
<b>Whole Life Costing Approach</b>	<p>Is an approach which addresses all the elements of a Supply over its life cycle such as:-</p> <ul style="list-style-type: none"> <li>• costs relating to acquisition,</li> <li>• costs of use, such as consumption of energy and other resources,</li> <li>• maintenance costs,</li> <li>• end of life costs, such as collection and recycling costs</li> </ul> <p>which can be used to produce a spend profile of the Supply over its anticipated lifespan.</p>
<b>YORTender</b>	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts.

\* In the text a \* means the value will track the EU threshold rounded down to the nearest £5,000. Also, see "EU threshold"

† The words "including", "include", "for example", "e.g.", and "such as" in these CPRs indicate examples and are not intended to be limiting

## **INTRODUCTION**

These Contract Procedure Rules aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition. To that end procurers shall follow the 'Procurement Principles' referred to below.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts. Service Directors should recognise the Council's view of the difference between Commissioning and Procurement (see Appendix 4).

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly related to and proportionate to the need which the Supply fulfils and should appropriately balance the value of and risks associated with any proposed action.

EU Procurement Rules, which are often more onerous, also apply to the procurement of all works, goods and services exceeding the EU Threshold, and where there is a conflict between these Contract Procedure Rules and the EU Procurement Rules, the EU Procurement Rules prevail. The GDPR principles of data protection by design and by default and by minimisation should also be taken into consideration in the context of contracts and their award procedures that involve the transfer of personal data.

The Council's Financial Procedure Rules must also be complied with. In particular if you are giving a Grant then FPR 20 will apply.

### **Procurement Principles:**

The aim of every procurement exercise should be value for money. In pursuit of that aim, procurers shall endeavour to treat market operators equally and without discrimination, and to act in a transparent and proportionate manner. Without detracting from those principles, procurers should consider how social value might be enhanced in contracts and procurement processes, including encouraging the participation of local businesses in Council tenders.

## **RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER**

- 1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular:-
  - 1.2.1 the legality of the proposed non-compliant process or action; and
  - 1.2.2 the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4 Each Service Director must ensure:-
  - 1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
  - 1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
- 1.5 When authorising staff to procure Supplies on his or her behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations.
- 1.6 The Head of Procurement may:-
  - 1.6.1 authorise officers who are not procurement officers under his or her managerial responsibility to act on his or her behalf in respect of any role assigned to the Head of Procurement in these CPRs;
  - 1.6.2 issue waivers in relation to the need to consult him or her under CPR 1.3;
  - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation , as appropriate, with the Service Director, Solicitor to the Council, Chief Finance Officer and Head of Internal Audit

The Head of Procurement must record the precise extent of such authorisations and the officer to which roles have been delegated and share these authorisations with the Solicitor to the Council and the Head of Internal Audit.
- 1.7 A Service Director has authority to commence any Procurement subject to:-
  - 1.7.1.1 compliance with these CPRs and FPRs; and
  - 1.7.1.2 having appropriate delegated authority; and
  - 1.7.1.3 compliance with management processes designed to ensure that proposed projects meet the Council’s business needs; and
  - 1.7.1.4 seeking Value for Money.
- 1.8 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by European and UK law and agreements with Grant funding organisations.



- 1.9 The Head of Procurement, the Solicitor to the Council and the Head of Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:-
- 1.9.1 the Head of Procurement – Good Procurement Practice;
  - 1.9.2 Solicitor to the Council – The EU Procurement Rules and other laws and Corporate Governance;
  - 1.9.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.10 Any dispute concerning interpretation of these CPRs must be referred to the Head of Internal Audit who, in consultation with the Solicitor to the Council, may provide clarification and determination.
- 1.11 Subject to Part 3 of the Council’s constitution and without prejudice to the role of the Monitoring Officer or the Chief Finance Officer, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Internal Audit, and the Solicitor to the Council provided that:-
- 1.11.1 the post holders to whom these duties are assigned must hold general competencies in respect of:-
    - public sector procurement in respect of duties reassigned from the Head of Procurement;
    - finance in respect of duties reassigned from the Head of Internal Audit;
    - Law and Court procedure in respect of duties reassigned from Solicitor to the Council.
  - 1.11.2 the same degree of separation of officer responsibility for the duties is maintained.
- 1.12 **Conflicts of Interest and Integrity<sup>3</sup>:**
- 1.12.1 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.
  - 1.12.2 Any Officer, Member or other person acting on the Council’s behalf in procuring a Supply must declare any potential Conflict of Interest as soon as he or she becomes aware of a potential Conflict of Interest and update the declaration in the event of any changes.
  - 1.12.3 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
  - 1.12.4 In exercising the decisions delegated to them, the Head of Procurement, Head of Internal Audit and Solicitor to the Council (or any other persons undertaking their responsibilities by application of CPR 1.11 or CPR 1.6) must reach their decisions independently.

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<sup>3</sup> Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.7 of the Council’s Constitution and Members should also refer to Part 5.1 of the Constitution.

## **RULE 2 – PREPARATION AND PROCESS**

2.1 Each Service Director must ensure:-

- (1) That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPR or the EU Procurement Rules, unless justified by objective reasons.
- (2) Each Procurement complies with the following:-
  - a. it is justified by a business case (that includes a risk assessment) approved personally by a Senior Manager with relevant authority to purchase; and
  - b. a Whole Life Costing Approach underpins the specification of the Supply and
  - c. it aligns with the Procurement Strategy; and
  - d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.12), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions that have been made under CPRs 6.10 & 6.11 and contracted suppliers).
- (3) The Supply is likely to be within budgetary provision (see CPR 10.1).
- (4) An estimate of the full cost of the Supply contract or Framework Agreement which is as accurate as possible is made. Valuations must:
  - a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
  - b. assess the gross value of a Framework Agreement to be the reasonably estimated value of all Supply contracts which might be made through it;
  - c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
  - d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
  - e. include any Grant funding;
  - f. exclude VAT.
- (5) Where the cost of the Supply is less than the EU Threshold and an approved Framework Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the EU Procurement Rules.
- (6) Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- (7) The process can be adequately resourced.
- (8) The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.1(10) below) and other procurement documentation. The documents must be likely to be understandable by all reasonably well informed people in the relevant industry in the same way.

- (9) For contracts up to the EU supplies and services threshold, other than Land Contracts (as to which see CPR 9); the Service Director shall wherever possible use appropriate standard contract terms. Otherwise every contract for Supplies or Income Contract must set out:
- a. details of the Supply to be made or to be disposed of;
  - b. the price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
  - c. the time(s) within which the contract is to be performed;
  - d. termination provisions and break clauses, if appropriate;
  - e. appropriate data protection clauses where personal data is involved; and
  - f. such other matters as the Solicitor to the Council considers to be necessary (the Solicitor to the Council need not be consulted, but guidance must be followed).
- (10) For contracts above the EU supplies and services threshold, other than Land Contracts (as to which see CPR 9); the Service Director must consult with the Solicitor to the Council who will prepare contract documentation appropriate for the contract.
- (11) Where a competitive process is being carried out: a transparent, unambiguous and clearly set out schedule of Award Criteria, which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and advertised. These criteria must be linked to the subject matter of the contract, must not include unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR 3.4 – 3.9) and must be proportional to the contract's main objectives.
- (12) Consideration of whether it would be appropriate to divide large procurements into contract Lots<sup>4</sup> and must record the decision and reasoning.
- (13) The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the EU supplies and services threshold.
- (14) The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.
- (15) That (unless Cabinet authorises otherwise) the formal Council policies and/or guides referred to in Appendix 1 are followed.
- (16) All supply contracts in excess of £300,000 will be bonded in the sum of 10% of the Tender value, except where the Solicitor to the Council and Head of Internal Audit agree either:-
- a. No bond is necessary; or
  - b. A different value (or percentage) is appropriate; and or
  - c. A parent company guarantee or other form of surety can be accepted instead.
- (17) A risk log is maintained during the Procurement process.

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<sup>4</sup> This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.

- 2.2 If you are considering conducting interviews or receiving presentations you should discuss this with the Head of Procurement at the preparatory stage (also see CPRs 4.14-4.16).
- 2.3 Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000, the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Solicitor to the Council and / or the Head of Internal Audit, and undertake these consultations as necessary.
- 2.4 The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with EU Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the Official Journal of the European Union (OJEU) and Contract Finder. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.5 Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier, and no technical advice may be sought or accepted from any supplier in relation to the preparation of any specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
- 2.6 In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with EU and UK procurement legislation. In respect of contracts for services, Service Directors must also consider (a) how what is proposed to be procured might improve the economic, social and environmental well-being of Kirklees, (b) which proportionate actions (which must comply with the EU Procurement Rules) might be taken in the Procurement with a view to securing that improvement, and (c) whether any consultation might be needed to inform them in relation to 2.6(b).
- 2.7 Where any Supplier is given possession of or access to any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation, any Information Commissioner's Office directions to the Council and the undertaking which the Chief Executive gave to the Information Commissioner in July 2011. The Service Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors and sharing data, and consult with the Information Governance Team. The Service Director must ensure that:
- A. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
  - B. appropriate guarantees of the security of the personal data are included within a written contract;
  - C. the performance of the contract is appropriately monitored;
  - D. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
  - E. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
  - F. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

All contracts that involve the processing or sharing of personal data must be reported to the Information Governance Team, who will keep a log of these contracts. The log will be reviewed by the Information Governance Board on a six-monthly basis.

## Collaboration

- 2.8 The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.9 However, the EU Procurement Rules provide for joint liability where one authority procures on behalf another (other than as a central purchasing organisation, e.g. YPO). This increases the risks for the passive partner(s). So when taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organisation and the Crown Commercial Service); addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

## RULE 3 - PROCUREMENT PROCESS

- 3.1 Subject to complying with the law, the process for procurement must comply with the following:-

Value of Supplies	Requirement		
	Procurement Process	Advertising	Min no. of Suppliers
<b>£0 - £24,999.99</b>	<p>Any Reasonable means to select are permitted. Reasons to justify the decision taken must be recorded.</p> <p>Where practicable Supplies from a Supplier within the Council's area must be considered in addition to Supplies from Suppliers outside the area (although the best value Supply must always be chosen).</p> <p>All contracts awarded in excess of £5,000 must be reported to Corporate Procurement.</p>	Any reasonable means	3
<b>£25,000 – EU Threshold</b>	<p>One of the following:-</p> <ul style="list-style-type: none"> <li>• Quotations (CPRs 3-4)</li> <li>• Framework Suppliers, Standing Lists, etc. (CPR 5)</li> <li>• Exemptions (CPR 6)</li> <li>• Internal, Consortia &amp; Compulsory (CPR 6)</li> </ul>	<p><b>As the Head of Procurement determines</b></p> <ol style="list-style-type: none"> <li>1. From a standing list</li> <li>2. An approved Framework Agreement</li> <li>3. An approved Dynamic Purchasing System</li> <li>4. Advertise on YORTender, Contracts Finder PLUS other</li> </ol>	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>

		<p>reasonable advertising means;</p> <p>Or</p> <p>For value below £100,000, use of suppliers selected otherwise (except where the procurement applies to a grant obliging competition, or cross border competition may be compromised)</p>	
<b>Above EU Threshold</b>	<p>One of the following:-</p> <ul style="list-style-type: none"> <li>• Tenders (CPRs 3 - 4)</li> <li>• Framework Suppliers, Standing Lists, etc. (CPR 5)</li> <li>• Exemptions (CPR 6)</li> <li>• Internal, Consortia &amp; Compulsory (CPR 6)</li> </ul>	<p>Advertise on YORtender, Contracts Finder and OJEU- and in other media if appropriate (OJEU first); or</p> <p>Use approved Framework Agreement; or</p> <p>Use approved Dynamic Purchasing System</p>	<p>(or £180,000 whichever is lower)</p> <p>5</p>

3.2 These CPRs also apply to the selection of any nominated or named sub-contractor, product or manufacturer whose use by a supplier is a requirement of a contract specification.

3.3 A Service Director must invite at least the number above of suppliers to submit a written Tender, unless:-

3.3.1 an **approved**<sup>5</sup> Framework Agreement or Dynamic Purchasing System is being used (and in which case the rules of the Framework Agreement or the Dynamic Purchasing System must be followed); or

3.3.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council.

The Suppliers must have indicated that they are willing to submit a Tender. If it is not possible to identify the number of willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

### Supplier Selection

3.4 Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.

<sup>5</sup> See CPR 5.17

- 3.5 Where the procurement process has an overall value of less than the supplies and services EU threshold, a qualification stage must not be used, although key, proportional, Suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish the Suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.
- 3.6 When operating a procurement process with a value above the supplies and services EU threshold, and subject to CPR 3.7, the Service Director must use the Council's standard selection questionnaire to establish Suitability and/or to establish a shortlist. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.
- 3.7 The European Single Procurement Document must be accepted where applicable.
- 3.8 The selection of any potential Supplier to submit a Tender must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Selection Criteria must be transparent and financial ratios to be used as part of the evaluation must be disclosed. When conducting a procurement process which is subject to the EU Procurement Rules, minimum standard and/or pass marks must be published in the relevant OJEU contract notice or invitation to confirm interest.
- 3.9 Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

#### **RULE 4 –TENDER RECEIPT & EVALUATION**

- 4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the YORtender system unless the Head of Procurement agrees otherwise. (If the Head of Procurement approves another means, they will be required to agree and supervise a fair means of tender opening) .
- 4.2 All invitations must state clearly the date and time of return. Electronic Tenders must be returned in accordance with the approved tendering system requirements.
- 4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.
- 4.4 At the Tendering opening the Head of Procurement will maintain a written record of the:-
- 4.4.1 nature of the Supply;
  - 4.4.2 name of each supplier submitting a Tender and the date/time of receipt;
  - 4.4.3 name of suppliers failing to submit prices/proposal;
  - 4.4.4 prices from each supplier;
  - 4.4.5 names of the persons present at the opening;
  - 4.4.6 date and time of opening of Tenders;
  - 4.4.7 any reason for rejecting any Tender.
- 4.5 Late Tenders must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder

which submits the late Tender. Any decision to accept a late Tender will be made by the Head of Procurement following both (a) such verification as he or she feels appropriate and (b) approval by the Head of Internal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.

4.6 Suppliers must always be required to submit bids which comply with the tender documents. Variant bids may be permitted providing that the tender documents:-

- 4.6.1 say whether a standard or reference bid is also required;
- 4.6.2 include the minimum requirements to be met by the variants;
- 4.6.3 set award criteria which can be applied to the variants.

and the variants which are submitted must conform to the requirements of the tender documents.

Tenders which do not comply with the above in this CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.

4.7 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.1(11)) and keep a written record of the analysis and outcome.

4.8 The use of or participation in e-auctions to set prices is permitted where:-

- 4.8.1 bids can be ranked automatically; and
- 4.8.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and
- 4.8.3 the written agreement of the Head of Internal Audit has been given; and
- 4.8.4 the process is subject to supervision by the Head of Procurement.

4.9 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.

4.10 The Service Director must ensure that, where required by EU procurement rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Solicitor to the Council that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.

4.11 Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 4.13) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.

4.12 If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Solicitor to the Council must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the Solicitor to the Council advises about confidentiality and Legal Privilege.



## **Clarifications, Presentations and Interviews**

- 4.13 Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:
- 4.13.1 set an appropriate time limit for a reply; and
  - 4.13.2 do not request changes or otherwise seek to influence the bidder; and
  - 4.13.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
  - 4.13.4 treat all tenderers equally and fairly and so, for example, the request:-
    - 4.13.4.1 must not occur before all of the bids have been subject to an initial evaluation;
    - 4.13.4.2 must not unduly favour or disadvantage the bidder to whom the request is addressed; and
    - 4.13.4.3 must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.14 Clarity may also be facilitated through planned presentations designed to assist in understanding or verifying submitted bids. Clarification questions may be asked during such presentations and prior scoring may be appropriately moderated (but the presentation itself must not be scored). All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.
- 4.15 Interviews and / or presentations which form part of the bid (rather than clarification of a submission) are discouraged and must be authorised by the Head of Procurement in writing. They must also be:-
- 4.15.1 comprehensively recorded; and
  - 4.15.2 assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
  - 4.15.3 supervised by the Head of Procurement.
- 4.16 Where interviews and / or presentations are to be used, unless the Head of Procurement agrees otherwise, all bidders must be invited to participate.

## **RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS AND FRAMEWORK AGREEMENTS: CREATION AND USAGE**

- 5.1 The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

### **Standing Lists**

- 5.2 The Head of Procurement will determine for which types of Supply Council-wide Standing Lists must be kept (see CPR 6.10). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.

- 5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the EU Procurement Rules) of the Supply in question does not exceed the relevant EU Threshold. Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant EU Threshold.
- 5.4 Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the YORTender web site, Contracts Finder and other appropriate media as the Head of Procurement may determine. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation, of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 5.6 The Head of Procurement (in consultation with the Solicitor to the Council) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to meet the CPR's Tender requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 5.8 Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

### **Council Framework Agreements and Dynamic Purchasing Systems**

- 5.9 Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the EU Procurement Rules, as applicable). However they must not be used to attempt to create further Framework Agreements or Dynamic Purchasing Systems.
- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract (but must not be procured through a standing list, another framework agreement or a Dynamic purchasing system) and in accordance with the EU Procurement Rules.
- 5.11 All Framework Agreements will be in the form of a written agreement detailing the method by which the Council will call off Supplies during the duration of the Framework Agreement and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 5.12 Framework Agreements above the EU Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
- 5.13 Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.

- 5.14 Dynamic Purchasing Systems must:
- 5.14.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and
  - 5.14.2 remain advertised; and
  - 5.14.3 not limit the number of suppliers admitted to the system (but the system may be split into categories); and
  - 5.14.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system, or on the relevant category on the system, as appropriate; and
  - 5.14.5 be operated wholly electronically; and
  - 5.14.6 be open to new entrants; and
  - 5.14.7 not last longer than 5 years.
- 5.15 When using Framework Agreements or Dynamic Purchasing Systems, the Council must follow the procurement rules set out in the Framework Agreement or the Dynamic Purchasing System.
- 5.16 The Head of Procurement will ensure that the use of Framework Suppliers and Dynamic Purchasing Systems provide value for money, considering all procurement costs and alternative approaches.
- 5.17 The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems (noting which of these comply with the EU Procurement Rules) which Service Directors are permitted to use.

#### **Use of Third Party Procurement Facilities**

- 5.18 Supplies may be obtained through third party Frameworks Agreements that:-
- 5.18.1 are created by a public body or a private sector party as agent of a public sector body which is approved by the Head of Procurement (see also CPR 5.1);
  - 5.18.2 have valid mechanisms that exist to enable the Council to use the Framework Agreement (including appropriate transparent referencing in the procurement documents and inclusion in the framework call of conditions);
  - 5.18.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Internal Audit, rules which are broadly comparable;
  - 5.18.4 are included in the CPR 5.17 approved list (and, if the Supply which is to be procured is above the EU Threshold, is noted in the list as being compliant with the EU Procurement Rules);
  - 5.18.5 where the EU procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

#### **RULE 6 – EXCEPTIONS FROM COMPETITION**

- 6.1 Subject to compliance with the EU Procurement Rules the following are exempted from the competitive requirements of these CPR<sup>6</sup>:
- 6.1.1 where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or

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<sup>6</sup> When the EU Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

- substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
- 6.1.2 items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Internal Audit);
- 6.1.3 the selection of a supplier whose usage is a condition of a Grant funding approval;
- 6.1.4 the selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party;
- 6.1.5 where CPR 6.10 applies;
- 6.1.6 counsel or other external legal advice, provided that the Solicitor to the Council takes steps to ensure that value for money is being obtained;
- 6.1.7 a necessary Supply required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of Internal Audit;
- 6.1.8 direct award from an approved Framework Agreement (see CPR 5.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the EU Procurement Rules;

The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exception in respect of a supply valued in excess of £100,000.

- 6.2 **Trial Purchases:** Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000, to ascertain if the Supply is of interest to the Council, without competition. Where an exception to competition in CPR 6.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply. Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £25,000.

**< There are substantial restrictions on the use of negotiated contracts where EU Procurement Rules apply >**

- 6.3 The procuring Service Director and the Head of Procurement may decide that;
- 6.3.1 An alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of Internal Audit.
  - 6.3.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Tenders.
  - 6.3.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.
  - 6.3.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the council without competition is appropriate (although subject to EU Procurement Rules).

**Note in the above,** in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by his or her own Service Director, there must be consultation with the Head of Internal Audit.

## **Negotiated Contracts**

- 6.4 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.
- 6.5 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 6.6 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Internal Audit of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

## **Legal Issues**

- 6.7 The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the EU supplies and services threshold (except those in relation to Land where the Head for Corporate Property Management should be consulted irrespective of value).
- 6.8 Before a decision pursuant to CPRs 6.1 to 6.3 is made, the Head of Procurement will determine whether the likely level of interest from suppliers based in other EU Member States is sufficiently low so that the EU Procurement Rules do not require the Procurement to be advertised.
- 6.9 Before a decision pursuant to CPRs 6.1 to 6.3 is made, the Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, he/she must consult with the Solicitor to the Council about the possibility of state aid before approving the exemption from competition.

## **MANDATORY SUPPLIERS, FRAMEWORKS AGREEMENTS OR DYNAMIC PURCHASING SYSTEMS**

- 6.10 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the EU Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.
- 6.11 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, and set standards to be established in those arrangements.
- 6.12 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-
  - 6.12.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;
  - 6.12.2 in respect of the outsourcing of an activity having a value below £100,000;
  - 6.12.3 in respect of services provided within schools;
  - 6.12.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

## **RULE 7 - RECORD KEEPING AND REPORTING**

- 7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation).

To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

- 7.1.1 communications with economic operators and internal deliberations;
- 7.1.2 preparation of the procurement or sale documents;
- 7.1.3 any interviews, other dialogue or negotiation;
- 7.1.4 supplier vetting; and
- 7.1.5 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule.

- 7.2 A full trail of electronic Tenders received must be recorded in YORtender or retained in a database approved by the Head of Internal Audit.
- 7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 3).
- 7.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the EU Procurement Rules.
- 7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 3.
- 7.6 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).
- 7.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

## **RULE 8 - INCOME CONTRACTS & CONCESSIONS (INCLUDING NIL VALUE AND DISPOSAL CONTRACTS)**

- 8.1 CPRs 8.2 to 8.6 apply when the Council intends to derive income from:-

- 8.1.1 the disposal of property (other than Land);
- 8.1.2 the sale of a right to exploit a business opportunity;
- 8.1.3 the operation of business activity.

CPR 8 does not apply to Land (See CPR 9).

- 8.2 Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Internal Audit must be consulted and he will decide whether this amounts to a Grant (and so FPR 20 applies instead of CPR 8).

### The disposal of an asset

8.3 The procedure for the Disposal of assets is:-

- 8.3.1 assets valued up to £25,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained;
- 8.3.2 assets valued above £25,000 must be disposed of following public notice either by open Tender process, closed Tender process involving at least 3 prospective purchasers or public auction. The use of the Council web site is permissible for this purpose.

Leased assets must be disposed of only in accordance with the instruction of the lessor.

### The sale of a right to exploit a business opportunity

8.4 The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

- 8.4.1 A business opportunity contract that will not generate income in excess of £25,000 over the duration of the contract may be sourced by any reasonable means to select (see an explanation of this phrase in respect of Supplies in the Definitions section) arranged and undertaken by the Service Director responsible for the activity.
- 8.4.2 The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £25,000.

### The operation of business activity, beyond that normally undertaken by a local authority.

- 8.5 If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the Solicitor to the Council.
- 8.6 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Solicitor to the Council.

### Concession Contracts

8.7 Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

Concession contracts for works or services with a value of £4,104,000 or more are subject to the Public Concessions Regulations 2016 and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with these Regulations.

### Valuation

8.8 The value of a Concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.

- 8.9 The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.
- 8.10 When calculating the estimated value of a Concession contract or Income Contract, Service Directors shall, where applicable, take into account:-
- 8.10.1 the value of any form of option and any extension of the duration of the contract;
  - 8.10.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;
  - 8.10.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;
  - 8.10.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
  - 8.10.5 revenue from sales of any assets which are part of the contract;
  - 8.10.6 the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
  - 8.10.7 any prizes or payments to candidates or tenderers.

## **RULE 9 - LAND**

- 9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate Property Management must be consulted in respect of all Land transactions of any value except where the Solicitor to the Council authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 9.2 The Head of Corporate Property Management (and any other Director authorised so to do) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to him by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to him from the Cabinet.
- 9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Property Management and the Solicitor to the Council, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 9.4 Where Land is sold at a public auction, the Head of Corporate Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made. If a successful bid is less than the reserve price then the Head of Corporate Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

## **RULE 10 – EXECUTING CONTRACTS**

### **SUPPLIES**

- 10.1 A contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is likely to be sufficient ongoing funding to meet the contractual cost through the anticipated life of the contract.



10.2 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Framework Agreements up to the EU supplies and services threshold must be in writing and can be made by the Service Director either:-

10.2.1 where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or

10.2.2 By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

If the Service Director and Solicitor to the Council decides that it is appropriate for the contract to be sealed (or if it is required by law), the contract will be executed by the Solicitor to the Council.

The Head of Procurement must ensure that the Councils electronic procurement systems are set up so that the most appropriate Official Council Order are available to be attached to the supply being purchased.

10.3 Contracts for all Supplies (which includes call-offs from Framework Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and every Framework Agreement with an estimated value above the EU supplies and services threshold must be in writing and must (subject to CPR 10.4) be either:-

(a) made under the corporate common seal of the Council, attested by one legal officer; or

(b) signed by two legal officers.

who have been nominated as contract signatories by the Solicitor to the Council under her Scheme of Officer Delegations.

10.4 Notwithstanding CPR 10.3, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist contracts for Supplies above the EU supplies and services threshold. Two authorised officers must sign each such contract.

10.5 The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant contracts and suitable record keeping, provide third parties with a power of attorney to sign Council contracts of values below the EU supplies and services threshold.

## **LAND**

10.6 The Solicitor to the Council will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies (with the exception of the granting of tenancies for housing and associated properties for rent which is delegated to Kirklees Neighbourhood Housing Ltd) and other deeds and documents associated with Land. The Solicitor to the Council may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by the Solicitor to the Council.

10.7 Any contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed by, or have the corporate common seal affixed in the presence of, the Solicitor to the Council (or by a legal officer nominated by him or her).

Additionally, the Solicitor to the Council may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR9.1.

## **GENERAL**

- 10.8 The Solicitor to the Council is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 10.3 and provided that this is not subject to any contrary direction from the Council or Cabinet.

## **RULE 11 – VARIATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS**

- 11.1 A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.
- 11.2 A Service Director, in consultation with the Solicitor to the Council, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.
- 11.3 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.
- 11.4 The Head of Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the Solicitor to the Council accept such proposed sums.
- 11.5 Service Directors may vary contracts by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract.
- 11.6 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR 11.5 must be subject to the approval of the Head of Procurement.
- 11.7 Any variation to a contract which cannot be fulfilled by following CPR 11.5 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.

## **RULE 12 - MISCELLANEOUS**

- 12.1 A Special Purpose Vehicle (as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the Solicitor to the Council and the Chief Finance Officer. This does not apply to any purchase of shares or similar for the purpose of investment.

Approved by Council  
Apply from 1 June 2019

## Appendix 1

### Examples of Policies which are relevant to CPR 2.1(15)

- **Kirklees Financial Procedure Rules**  
<http://www.kirklees.gov.uk/beta/your-council/pdf/constitution-part-46.pdf>
- **Social Value Policy Statement**  
<http://www.kirklees.gov.uk/beta/business-with-the-council/pdf/socialValuePolicyStatement.pdf>
- **General Data Protection Regulation (GDPR) Guidance**  
<http://www.kirklees.gov.uk/beta/information-and-data/general-data-protection-regulation.aspx>

## Appendix 2

EU Thresholds 1 Jan 2018 –31 Dec 2019	
Supply and service contracts	£181,302 ( <b>£180,000*</b> )
Light Touch Regime Contracts (Annex XIV)	£615,278 ( <b>£615,000*</b> )
Works contracts	£4,551,413 ( <b>£4,550,000*</b> )
Small lots – supplies & services	£65,630 ( <b>£65,000*</b> )
Small lots – works	£820,370 ( <b>£820,000*</b> )

\* These are current the values for the purposes of these CPRs.

The threshold values to be used will be those applicable at the commencement of the procurement process. EU Procurement threshold values are revised every two years.

## Appendix 3

### Information to be Reported to the Head of Procurement (CPR 7)

	Information	When
A.	Details of all contracts awarded for Supplies of £5,000 or above following a competitive process including the name of the Supplier, and amount of the Tender and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	When Requested
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When Requested
C.	Details of all contracts awarded for supplies of £5,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue, including the reason for the exemption.	When Requested
D.	Contracts with a value of £5,000 or more see CPR, with the following information: 1. reference number	In All Cases On Contract Award

	<ol style="list-style-type: none"> <li>2. title of agreement</li> <li>3. local authority department responsible</li> <li>4. description of the goods and/or services being provided</li> <li>5. Supplier name and details</li> <li>6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract)</li> <li>7. Value Added Tax that cannot be recovered</li> <li>8. start, end and review dates</li> <li>9. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and</li> <li>10. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number</li> </ol>	
E.	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases On Request
F.	Copies of Regulation 84 reports	All cases where the EU Procurement Rules apply On Contract Award

## Appendix 4

### Relationship between Commissioning and Procurement



#### Commissioning

- **What do we want?**
- Led by the service
- Engaging users

#### Procurement

- **How do we get it?**
- Led by Procurement
- Engaging Suppliers

#### Contract Management

- **Are we still getting what we asked for?**
- Led by Service
- Managing the Supplier

