

KIRKLEES COUNCIL
CONTRACT PROCEDURE RULES

JUNE 2021

CONTRACT PROCEDURE RULES

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12. MISCELLANEOUS

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DEFINITIONS

Award-Criteria	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.
Chief Executive	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.
Chief Finance Officer	Means the Service Director— Finance, Professional & Transactional Services.
Commissioning	The relationship between commissioning and procurement is described in the diagram in Appendix 34.
Conflict of Interest	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.
CPR	Means these Contract Procedure Rules.
Data Protection Legislation	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. <u>Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU)- 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.</u>
Dynamic Purchasing System	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.

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

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

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Standing List	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
Suitability Criteria	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. 'Suitability' shall be interpreted accordingly.
Supplier	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.
Tender	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
Value for Money	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
Whole Life Costing Approach	Is an approach which addresses all the elements of a Supply over its life cycle such as:- <ul style="list-style-type: none"> • costs relating to acquisition, • costs of use, such as consumption of energy and other resources, • maintenance costs, • end of life costs, such as collection and recycling costs which can be used to produce a spend profile of the Supply over its anticipated lifespan.
YORTender	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 (CPRs) 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 and relative 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.~~

~~Where the council wishes to obtain the delivery of goods, works, or services, the use of procurement is the usual method. Grants should only be used to assist or support objectives of another organisation. In some instances instances, CPRs will apply to grants, (see Appendix 4 Appendix 4 Appendix 4).~~

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 **take every opportunity to consider how improvements to the economic, social and environmental wellbeing of the district (social value) ~~can~~ might be generated and enhanced** in contracts and procurement processes, including encouraging the ~~participation of~~ participation of local ~~local~~ businesses in Council tenders.

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³ 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.

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~~informed people in the relevant industry in the same way. The documents must be likely to be understandable by all reasonably well informed people in the relevant industry in the same way.~~

2.1.8.

~~1.1.9-2.1.9.~~ For contracts up to the UK public procurement 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).

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~~1.1.10-2.1.10.~~ For contracts above the UK public procurement 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.

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~~1.1.11-2.1.11.~~ 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 ~~any~~ unlawful non-commercial considerations or Suitability Criteria (which should be identified separately and must follow CPR ~~3.53-4~~ 3.93-9) and must be proportional to the ~~contract's~~ contract's main objectives.

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~~1.1.12-2.1.12.~~ Consideration of whether it would be appropriate to divide large procurements into contract Lots^{2,4} and must record the decision and reasoning.

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~~1.1.13-2.1.13.~~ The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK EU supplies and services threshold.

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~~1.1.14-2.1.14.~~ The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

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~~1.1.15. That (unless Cabinet authorises otherwise) the formal Council policies and/or guides referred to in Appendix 1 are followed.~~

2.1.15. All supply contracts relating to:

- a. ~~any~~ capital construction works in excess of £300,000
- b. ~~any~~ IT contracts that involve pre operational payments in excess of £300,000
- c. ~~any~~ contracts with a total consideration in excess of £3m

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~~1.1.16.~~ ~~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:-

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a.i. No bond is necessary; or

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² This is not the same thing as disaggregation. Please contact Corporate Procurement if there is any doubt about what this means.

~~1.1.16-2.1.16.~~ ~~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:-

3.23.2. 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.

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

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3.23.3.1.1 an approved^{5-d} 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~~ must be followed); or

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

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3.4. The Suppliers must be reasonably capable of, or have indicated that they are willing to₂ submit a Tender. If it is not possible to identify the number of suitable and/or 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.

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Supplier Selection

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

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⁵See CPR 5.17

³ See CPR 5.17

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Clarifications, Presentations and Interviews

~~4.13.4.15~~ 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:

~~4.13.14.15.1~~ set an appropriate time limit for a reply; and

~~4.13.24.15.2~~ do not request changes or otherwise seek to influence the bidder; and

~~4.13.34.15.3~~ deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and

~~4.15.4~~ treat all tenderers equally and fairly and so, for example, the request:-

~~4.13.4~~

~~4.13.4.1a~~ must not occur before all of the bids have been subject to an initial ~~evaluat~~ ~~ial~~ evaluation;

~~4.13.4.2b~~ must not unduly favour or disadvantage the bidder to whom the request is addressed; and

~~4.13.4.3c~~ must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.

~~4.14.16~~ 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.

~~4.17~~ 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~~ ~~must~~ also be:-

~~4.15~~

~~4.15.14.17.1~~ Comprehensively recorded; and

~~4.15.24.17.2~~ assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and

~~4.15.34.17.3~~ 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.

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5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the UKEU Procurement Rules) of the Supply in question does not exceed the relevant UKEU Threshold. A Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UKEU Threshold.

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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 eProcurement Portal Tender 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.

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5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation, on of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.

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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.

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5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to

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5.7 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.

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Council Framework Agreements and Dynamic Purchasing Systems

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5.9 Framework Agreements and Dynamic Purchasing Systems may be used to source contracts for appropriate types of Supplies (subject to compliance with the UKEU Procurement Rules, as applicable). ~~However they must not be used to attempt to create further Framework Agreements or Dynamic Purchasing Systems.~~

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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 UKEU Procurement Rules.

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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.

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5.12 Framework Agreements above the UKEU Threshold must be closed to new entrants and must not last ~~longer~~ 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.

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5.14 Dynamic Purchasing Systems must:

5.14

- 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.~~

5.14.7 be subject to consistent due diligence assessments of DPS participants

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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.

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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.

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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.

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Use of Third Party Procurement Facilities

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5.18 Supplies may be obtained through third party Frameworks Agreements; (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) that:-

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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 5.15.1);

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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);

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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;

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~~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);~~

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~~5.18.5~~ 5.18.4 where the UKEU procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

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RULE 6 – EXCEPTIONS FROM COMPETITION

6.1 Subject to compliance with the EU-UK Procurement Rules the following are exempted from ~~the the~~competitive-competitive requirements of these CPRs^{4,6}:

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_

6 ~~When the UKEU Procurement Rules apply, these exemptions may not be permitted (Directors must check this)~~

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⁴ When the UK Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

~~EU-UK Procurement Rules apply, these exemptions may not be permitted (Directors must check this)~~

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Negotiated Contracts

~~6.56.7~~ Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must ~~b~~ be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.

~~6.66.8~~ Written negotiation must be subject to evidenced independent check of process, calculation and ~~ev~~ overall value for money.

~~6.76.9~~ For any contract valued at above £100,000 the Service Director must obtain the approval of the ~~He~~ 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.

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Legal Issues

~~6.86.10~~ The Solicitor to the Council must be consulted in advance of any negotiation in respect of any contract estimated to exceed the ~~UKEU~~ supplies and services threshold (except those in relation to ~~L~~ Land where the Head for Corporate Property Management should be consulted irrespective of value).

~~6.9~~ 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.

~~6.106.11~~ Before a decision pursuant to CPRs ~~6.1 6-1~~ to ~~6.3 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~~ they must consult with the Solicitor to the Council about the possibility of ~~subsidy control~~ state aid before approving the exemption from competition.

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Mandatory suppliers, frameworks agreements or dynamic purchasing systems

~~6.116.12~~ 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 ~~UKEU~~ Procurement Rules and the possibility of state aid) that the use of one (or more) Suppliers is compulsory.

~~6.126.13~~ The Head of Procurement may also determine that Supplies of a particular type are to be obtained ~~fr~~ from Suppliers via a Framework Agreement or a Dynamic Purchasing System or Standing Lists, ~~and~~ and set standards to be established in those arrangements.

~~6.136.14~~ Supplies must be obtained from internal Council Services (which are capable of supplying them ~~directly~~) without competition except:-

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~~6.13.16.14.1~~ where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;

~~6.13.26.14.2~~ in respect of the outsourcing of an activity having a value below £100,000;

~~6.13.36.14.3~~ in respect of services provided within schools;

~~6.13.46.14.4~~ 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).

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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.

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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 on ~~in~~ YORtender the eProcurement Portal or retained in a database approved by the Head of Internal Audit.

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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 2~~ Appendix 2).

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7.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template ~~by~~ by the end of each procurement process which is subject the UKEU Procurement Rules.

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7.5 Each Service Director must promptly provide to the Head of Procurement the information specified in ~~Appendix 2~~ Appendix 2.

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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~~ 7-3 above).

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7.7 The Service Director must keep a written record of the reasons for using a negotiated procedure

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

8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.

~~8.18.2~~ CPRs ~~8.28.2~~ to ~~8.8~~ ~~8.6~~ apply when the Council intends to derive income from:-

- ~~8.1.18.2.1~~ the disposal of property (other than Land);
- ~~8.1.28.2.2~~ the sale of a right to exploit a business opportunity;
- ~~8.1.38.2.3~~ the operation of business activity.

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

~~8.28.3~~ 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~~ they will decide whether this amounts to a Grant (and so FPR ~~2240~~ applies instead of CPR 8).

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The disposal of an asset

8.38.4 The procedure for the ~~Disposal~~ disposal of assets is:-

8.3.18.4.1 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;

8.4.2 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.

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

~~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

8.48.6 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 asset 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.

8.4.18.6.1 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 and should be~~ (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.

8.4.28.6.2 The Head of Procurement must direct and supervise the tendering of any arrangements expected to generate income in excess of £25,000.

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

8.58.7 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.

8.68.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Solicitor to the Council.

Concession Contracts

8.78.9 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.

8.10 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

8.11 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.

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~~8-98.12~~ The value of an Income Contracts is the gross income generated by the Council as a result of the ~~r~~ights granted, or goods, works or services supplied by the Council.

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~~8-108.13~~ When calculating the estimated value of a Concession contract or Income Contract, Service ~~D~~irectors shall, where applicable, take into account:-

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~~8-10-18.13.1~~ the value of any form of option and any extension of the duration of the contract;

~~8-10-28.13.2~~ revenue from the payment of fees and fines by the users of the works or services or ~~p~~ublic other than those collected on behalf of the Council;

~~8-10-38.13.3~~ payments or any other financial advantages, in any form, from the Council or any other ~~p~~ublic authority to the contractor;

~~8-10-48.13.4~~ the value of grants or any other financial advantages, in any form, from third parties for ~~t~~he performance of the contract;

~~8-10-58.13.5~~ revenue from sales of any assets which are part of the contract;

~~8-10-68.13.6~~ 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 ~~s~~services;

~~8-10-78.13.7~~ any prizes or payments to candidates or tenderers.

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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 ~~UK~~ supplies and services threshold must be in writing and can be made by the Service Director either:-

- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
- By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

10.3 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.

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

~~10.3~~ 10.5 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 ~~UK~~ supplies and services threshold must be in writing and must (subject to CPR ~~10.6~~ 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~~ their Scheme of Officer Delegations.

~~10.4~~ 10.6 Notwithstanding CPR ~~10.5~~ 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 ~~UK~~ supplies and services threshold. Two authorised officers must sign each such contract.

~~10.5~~ 10.7 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

10.8 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.

10.9 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 CPR 9.1.

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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

General

10.810.10 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 10.5 10.3 and provided that this is not subject to any contrary direction from the Council or Cabinet.

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

11.1 It is recognised that during the term of a Contract, modifications may be proposed, which if adopted would result in additional Works, Goods and/or Services, which were not considered when the original procurement took place, being procured or otherwise would alter the overall nature of the Contract. There are significant limitations upon the Council being able to make such modifications, especially where the Regulations apply. When considering a variation, modification or the termination of an existing Contract, advice must be sought in advance from the Corporate Procurement Service and with the Solicitor to the Council.

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11.11.2 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.

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11.211.3 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.

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11.311.4 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.

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11.411.5 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.

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11.511.6 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.

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11.611.7 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR

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11.6 11.75 must be subject to the approval of the Head of Procurement.

11.711.8 Any variation to a contract which cannot be fulfilled by following CPR 11.6 11.75 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.

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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

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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>

DEFINITIONS

<u>Award Criteria</u>	<u>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.</u>
<u>Chief Executive</u>	<u>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.</u>
<u>Chief Finance Officer</u>	<u>Means the Service Director – Finance</u>
<u>Commissioning</u>	<u>The relationship between commissioning and procurement is described in the diagram in <u>Appendix 3</u>.</u>
<u>Concession</u>	<u>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.</u>
<u>Conflict of Interest</u>	<u>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 the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.</u>
<u>Contract</u>	<u>Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).</u>
<u>Contract Procedure Rules (CPRs)</u>	<u>Means these Contract Procedure Rules.</u>

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Data Protection Legislation	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.
Dynamic Purchasing System (DPS)	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 all contracts and it should be set up using the restricted procedure.
eProcurement Portal (YORTender)	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. Currently available at www.yortender.co.uk
Financial Ratio	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
Find A Tender Service (FTS)	"Find a Tender" means the UK e-notification service where notices for new procurements are required to be published;
Financial Procedure Rules (FPRs)	The Financial Procedure Rules.
Framework Agreement	Means an agreement between a Contracting Authority 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 UK Threshold are subject to the Public UK 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.
Head of Corporate Property Management	Means the officer appointed by the Service Director who is responsible for corporate property management functions.
Head of Internal Audit	Means the officer appointed by the Chief Executive who is responsible for internal audit.
Head of Procurement	Means the officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
Income Contract	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset ⁵ and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4Appendix 4).
Local Government	Means the statutory codes and legislation requiring the Council to publish

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⁵ For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

<u>Transparency Requirements</u>	information, such as ⁶ the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015 .
<u>Official Council Order</u>	A standard form of contract for a Supply for a value of less than the current UK supplies and services threshold approved by the Solicitor to the Council whether attached electronically or by paper to an order for Supplies.
<u>Personal Data</u>	Means data which relate to a living individual who can be identified— (a) from those data, or (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, 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.
<u>Procurement</u>	The purchase, contract hire, lease, rental⁷ 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.
<u>Public Procurement Rules</u>	The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations).
<u>Reasonable Means</u>	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.
<u>Senior Manager</u>	Means an officer who reports directly to a Head of Service.
<u>Service</u>	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
<u>Service Director</u>	Means the most senior officer responsible for the day to day functions of each Service.
<u>Social Value</u>	Means The Public Services (Social Value) Act 2012 (‘Social Value Act’) that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
<u>Solicitor to the Council</u>	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
<u>Special Purpose Vehicle</u>	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.

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⁶ The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be limiting

⁷ Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [See the FPR].

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<u>Specification</u>	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.
<u>Standing List</u>	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
<u>Suitability Criteria</u>	Relate to the assessment or vetting of suppliers' general capability, fidelity, skill, competence, etc. to carry out the contract. 'Suitability' shall be interpreted accordingly.
<u>Supplier</u>	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.
<u>Supply / Supplies</u>	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).
<u>Tender</u>	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
<u>UK Threshold</u>	The financial threshold from time to time at which the UK Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in <u>Appendix 1</u> .
<u>Value for Money</u>	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.
<u>Whole Life Costing Approach</u>	Is an approach which addresses all the elements of a Supply over its life cycle such as:- <ul style="list-style-type: none"> • costs relating to acquisition, • costs of use, such as consumption of energy and other resources, • maintenance costs, • end of life costs, such as collection and recycling costs which can be used to produce a spend profile of the Supply over its anticipated lifespan.

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Appendix 12

**EU Thresholds 1 Jan
2018 – 31 Dec
2019 Relevant
Thresholds in Public
Contract Regulations**

Supply and service contracts	£189,330,302 (£180,000*)
Light Touch Regime Contracts (Annex XIV)	£63,540,278 (£615,000*)
Works contracts	£4,733,252,413 (£4,550,000*)
Small lots – supplies & services	£65,630 (€65,000*)
Small lots – works	£820,370 (€820,000*)

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

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Appendix 2

Information to be Reported to the Head of Procurement (

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RULE 7 - RECORD KEEPING AND REPORTING

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: <ol style="list-style-type: none"> 1. <u>reference number</u> 2. <u>title of agreement</u> 3. <u>Contract Manager; name of person responsible for managing the contract</u> 4. <u>description of the goods and/or services being provided</u> 5. <u>Supplier name and details</u> 6. <u>sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract)</u> 7. <u>start, end and review dates, including permitted extensions</u> 8. <u>whether or not the contract was the result of an invitation to quote or a published invitation to tender, and</u> 9. <u>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</u> 10. <u>whether or not the contract involves processing personal data</u> 	In All Cases <u>on</u> Contract Award
E.	<u>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.</u>	In All Cases <u>on Request</u>
F.	<u>Copies of Regulation 84 reports</u>	<u>All cases where the Public Procurement Rules apply on Contract Award</u>

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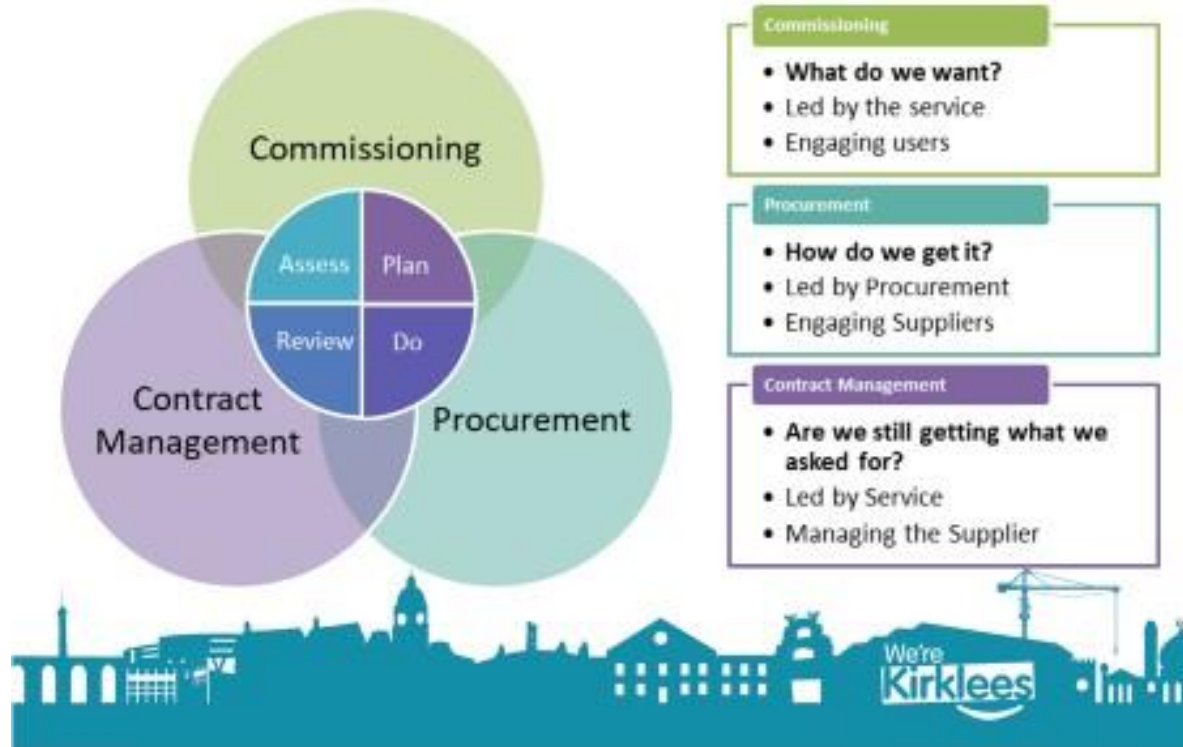
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E-	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases On Request
F-	Copies of Regulation 84 reports	All cases where the <u>Public EU</u> Procurement Rules apply On Contract Award

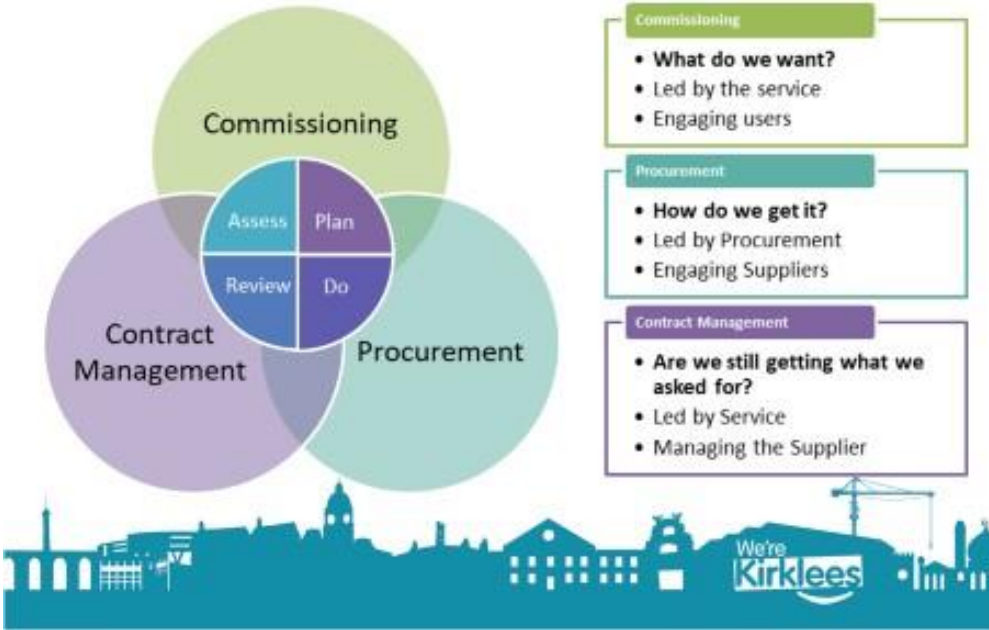
Relationship between Commissioning and Procurement

Relationship between Commissioning and Procurement



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Appendix 4



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How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain goods and works, and this is the usual preference to obtain services.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The table below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular service.

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<u>1</u>	If you are seeking to obtain goods or works you should procure as per CPRs
<u>2</u>	If you are seeking to obtain a service and can answer YES to ANY of the following, you should procure as per CPRs <ul style="list-style-type: none"> • <u>Is there an intention to specify service standards and outputs required?</u> • <u>Will payment be reduced/alterd if service standards are not met, or additional payment be made if there are claims for additional costs incurred?</u> • <u>Are there opportunities for change control?</u> • <u>Is there a contractual obligation on both parties?</u>

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	<ul style="list-style-type: none"> • <u>Is there an intention to have active management of the provider?</u>
<u>3</u>	<u>If you are seeking to use a supplier that is a commercial i.e. profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine “not for profit” organization or charity you should discuss further with the Procurement team.</u>
<u>4</u>	<p><u>If you are seeking a service and can answer YES to ANY of the following, you can consider use of a Grant as per FPRs</u></p> <ul style="list-style-type: none"> • <u>Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?</u> • <u>Is the intention to support parts of an existing activity?</u> • <u>Is the intention to provide a subsidy to existing service users</u> • <u>Is the council’s only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider?</u> • <u>Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?</u>

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Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with council CPRs)

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