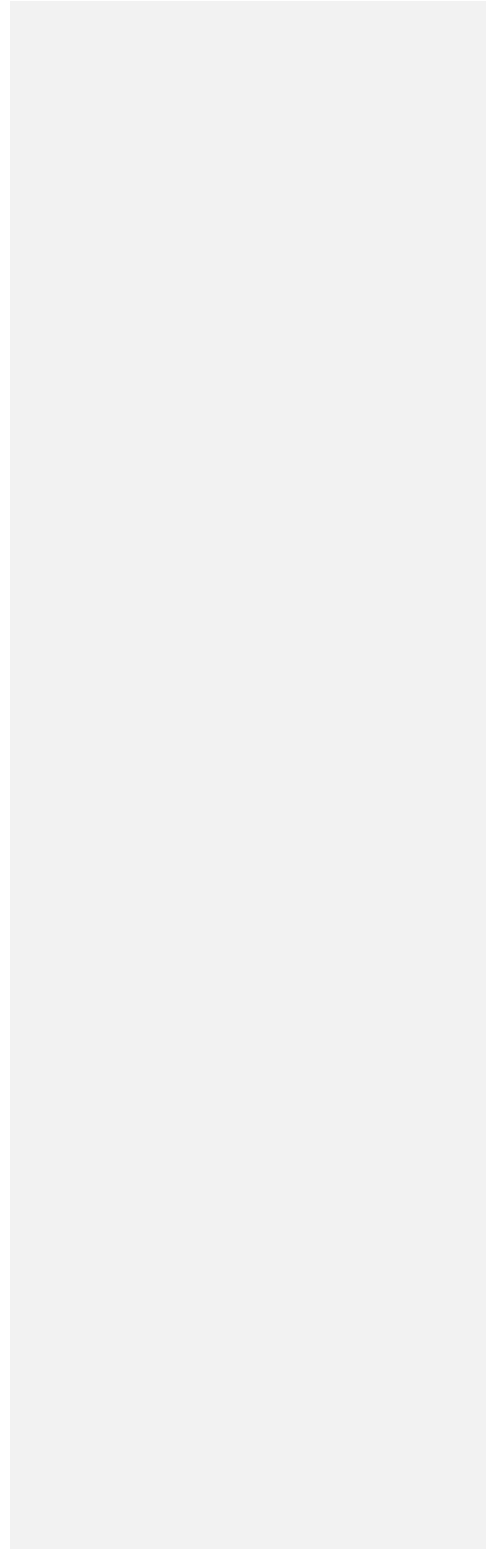


**KIRKLEES COUNCIL
CONTRACT PROCEDURE RULES**

| **MAY 202~~3~~²**



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- 1.7 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.
- 1.8 A Service Director has authority to commence any Procurement subject to:
- 1.8.1 compliance with these CPRs and FPRs; and
 - 1.8.2 having appropriate delegated authority; and
 - 1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
 - 1.8.4 seeking Value for Money.
- 1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.
- 1.10 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:
- 1.10.1 the Head of Procurement – Good Procurement Practice;
 - 1.10.2 Solicitor to the Council – UK Procurement Rules and other laws and Corporate Governance;
 - 1.10.3 Head of Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.11 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.
- 1.12 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:-
- 1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-
- 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.
 - the same degree of separation of officer responsibility for the duties is maintained.

Conflicts of Interest and Integrity¹

- 1.13 Service Directors shall take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators.

¹ Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

- 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 6.14), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.12 & 6.13).

Estimated Value

- 2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.
- 2.3.8. 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.
- 2.3.9. The Supply is likely to be within budgetary provision (see CPR 10.1).

Bonds and Guarantees

2.3.10. The council should always seek a parent company guarantee when such an option is available.

~~2.3.10.~~ 2.3.11. Bonds: All supply contracts relating to;

- a. capital construction works in excess of £5300,000
- b. any IT contracts that involve pre operational payments in excess of £5300,000
- c. any contracts with a total consideration in excess of £53m

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:-

- i. No bond is necessary; or
- ii. A different value (or percentage) is appropriate; and or
- ~~iii.~~ iii. a cash bond; and or
- ~~iv.~~ iv. A parent company guarantee or other form of surety can be accepted instead.

The Specification

- 2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Councils wider policy and strategy but subject always to ensuring full compliance

Director must follow the Council's Information Security Policy, in particular regarding contracting with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

- 2.12.1. the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
- 2.12.2. appropriate guarantees of the security of the personal data are included within a written contract;
- 2.12.3. the performance of the contract is appropriately monitored;
- 2.12.4. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
- 2.12.5. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
- 2.12.6. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

Collaboration

- 2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.14. 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); any 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
£0 - £24,999.99	<p>Any Reasonable Means to select are permitted. Reasons to justify the decision taken must be recorded,</p> <ul style="list-style-type: none"> Where practicable, suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this. 	<ol style="list-style-type: none"> Any reasonable means A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement 	3
£25,000 – Threshold	<p>One of the following:-</p> <ul style="list-style-type: none"> Quotations (CPRs 3-4) Framework Suppliers, Standing Lists, etc. (CPR 5) Exceptions (CPR 6) Internal, Consortia & Compulsory(CPR 6) <p>In addition;</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> From a standing list An approved Framework Agreement An approved Dynamic Purchasing System Advertise on eProcurement Portal, ContractsFinder PLUS other reasonable advertising means 	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
Above Threshold	<p>One of the following:-</p> <ul style="list-style-type: none"> Tenders (CPRs 3 - 4) Framework Suppliers, Standing Lists, etc. (CPR 5) Exceptions (CPR 6) Internal, Consortia & Compulsory(CPR 6) <p>In addition</p> <p>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>Advertise on eProcurement Portal, Contracts Finder, FTS and in other media if appropriate; or</p> <p>Use approved Framework Agreement; or</p> <p>Use approved Dynamic Purchasing System</p>	5

- 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:-
 - 3.1.1 an **approved**² 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
 - 3.1.2 it is otherwise agreed with the Head of Internal Audit in consultation with the Solicitor to the Council.
- 3.4. The Suppliers must be reasonably capable of, or have indicated that they are willing to, 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.

Supplier Selection

- 3.5. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of Suitability.
- 3.6. Where the procurement process has an overall value of less than the supplies and services UK 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.
- 3.7. When operating a procurement process with a value above the supplies and services UK threshold, 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.
- 3.8. 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 UK Procurement Rules, minimum standard and/or pass marks must be published in the relevant FTS 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.

² See CPR 5.17

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 eProcurement Portal 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 Procurement reference and title;
 - 4.4.2 name of each supplier submitting a Tender and the time of submission;
 - 4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
 - 4.4.4 prices from each supplier;
 - 4.4.5 name of opening officer;
 - 4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal ;
 - 4.4.7 date and time of opening of Tenders;
- 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 they feel 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 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.
- 4.7 Any variants which are submitted must conform to the requirements of the tender documents.
- 4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Internal Audit.
- 4.9 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7) and keep a written record of the analysis and outcome.
- 4.10 The use of or participation in e-auctions to set prices is permitted where:
 - 4.10.1 bids can be ranked automatically; and
 - 4.10.2 the mathematical formula to determine the rankings of the bids (or each variant where

variants are permitted) is disclosed; and

4.10.3 the written agreement of the Head of Internal Audit has been given; and

4.10.4 the process is subject to supervision by the Head of Procurement.

- 4.11 The Service Director will require tenderers to explain the price or costs proposed in their tender where tenders appear to be abnormally low.
- 4.12 The Service Director must ensure that, where required by UK 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.
- 4.13 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 4.15) take action as necessary, taking guidance from the Solicitor to the Council and the Head of Internal Audit.
- 4.14 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

- 4.15 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:
- 4.15.1 set an appropriate time limit for a reply; and
- 4.15.2 do not request changes or otherwise seek to influence the bidder; and
- 4.15.3 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:-
- a. must not occur before all of the bids have been subject to an initial evaluation;
 - b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
 - c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.16 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. 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 must be authorised by the Head of Procurement in writing. They must also be:

- 4.17.1 Comprehensively recorded; and
- 4.17.2 assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
- 4.17.3 supervised by the Head of Procurement.

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 6.12). 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 UK Procurement Rules) of the Supply in question does not exceed the relevant UK Threshold. A Framework Agreement or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UK 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 eProcurement Portal, 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 CPRs 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 UK Procurement Rules, as applicable).

- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the UK 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 UK 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 be subject to consistent due diligence assessments of DPS participants
- 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 which Service Directors are permitted to use.

Use of Third Party Procurement Facilities

- 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:
 - 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 where the UK 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 UK Procurement Rules the following are exempted from the competitive requirements of these CPRs³:
- 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 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 6.12 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 UK Procurement Rules;
- 6.2 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. Value for money must be evidenced and recorded.
- 6.3 Trial Purchases**
- 6.4 Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000 without competition in order to ascertain if the Supply is of interest to the Council. 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.
- 6.5 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.
- 6.6 The procuring Service Director and the Head of Procurement may decide that;
- 6.6.1 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.
 - 6.6.2 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.

³ When the UK Procurement Rules apply, these exemptions may not be permitted (Directors must check this)

consulted and they will decide whether this amounts to a Grant (and so FPR 4 applies instead of CPR 8).

The disposal of an asset

8.4 The procedure for the disposal of assets is:-

- 8.4.1 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.

8.5 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

8.6 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.

- 8.6.1 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 and should be arranged and undertaken by the Service Director responsible for the activity.
- 8.6.2 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.

8.7 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.

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

Concession Contracts

8.9 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 above UK thresholds 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.

8.12 The value of an Income Contracts is the gross income generated by the Council as a result of the

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 decide that it is appropriate for the Cecontract to be sealed (or if it is required by law), the Cecontract will be executed by the Solicitor to the Council.

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

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) be either:

- made under the corporate common seal of the Council, attested by one legal officer; or
- signed by two legal officers;
- a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;

who have been nominated as Cecontract signatories by the Solicitor to the Council under their Scheme of Officer Delegations. The solicitor to the Council may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.

10.6 Notwithstanding CPR 10.5, the Solicitor to the Council may authorise officers who are not Legal Officers to sign specific or specialist Cecontracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such Cecontract.

10.7 The Solicitor to the Council may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant Cecontracts and suitable record keeping, provide third parties with a power of attorney to sign Council Cecontracts of values below the £UK Threshold for 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- 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 Cecontract 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.

General

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

~~10.10~~10.11 The Solicitor to the Council may authorise an external property auctioneer to sign as agent for the Council, a Sale Memorandum to record the property price and terms of conditions of sale.

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.
- 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.
- 11.3 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.
- 11.4 The Solicitor to the Council may release any bond held by the Council, on request from the Head of Procurement.
- 11.5 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.
- 11.6 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.
- 11.7 Any variation with a value above £25,000 to a contract which cannot be fulfilled by following CPR 11.6 must be subject to the approval of the Head of Procurement.
- 11.8 Any variation to a contract which cannot be fulfilled by following CPR 11.6 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.
- 11.9 Subject to approval of the Solicitor to the Council and the Head of Procurement contracts may be novated to another Supplier where permitted by an express provision to novate in the terms and conditions of contract; or in the event of a successor due to the original Supplier carrying out a corporate restructuring, merger, acquisition, takeover or insolvency. The new Supplier must comply with the requirements under the original contract.

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
Commissioning	The relationship between commissioning and procurement is described in the diagram in Appendix 3.
Concession	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.
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 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.
Contract	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).
Contract Procedure Rules (CPRs)	Means these Contract Procedure Rules.
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.

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 https://yortender.eu-supply.com
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 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 ⁴ and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4 Appendix 4).
Land	“Land” includes any interest in land (including buildings) and any easement or right in or over land
Local Government Transparency Requirements	Means the statutory codes and legislation requiring the Council to publish information, such as ⁵ the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.

⁴ For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

⁵ The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be exhaustive. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402211/Local-Government-Transparency-Code-2017-Full-DOCS-2017-2021-changes-appendix-4.pdf

Official Council Order	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.
Personal Data	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.
Procurement	The purchase, contract hire, lease, rental ⁶ 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.
Public Procurement Rules	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).
Reasonable Means	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.
Senior Manager	Means an officer who reports directly to a Head of Service.
Service	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
Service Director	Means the most senior officer responsible for the day to day functions of each Service.
Social Value	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
Solicitor to the Council	Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.
Special Purpose Vehicle	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with

limiting
⁶ Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [See the FPR].

	others to provide specific Supplies to the Council.
Specification	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.
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.
Supply / Supplies	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).
Tender	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
UK Threshold	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 Appendix 1 .
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.

Appendix 1

Relevant Thresholds in Public Contract Regulations inclusive of VAT

[Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx \(publishing.service.gov.uk\)](#)

Supply and service contracts	£213,477
Light Touch Regime Contracts (Annex XIV)	£663,540
Works contracts	£5,336,937
Concession contracts	£5,336,937

- ◆ 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. The thresholds are updated every two years with the next update due on the 1 January 2024

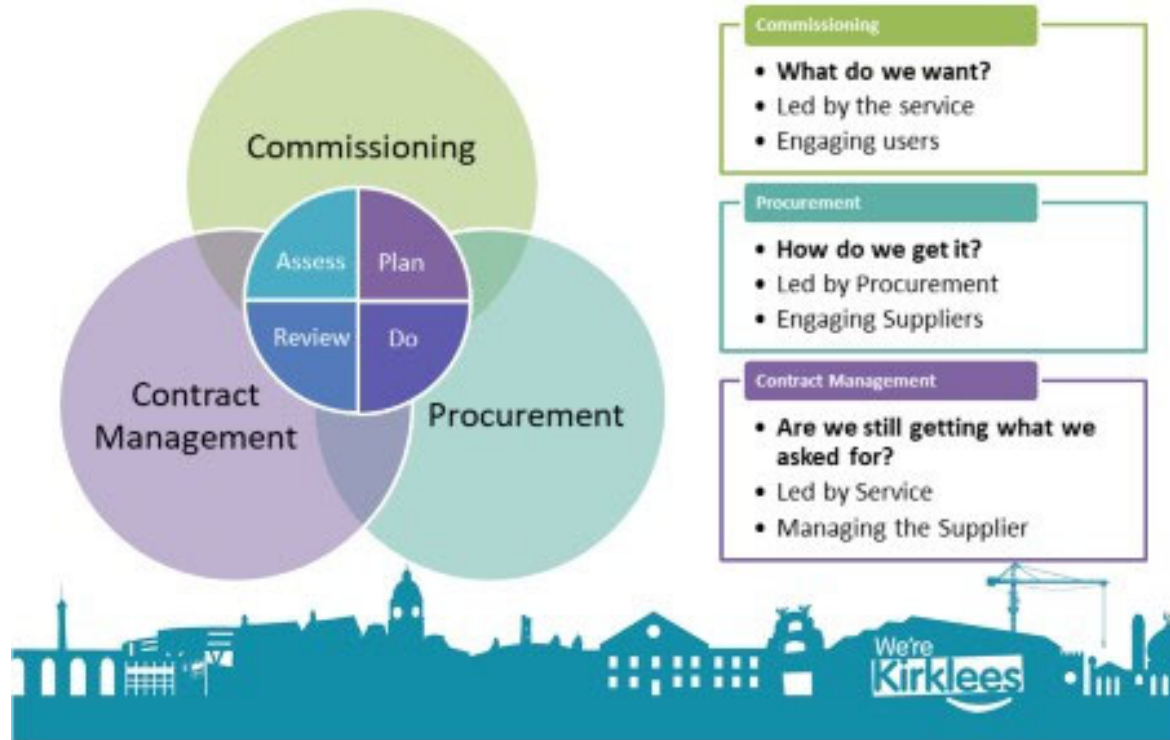
Appendix 2

Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING)

	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 2. title of agreement 3. Contract Manager; name of person responsible for managing the contract 4. description of the goods and/or services being provided 5. Supplier name and details 6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract) 7. start, end and review dates, including permitted extensions 8. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and 9. 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 10. whether or not the contract involves processing personal data	In All Cases on Contract Award
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 Public Procurement Rules apply on Contract Award

Appendix 3

Relationship between Commissioning and Procurement



Appendix 4

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**.

1	If you are seeking to obtain goods or works you should procure as per CPRs
2	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">• Is there an intention to specify service standards and outputs required?• Will payment be reduced/alterd if service standards are not met, or additional payment be made if there are claims for additional costs incurred?• Are there opportunities for change control?• Is there a contractual obligation on both parties?• Is there an intention to have active management of the provider?
3	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.
4	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 <ul style="list-style-type: none">• Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?• Is the intention to support parts of an existing activity?• Is the intention to provide a subsidy to existing service users• 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?• Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?

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)