

KIRKLEES COUNCIL CONTRACT PROCEDURE RULES

| ~~MAY 2024~~ MAY 2025

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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.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts and are made in accordance with section 135 of the Local Government Act 1972.

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 proportionate and relative to the need which the Supply fulfils and should appropriately balance the value of, and risks associated with, any proposed action.

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, CPRs will apply to grants (see Appendix 4).

Procurement ~~Principles~~ Objectives:

The ~~aim~~ objective of every procurement exercise should be to deliver value for money. In pursuit of that ~~aim~~ objective, procurers shall endeavour to treat suppliers the same, unless a difference between the suppliers justifies different treatment. They must take all reasonable steps to ensure no supplier is given an unfair advantage or disadvantage ~~market operators equally and without discrimination, and to act in a transparent and proportionate manner.~~ Procurers will act, and be seen to act, with integrity at all times.

~~Without detracting from those principles,~~ Procurers should take every opportunity to maximise public benefit by ~~considering~~ ing how improvements to the economic, social and environmental wellbeing of the district (social value) can be generated and enhanced in contracts and procurement processes, ~~including~~ This includes encouraging the participation of local businesses, small and medium-sized enterprises (SMEs) and social enterprises in Council tenders.

RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER

- 1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular: -
 - 1.2.1 the legality of the proposed non-compliant process or action; and
 - 1.2.2 the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4 Each Service Director must ensure:-
 - 1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
 - 1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
 - 1.4.3 a suitably experienced and trained officer is identified to adequately manage the Contract for every contractual relationship the Council enters into.
- 1.5 When authorising staff to procure Supplies on their behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure the Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations. An officer wishing to commence a procurement exercise and/or commit the ~~e~~Council to contractual obligations must ensure that:
 - 1.5.1 they have the Cabinet authority or a written approval of the delegated decision by an authorised officer under the Scheme of Officer Delegation to incur the expenditure and provide details to the Head of ~~Corporate~~ Procurement.
 - 1.5.2 officer executive decisions are recorded accurately and promptly including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options considered.
 - 1.5.3 all significant officer decisions taken relating to the procurement exercise (i.e. decisions which may be of interest to councillors and/or the public) are recorded
 - 1.5.4 where a Supply is a Key Decision), a Key Decision Notice (KDN) has been published in a Notice of Forthcoming Key Decisions.
- 1.6 The Head of Procurement may:-
 - 1.6.1 authorise officers who are not procurement officers under their managerial responsibility to act on their behalf in respect of any role assigned to the Head of Procurement in these CPRs;
 - 1.6.2 issue waivers in relation to the need to consult them under CPR 1.3;
 - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation, as appropriate, with the Service Director, ~~Solicitor to the Council~~Service Director Legal and Commissioning, ~~Chief Finance Officer~~Service Director Finance and Head of ~~Risk~~Internal Audit.

- 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~~Service Director Legal and Commissioning and the Head of ~~Risk~~Internal Audit.
- 1.8 A Service Director has authority to commence and award 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~~Service Director Legal and Commissioning and the Head of ~~Risk~~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~~Service Director Legal and Commissioning – ~~UK~~ Procurement Rules and other laws and Corporate Governance;
 - 1.10.3 Head of ~~Risk~~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 ~~Risk~~Internal Audit who, in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning, 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~~Service Director Finance, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of ~~Risk~~Internal Audit, and the ~~Solicitor to the Council~~Service Director Legal and Commissioning 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 ~~Risk~~Internal Audit;
 - Law and Court procedure in respect of duties reassigned from ~~Solicitor to the Council~~Service Director Legal and Commissioning.
 - 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 eConflicts of iInterest~~ or potential eConflicts of iInterest arising at all stages

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.

~~of in the conduct of the~~ procurement processes to avoid any distortion of competition and to ensure equal treatment of all economic operators.

- 1.14 Any Officer, Member or other person acting on the Council's behalf in procuring a Supply must declare any potential Conflict of Interest as soon as they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.
- 1.15 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
- 1.16 In exercising the decisions delegated to them, the Head of Procurement, Head of ~~Risk~~Internal Audit and ~~Solicitor to the Council~~Service Director Legal and Commissioning (or any other persons undertaking their responsibilities by application of CPR 1.124 or CPR 1.6) must reach their decisions independently.

RULE 2 – PREPARATION AND PROCESS

- 2.1. Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000 (excluding VAT), the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning and/or the Head of ~~Risk~~Internal Audit, and undertake these consultations as necessary.
- 2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with the ~~UK~~Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service either via the Central Digital Platform, Find A Tender Service (FTS) ~~and or~~ Contract Finder as appropriate. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.3. Each Service Director must ensure:
 - 2.3.1. That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPRs or the ~~UK~~Procurement Rules, unless justified by objective reasons or permitted by the Procurement Rules.
 - 2.3.2. Where the cost of the Supply is ~~below~~less than the UK Threshold and an approved Frameworks Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the ~~UK~~Procurement Rules.
2.3.3 That they have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
~~2.3.3. The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.~~
~~2.3.4. The process can be adequately resourced.~~
 - 2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

Compliance

2.3.6. Each Procurement complies with the following:-

- a. it is justified by a business case (that includes a risk assessment) approved by a Senior Manager with relevant authority to purchase; and
- b. a Whole Life Costing Approach underpins the specification of the Supply; and
- c. it aligns with the Procurement Strategy; and
- d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.13), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.11 & 6.12).

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~~will be within budgetary provision (see CPR 10.1).

Bonds and Guarantees

2.3.10. The ~~e~~Council ~~should always~~will seek a parent company guarantee when ~~ever practical such an option is available unless the Head of Risk is satisfied that a parent company guarantee is not required.~~

2.3.11. Bonds; All supply contracts relating to;

- a. capital construction works in excess of £500,000
- b. any IT contracts that involve pre operational payments in excess of £500,000
- c. any contracts with a total consideration in excess of £5m

will be bonded in the sum of 10% of the Tender value, except where the ~~Solicitor to the Council~~Service Director Legal and Commissioning and Head of ~~Risk~~Internal Audit agree either:-

- i. No bond is necessary; or

- ii. A different value (or percentage) is appropriate; and or
- iii. A cash bond; and or
- 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 Council's wider policy and strategy but subject always to ensuring full compliance with the UK eProcurement Rules legislation. Service Directors must also consider how what is proposed to be procured might improve the economic, social and environmental wellbeing of Kirklees.
- 2.5. Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier and no technical advice may be sought or accepted from any ~~s~~Supplier in relation to the preparation of any ~~s~~Specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
- 2.5.1 Where the estimated value of any contract may exceed the relevant UK Threshold, guidance must be sought from the Head of Procurement prior to undertaking any market engagement activities.
- 2.6. The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.10) and other procurement documentation must be created to be understandable by all reasonably well informed people in the relevant industry.

Award Criteria

- 2.7. 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~~ published with the procurement documents. These criteria must be linked to the subject matter of the contract, be sufficiently clear, measurable and specific, must not include unlawful non-commercial considerations or ~~Suitability Criteria~~ Conditions of Participation (which should be identified separately and must follow CPR 3.5– 3.9) and must be proportional to the contract's main objectives, complexity and cost.
- 2.8. The Head of Procurement ~~is~~ must be consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16 & 4.17).

Contracting

- 2.9. For contracts up to the UK supplies and services threshold, other than Land Contracts, 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~~Service Director Legal and Commissioning considers to be necessary (the ~~Solicitor to the Council~~Service Director Legal and Commissioning need not be consulted, but guidance must be followed).

2.10. For contracts above the UK supplies and services threshold, other than Land Contracts the Service Director must consult with the ~~Solicitor to the Council~~Service Director Legal and Commissioning who will prepare contract documentation appropriate for the contract.

Data Processing

2.11. ~~The Head of Procurement will maintain a list of A~~all contracts that involve the processing or sharing of personal data, ~~must be reported to the Information Governance Team, who will keep a log of these contracts.~~

2.12. Where any Supplier is given possession of, or access to, any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation. The Service Director must follow the Council's Information Security Policy and all linked policies, 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. ~~_____~~ a Data Protection Impact Assessment screening exercise should be carried out, and the appropriate document completed, with advice and guidance sought from the Information Governance Team;

~~2.12.2~~ the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;

2.12.~~23~~. appropriate guarantees of the security of the personal data are included within a written contract;

2.12.~~34~~. the performance of the contract is appropriately monitored;

2.12.~~54~~. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;

2.12.~~56~~. appropriate steps are taken to minimise as far as possible the impact of a breach of data security;

2.12.~~67~~. 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 (exc VAT)	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> <p><u>Where practicable, SMEs and/or VCSEs and/or</u> 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.</p>	<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 – <u>Goods & Services</u> Threshold	<p>One of the following:</p> <ul style="list-style-type: none"> Quotations (CPRs 3-4) Framework Suppliers, <u>Standing Lists, etc.</u> (CPR 5) Exemptions (CPR 6) Internal, Consortia & Compulsory (CPR 6) <p>In addition: 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"> <u>From a standing list</u> <u>1. An approved Framework</u> <u>2. An approved Dynamic Purchasing System</u> <u>3. Any other permitted compliant purchasing mechanism</u> Advertise on eProcurement Portal, Central Digital Platform 	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
<u>Light Touch Services Only Goods and Services Threshold – Light Touch Threshold²</u>	<p>One of the following:</p> <ul style="list-style-type: none"> <u>Quotations (CPRs 3-4)</u> <u>Framework Suppliers, Dynamic Marketplace, Dynamic Markets (CPR 5)</u> <u>Exemptions (CPR 6)</u> <u>Internal, Consortia & Compulsory (CPR 6)</u> <p><u>In addition:</u> <u>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</u></p>	<p><u>As the Head of Procurement determines</u></p> <ol style="list-style-type: none"> <u>An approved Framework</u> <u>An approved Dynamic Purchasing System</u> <u>An approved Pseudo Dynamic Purchasing System</u> 	4

² Light touch threshold applies to contracts for certain social, health, education and other public services. Certain health services are subject always to the Health Care Services (Provider Selection Regime) Regulations 2023. For these services there is no minimum threshold for application of this regime.

	<u>The Legal Service will perform the execution of any contract(s).</u>	<u>4. Any other permitted compliant purchasing mechanism</u> <u>5. Advertise on eProcurement Portal, Central Digital Platform</u>	
<u>Works Only³</u> <u>Goods and Services</u> <u>Threshold –</u> <u>Works</u> <u>Threshold</u>	<u>One of the following:</u> <ul style="list-style-type: none"> • <u>Quotations (CPRs 3-4)</u> • <u>Tenders (CPR 3-4)</u> • <u>Framework Suppliers, Dynamic Marketplace, Dynamic Markets, Standing Lists, etc. (CPR 5)</u> • <u>Exemptions (CPR 6)</u> • <u>Internal, Consortia & Compulsory (CPR 6)</u> <p><u>In addition:</u> <u>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</u></p> <p><u>The Legal Service will perform the execution of any contract(s).</u></p>	<u>As the Head of Procurement determines</u> <ol style="list-style-type: none"> <u>1. From a standing list</u> <u>2. An approved Framework</u> <u>3. An approved Dynamic Purchasing System or Dynamic Market</u> <u>4. Any other permitted compliant purchasing mechanism</u> <u>5. Advertise on eProcurement Portal, Central Digital Platform</u> 	<u>4</u>
<u>Above Threshold</u>	<p>One of the following:</p> <ul style="list-style-type: none"> • <u>Tenders (CPRs 3-4)</u> • <u>Framework Suppliers, Dynamic Marketplace, Dynamic Markets, Standing Lists, etc. (CPR 5)</u> • Framework Suppliers etc. (CPR 5) • <u>Exemptions (CPR 6)</u> • <u>Internal, Consortia & Compulsory (CPR 6)</u> <p><u>In addition:</u> <u>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</u></p> <p><u>The Legal Service will perform the execution of any contract(s).</u></p>	<p>Advertise on eProcurement Portal, Central Digital Platform; or</p> <p>Use approved Framework ; or</p> <p>Use approved Dynamic Purchasing System <u>or</u> <u>Dynamic Market</u></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.~~^{3.32.}

A Service Director must invite at least the number above of suppliers to submit a written

³ A separate suitability stage may be included if required in relation to a below threshold Works contract that is valued at over the Goods & Services threshold

Tender / Quotation, unless:-

3.42.1 an **approved**² Framework ~~Agreement~~, Dynamic Market or Dynamic Purchasing System is being used (and in which case the rules of the Framework ~~Agreement~~, Dynamic Market or the Dynamic Purchasing System must be followed); or

3.42.2 it is otherwise agreed with the Head of ~~Risk~~Internal Audit in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

3.43. 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 Conditions of Participation

3.54. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of ~~S~~suitability.

3.65. Where the procurement process has an overall value of less than the supplies and services UK ~~€~~£Threshold, a qualification stage must not be used (except in the case of Works contracts valued at above the supplies and services UK Threshold but below the works UK Threshold), 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.

3.76. 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~~standard procurement documentation to ~~establish suitability~~assess the ~~€~~£Conditions of Participation and/or to establish a shortlist where permitted. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.

3.87. The ~~selection~~Conditions of Participation assessment 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~~Conditions of Participation must be a transparent and proportionate means of ensuring legal and financial capacity and technical ability to perform the contract. ~~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~~Tender Notice or invitation to confirm interest.

3.98 The Conditions of Participation also apply to the selection of any ~~nominated or named sub-contractor~~, associated supplier in accordance with the Procurement Rules

3.9. Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

RULE 4 –TENDER RECEIPT & EVALUATION

- 4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the 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 In the case of Tenders not received through the eProcurement Portal, 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 RiskInternal 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 RiskInternal Audit.

4.9 Where appropriate, the Head of Procurement will check the debarment list in connection with a procurement process to determine the excluded or excludable status of those parties involved.

4.109 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.

4.101 The Head of Risk must be satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK Threshold.

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

4.102.1 bids can be ranked automatically; and

4.102.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and

4.102.3 the written agreement of the Head of ~~Risk~~Internal Audit has been given; and

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

4.113 The Service Director will require tenderers to ~~explain the price or costs proposed in their tender~~ demonstrate that it will be able to perform the contract for the price offered where tenders appear to be abnormally low.

4.124 The Service Director must ensure that, where required by ~~UK p~~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 ~~t~~Tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the ~~Solicitor to the Council~~Service Director Legal and Commissioning that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.

4.135 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 4.145) take action as necessary, taking guidance from the ~~Solicitor to the Council~~Service Director Legal and Commissioning and the Head of ~~Risk~~Internal Audit.

4.146 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~~Service Director Legal and Commissioning 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~~Service Director Legal and Commissioning advises about confidentiality and Legal Privilege.

Clarifications, Presentations and Interviews

4.157 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:

- 4.1~~57~~.1 set an appropriate time limit for a reply; and
- 4.1~~57~~.2 do not request changes or otherwise seek to influence the bidder; and
- 4.1~~57~~.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
- 4.1~~57~~.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 or compliance check;
 - 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.~~4.1~~76~~8 Interviews and/or presentations which form part of the bid procurement process must be authorised by the Head of Procurement in writing. They must also be:

- 4.1~~86~~7.1 Comprehensively recorded; and
- 4.1~~86~~7.2 Assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
- 4.1~~86~~7.3 Supervised by the Head of Procurement.

4.1~~79~~ Where provided for in the procurement process, clarity may also be facilitated through planned presentations, meetings or demonstrations designed to assist in verifying submitted bids as part of the Due Diligence process to ensure compliance with procurement documentation.

RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS, DYNAMIC MARKETS AND FRAMEWORKS 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 Subject to the Procurement Rules, ~~the~~ Head of Procurement will determine for which types of Supply Council-wide Standing Lists may~~must~~ be kept (see CPR 6.11). 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~~ Service Director Legal and Commissioning) 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 Frameworks ~~Agreements, and~~ Dynamic Purchasing Systems and Dynamic Markets

- 5.9 Frameworks ~~Agreements, and~~ Dynamic Purchasing Systems and Dynamic Markets 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 Frameworks ~~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 Unless the Framework has been established as an Open Framework, Frameworks ~~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.
- 5.12.1 Open Frameworks above the UK-Threshold must be reopened in accordance with the Procurement Rules.
- ~~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 3 Dynamic Purchasing Systems and Dynamic Markets must:
- 5.143.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and

5.143.2 remain advertised; and

5.143.3 not limit the number of suppliers admitted to the system or market (but the system or market may be split into categories or parts (as applicable)); and

5.143.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system or market, or on the relevant category or part on the system or market, as appropriate; and

5.143.5 be operated wholly electronically; and

5.143.6 be open to new entrants; and

5.143.7 be subject to consistent due diligence assessments of ~~DPS~~ participants

5.154 When using Frameworks, ~~Agreements or~~ Dynamic Purchasing Systems or Dynamic Markets, the Council must follow the procurement rules set out in the Framework, ~~Agreement or the~~ Dynamic Purchasing System or Dynamic Market.

5.165 The Head of Procurement will ensure that the use of Framework Suppliers, ~~and~~ Dynamic Purchasing Systems and Dynamic Markets 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**

5.186 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:

5.186.1 are created ~~by a public body or a private sector party as agent of a public sector body in accordance with the Procurement Rules and~~ which is approved by the Head of Procurement (see also CPR 5.1);

5.186.2 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 off conditions);

5.186.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of ~~Risk Internal Audit~~, rules which are broadly comparable;

5.186.4 where the ~~UK~~ prourement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

RULE 6 – ~~EXCEPTIONS~~ EXEMPTIONS FROM COMPETITION

6.1 Subject to compliance with the ~~UK~~ Procurement Rules the following are exempted from the competitive requirements of these CPRs⁴:

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~~

⁴ When the ~~UK~~ Procurement Rules apply, these exemptions may not be permitted (Directors must check this). Exemptions are not permitted for those health services which are in scope of the Health Care Services (Provider Selection Regime) Regulations 2023

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 ~~Risk~~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 6.11 applies;

6.1.6 counsel or other external legal advice, provided that the ~~Solicitor to the Council~~Service Director Legal and Commissioning takes steps to ensure that value for money is being obtained;

6.1.7 a ~~necessary~~ Supply that is strictly necessary for reasons of extreme and unavoidable urgency required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of ~~Risk~~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;

6.1.9 in respect of the production of a prototype, or supply of other novel goods or services, at the request of the Council; or

6.1.10 for the supply of goods, services or works by the existing Supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where a change in Supplier would result in disproportionate technical difficulties in operation or maintenance or additional cost to the Council.

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 ~~exemption~~ in respect of a supply valued in excess of £100,000. Value for money must be evidenced and recorded.

Trial Purchases

6.3 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 ~~exemption~~ 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.

6.3.1 Following any such trial, 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.

6.54 The procuring Service Director and the Head of Procurement may decide that;

6.54.1 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 ~~Risk~~~~Internal~~~~Audit~~.

6.54.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Tenders.

6.54.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.

6.54.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the ~~e~~Council without competition is appropriate (although subject to ~~the~~ UK Procurement Rules).

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

Negotiated Contracts

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

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

6.87 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of ~~Risk~~~~Internal~~~~Audit~~ of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

Legal Issues

6.98 The ~~Solicitor to the Council~~~~Service Director Legal and Commissioning~~ must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK ~~£~~Threshold (except those in relation to Land where the Head ~~of Corporate Landlord~~ ~~for Corporate Property Management~~ should be consulted irrespective of value).

6.109 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, they must consult with the ~~Solicitor to the Council~~~~Service Director Legal and Commissioning~~ about the possibility of subsidy control before approving the exemption from competition.

~~Mandatory s~~Suppliers, ~~f~~Frameworks agreements, ~~o~~r ~~d~~Dynamic ~~p~~Purchasing ~~s~~Systems ~~o~~r ~~d~~Dynamic ~~m~~Markets

6.140 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 ~~UK~~

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

6.1~~2~~1 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework~~Agreement or a~~ Dynamic Purchasing System, ~~Dynamic Market~~ or Standing Lists, and set standards to be established in those arrangements.

6.1~~3~~2 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-

6.1~~3~~2.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;

6.1~~3~~2.2 in respect of the outsourcing of an activity having a value below £100,000;

6.1~~3~~2.3 in respect of services provided within schools;

6.1~~3~~2.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

RULE 7 - RECORD KEEPING AND REPORTING

7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation). To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

7.1.1 communications with economic operators and internal deliberations;

7.1.2 preparation of the procurement or sale documents;

7.1.3 the dividing large procurements into contract Lots;

7.1.4 consideration of social value in the commissioning and procurement process;

7.1.5 any interviews, other dialogue or negotiation;

7.1.6 a risk log;

7.1.7 supplier vetting; and

7.1.8 reasons for award of the contract.

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

7.2 A full trail of electronic Tenders received must be recorded on the eProcurement Portal or retained in a database approved by the Head of ~~Risk~~~~Internal Audit~~.

7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 2).

~~7.4 The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the UK Procurement Rules.~~^{7.54}

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

7.65 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).

7.76 The Service Director must keep a written record of the reasons for using a negotiated procedure under Rules 6.5 - 6.7.

RULE 8 - INCOME CONTRACTS & CONCESSIONS

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

8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-

8.2.1 the disposal of property (other than Land);

8.2.2 the sale of a right to exploit a business opportunity;

8.2.3 the operation of business activity.

8.3 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 ~~Risk~~Internal Audit must be consulted and they will decide whether this amounts to a Grant (and so FPR 224 applies instead of CPR 8).

The disposal of an asset (other than land and buildings)

8.4 The procedure for the disposal of assets e.g. surplus plant, vehicles, furniture, equipment and stock items (owned by the Council and not leased) 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, unless the interests of the Council would be better served by disposal in some other way;.

8.4.3 Authority for alternative disposal methods must be granted by the Head of Procurement in consultation with the Head of ~~Risk~~Internal Audit and Risk.

8.4.4 All IT equipment should be disposed of in accordance with the contract arrangements put in place by IT services to ensure equipment is securely and safely dealt with in line with requirements.

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 as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

8.6.1 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~~Service Director Legal and Commissioning.

8.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

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~~UK Procurement Rules Regulations and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with the Procurement Rules and these ~~CPRs~~Regulations.

Valuation

8.11 The value of a Concession contract shall be estimated in accordance with the Procurement Rules, ~~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 Contract~~s~~ is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.

8.13 When calculating the estimated value of an ~~Concession contract or~~ Income Contract, Service Directors shall, where applicable, take into account:-

8.13.1 the value of any form of option and any extension of the duration of the contract;

8.13.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;

8.13.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;

8.13.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;

8.13.5 revenue from sales of any assets which are part of the contract;

8.13.6 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 services;

8.13.7 any prizes or payments to candidates or tenderers.

RULE 9 - LAND

- 9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate Landlord and Capital Property Management must be consulted in respect of all Land transactions of any value except where the ~~Solicitor to the Council~~ Service Director Legal and Commissioning authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 9.2 The Head of Corporate Landlord and Capital Property Management (and any other authorised Director ~~authorised so to do~~) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to ~~him~~ them by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to ~~them~~ him from the Cabinet.
- 9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Landlord and Capital Property Management and the ~~Solicitor to the Council~~ Service Director Legal and Commissioning, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 9.4 Where Land is sold at an in person public auction, the Head of Corporate Landlord and Capital Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made however, if the Land is to be sold by way of an online auction the reserve shall be agreed between the Council's internal qualified valuer on a professional basis in liaison with the auctioneer who under the procured tender contract is obligated to also provide their professional opinion of market value based on experience and evidence and they will jointly set a reserve prior to the auction going live.. If a successful bid is less than the reserve price then the Head of Corporate Landlord and Capital Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

RULE 10 – EXECUTING CONTRACTS

Supplies

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

- 10.2 Contracts for all Supplies (which includes call-offs from Frameworks Agreements and Dynamic Purchasing Systems), Concessions, Income Contracts and Frameworks 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~~ Service Director Legal and Commissioning decide 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~~ Service Director Legal and Commissioning.
- 10.4 The Head of Procurement must ensure that the Council's electronic procurement systems are set up so that the most appropriate Official Council Order ~~are~~ is available to be attached to the supply being purchased.
- 10.5 Contracts for all Supplies (which includes call-offs from Frameworks Agreements, and Dynamic Purchasing Systems and Dynamic Markets), 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 Contract signatories by the ~~Solicitor to the Council~~ Service Director Legal and Commissioning under their Scheme of Officer Delegations. The ~~solicitor to the Council~~ Service Director Legal and Commissioning 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~~ Service Director Legal and Commissioning 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.
- 10.7 The ~~Solicitor to the Council~~ Service Director Legal and Commissioning 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 UK Threshold for supplies and services.

Land

- 10.8 The ~~Solicitor to the Council~~ Service Director Legal and Commissioning 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~~ Service Director Legal and Commissioning may nominate other officers to enter into Land

commitments and arrangements using documentation previously approved by the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

10.9 Any Contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed (under hand where executed in hardcopy format or electronically where executed in electronic format) by, or have the corporate common seal affixed in the presence of, the ~~Solicitor to the Council~~Service Director Legal and Commissioning (or by a legal officer nominated by themhim or her), and where the corporate common seal is affixed it is permissible to do so electronically (where the law permits in accordance with the Electronic Communications Act 2000). Additionally, the ~~Solicitor to the Council~~Service Director Legal and Commissioning may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR 9.1. Where the Council has listed Land for sale at public auction and a sale is agreed post-auction through the auctioneer under RICS common auction conditions (or such other conditions as appropriate), the Solicitor to the Council may authorise the external property auctioneer to sign the contract for the sale of the Land (on the same basis as outlined above in this CPR 10.9) as agent for the Council and to deal with exchange of contracts between the Council and the buyer.

General

10.10 The ~~Solicitor to the Council~~Service Director Legal and Commissioning 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.

10.11 The ~~Solicitor to the Council~~Service Director Legal and Commissioning 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 MODIFICATION 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 Procurement RulesRegulations 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~~Service Director Legal and Commissioning.

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~~Service Director Legal and Commissioning, 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~~Service Director Legal and Commissioning may release any bond held by the Council, on request from the Head of Procurement.
- 11.5 The Head of ~~Risk~~Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning accept such proposed sums.
- 11.6 Service Directors may ~~vary~~modify contracts:
- 11.6.1 ~~that were awarded under the Public Contracts Regulations 2015 UK Procurement Regulations~~ by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract; or:
- 11.6.21 ~~Service Directors may modify contracts that were awarded under the Procurement Act 2023 UK Procurement Regulations~~ if 'the possibility of the modification is unambiguously provided for in the contract awarded and the tender or transparency notice for the award of contract and the modification would not change the overall nature of the contract'.
- 11.7 Any ~~variation~~modification, whether above or below the relevant UK Threshold, 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 ~~modification~~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~~Service Director Legal and Commissioning and the Head of Procurement, and the Procurement Rules as applicable, contracts may be novated or reassigned to ~~another~~ Supplier who is not an excluded 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 only where this is needed following a corporate restructuring or similar circumstances, such as a takeover, merger, acquisition or insolvency, merger, acquisition, takeover or insolvency. The new Supplier must comply with the requirements under the original contract.

RULE 12 - MISCELLANEOUS

- 12.1 A Special Purpose Vehicle (such 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~~Service Director Legal and Commissioning and the ~~Chief Finance Officer~~Service Director Finance. This does not apply to any purchase of shares or similar for the purpose of investment.

DEFINITIONS

DEFINITION	DESCRIPTION
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.
<u>Central Digital Platform</u>	<u>Means the "online system" established and operated for the publication of notices, procurement documents and other information relating to public contracts</u>
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.
<u>Conditions of Participation</u>	<u>is a condition that a supplier must demonstrate they are capable of satisfying in order to be awarded a contract.</u>
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.
<u>Council</u>	<u>Means the Council of the Borough of Kirklees, which is also known by its abbreviated name of Kirklees Council.</u>

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.
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DEFINITION	DESCRIPTION
<u>Dynamic Market</u>	<u>Is a procurement tool established in accordance with sections 34 to 40 of the Procurement Act 2023 and is available for the procurement of above UK Threshold contracts. It is a list of qualified suppliers (i.e. suppliers who have met the ‘conditions for membership’ of the dynamic market who are eligible to participate in future procurements. A dynamic market may be split into parts, with suppliers only eligible to participate in the parts for which they have qualified. New suppliers can be added through the lifetime of the dynamic market and there is no maximum term or minimum or maximum number of suppliers.</u>
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 <u>and contracts awarded under the Public Contracts Regulations 2015</u> are required to be published;
Financial Procedure Rules (FPRs)	The Financial Procedure Rules.

<p>Frameworks <u>Agreement</u></p>	<p>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. Frameworks <u>Agreements</u> which deal with Supplies that are above, or aggregate above, the UK Threshold are subject to the <u>Public</u> Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework Agreement' and 'Framework Suppliers' shall be construed accordingly. <u>References to Frameworks includes Framework Agreements established under the Public Contracts Regulations 2015 and Open Frameworks as defined in the Procurement Act 2023.</u></p>
<p>Head of Corporate <u>Landlord and Capital Property Management</u></p>	<p>Means the officer appointed by the Service Director who is responsible for corporate property management functions.</p>
<p>Head of <u>Risk Internal Audit</u></p>	<p>Means the officer appointed by the Chief Executive who is responsible for Internal audit.</p>
<p>Head of Procurement</p>	<p>Means the <u>Head of Procurement and Commissioning or such other</u> officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.</p>
<p>Income Contract</p>	<p>An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset⁴ and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4).</p>

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

DEFINITION	DESCRIPTION
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.
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 <u>Service Director Legal and Commissioning</u> whether attached electronically
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, Frameworks Agreements, <u>and Dynamic Purchasing Systems and Dynamic Markets</u> . ‘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 <u>Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023, Public Concessions Regulations 2016 and</u> Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations) <u>as may be applicable in relation to the Procurement or Contract</u> .
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.

⁵ The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be 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**].

DEFINITION	DESCRIPTION
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.
<u>Service Director Finance</u>	<u>Means the Service Director responsible for finance, also being the s151 Officer</u>
<u>Service Director Legal and Commissioning</u>	<u>Means the Service Director responsible as legal adviser to the Council, also being the Monitoring Officer</u>
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 adviser 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 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 <u>Means a supplier's² general capability, fidelity, skill, competence, etc. to carry out the contract, including, where relevant, whether a Supplier is an excluded or excludable supplier under the Procurement Act 2023. 'Suitability' shall be interpreted accordingly.</u>
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.

DEFINITION	DESCRIPTION
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	
<u>Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx (publishing.service.gov.uk)</u>	
Supply Goods and services contracts	£214,904 (<u>£179,086.67 excl. VAT</u>)
Light Touch Regime Contracts	£663,540 (<u>£552,950 excl. VAT</u>)
Works contracts	£5,372,609 (<u>£4,477,174.17 excl. VAT</u>)
Concession contracts	£5,372,609 (<u>£4,477,174.17 excl. VAT</u>)

+ 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 2026

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 <u>of Rule 6</u> , including the reason for the exemption.	When requested
D.	Contracts with a value of £5,000 or more (see <u>Rule 3) CPR</u> , with the following information: <ol style="list-style-type: none"> 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 information 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**
 - 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**
 - 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)