

# RIBBLE VALLEY BOROUGH COUNCIL REPORT TO POLICY AND FINANCE COMMITTEE

Agenda Item No 9

meeting date: 21 JANUARY 2020  
title: REVIEW OF FINANCIAL REGULATIONS AND CONTRACT PROCEDURE RULES  
submitted by: DIRECTOR OF RESOURCES  
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## 1 PURPOSE

1.1 To recommend to Council the acceptance of the reviewed financial regulations and contract procedure rules.

1.2 Relevance to the Council's ambitions and priorities:

- This report contributes to the council's ambition to be a well-managed council providing efficient services based on identified customer needs.

## 2 BACKGROUND

2.1 The Council's financial regulations and contract procedure rules are key components of the Council's Constitution and Corporate Governance arrangements.

2.2 These documents are reviewed on an annual basis and any amendments are reported to committee for approval. It is good practice to keep the financial regulations and contract procedure rules under regular review in order to take account of evolving working practices and changes to law.

## 3 REVIEW OF FINANCIAL REGULATIONS

3.1 The financial regulations cover all aspects of the Council's financial arrangements and activities. They apply to every member and officer of the Council and anyone acting on the Council's behalf.

3.2 The financial regulations form part of the Council's Constitution and as a consequence require the additional approval of Full Council, where changes are made.

3.3 A full review of the existing financial regulations has been carried out and no further changes are required.

## 4 REVIEW OF CONTRACT PROCEDURE RULES

4.1 Attached at Annex 1 are the revised Contract Procedure Rules following the recent review.

4.2 The main changes and clarifications that have been made to the Contract Procedure Rules in this review are:

- Clarification that exemptions from the Contract Procedure Rules should always be sought from Committee in the first instance. Agreement must continue to be sought from the Head of Legal Services and the Director of Resources where time constraints or urgency restrict the ability to seek committee approval and in such circumstances this should continue to be reported to committee retrospectively. (CPR5 (5.4)).
- Clarification on the arrangements that should be put in place for the scoring of tenders and the parties to be involved. (CPR18 (18.2)).

- Specific requirement to include the financial services section in the calculation of any amounts due for liquidated damages under a contract and its inclusion in the contract documentation where relevant. (CPR27 (20.1v)).
- Amended percentage at which contract variations must be reported to the Head of Legal Services and the Director of Resources from 10 per cent of tender sum to 5 per cent of tender sum. (CPR22 (22.1a)).

4.3 These contract procedure rules form part of the Council's Constitution and as a consequence will require the additional approval of Full Council.

4.4 With regard to the EU Procurement directives, as the UK leaves the EU on the 31 January we will enter a transition period which will end in December 2020 (unless changed). During this period the EU procurement directives will continue to apply by default. Also, after the end of the transition period, the procurement regulations will also continue to apply, as they are now a part of UK law.

## 5 RISK ASSESSMENT

- Resources – Operating without financial policies and procedures that are fit for purpose exposes the council to very great risks to its resources.
- Technical, Environmental and Legal – The financial regulations form part of the Council's Constitution. Under the requirements of the Local Government Act 1972 Section 151, the Financial Regulations provide a control framework through which the Director of Resources carries out their statutory duty on behalf of the council.
- Political – None
- Reputation – Financial regulations are an important part of the Council's Governance arrangements and will give the public confidence that the Council manages its financial affairs properly.
- Equality and Diversity – Effective financial and governance arrangements will ensure that equality and diversity matters remain a continued focus

## 6 RECOMMENDED THAT COMMITTEE

6.1 Recommend to Full Council acceptance of the reviewed (without change) Financial Regulations and revised Contract Procedure Rules

HEAD OF FINANCIAL SERVICES

DIRECTOR OF RESOURCES

PF9-20/LO/AC

9 January 2019

BACKGROUND WORKING PAPERS:

For further information please ask for Lawson Oddie, extension 4541

DRAFT

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# Contract Procedure Rules

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January 2020

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Ribble Valley  
Borough Council

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## Contract Procedure Rules

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## CPR1: Interpretation

- 1.1 These Contract Procedure Rules are standing orders of the Council (made pursuant to Section 135 of the Local Government Act 1972) with respect to the making of Contracts.
- 1.2 In these Rules, each of the expressions in the left-hand column below shall have the meaning stated against that expression in the right-hand column.

<b>Responsible Officer</b>	any permanent or temporary staff member who is properly authorised to carry out any of the Council's contracts functions. Such persons must keep their relevant Director fully informed of any proposed actions under these Contract Procedure Rules.
<b>Director</b>	is the Chief Executive or a Director
<b>Heads of Service</b>	Includes, for the purposes of these Contract Procedures Rules, all Heads of Service (or, in the absence of the Head of Service, their nominated representative). Such persons must keep their relevant Director fully informed of any proposed actions under these Contract Procedure Rules.
<b>Committee</b>	means a Committee or Sub-Committee of the Council.
<b>Contract</b>	is any agreement between the Council and one or more Providers for the supply of goods or materials for or on behalf of the Council, for the execution of works for or on behalf of the Council, or for the provision of services to the Council or to others on its behalf (including but not limited to the provision of services, wholly or partly, in return for a concession).
<b>CPR</b>	Contract Procedure Rule.

## Contract Procedure Rules

<b>EU Contract</b>	is a Contract covered by the EU Public Contracts Directive.
<b>Provider</b>	is any contractor supplying or offering to supply goods, works, or services (including concessions) to the Council and includes any individual, firm, agent, company, partnership, public authority or other organisation.
<b>Section 151 Officer</b>	is the officer with responsibility for the proper administration of the financial affairs of the Council in accordance with Section 151 of the Local Government Act 1972 (Director of Resources) or their Deputy.

- 1.3 References to monetary values in these Contract Procedure Rules **exclude VAT**. The values quoted relate to the total value of a contract **over the full anticipated lifetime of supply**.
- 1.4 Where reference is made in these Contract Procedure Rules to the Director of Resources, in the absence of that Officer, the Head of Financial Services is the authorised substitute. Likewise, in the absence of the Head of Legal and Democratic Services the Council's Solicitor will be the authorised substitute.

## CPR2: Scope and Application

- 2.1 These Procedure Rules shall apply to any Contract, with the exceptions listed in CPR 2.2, and also to the nomination of sub-contracts under any such Contract (whether in each case the Council is contracting or nominating on its own behalf or wholly or partly on behalf of others).
- 2.2 These Procedure Rules do not apply to transactions of the following types:
- a) Purchases or sales by auction or at public fairs or markets;
  - b) Contracts for the sale or purchase of land;
  - c) Contracts for the engagement of Counsel, or for the engagement of external Solicitors to represent the Council in specified legal proceedings;
  - d) Contracts with statutory undertaking(s) for work which only they can carry out;
  - e) Contracts of employment;
  - f) Orders placed with such consortia or framework agreements as may be approved by the Director of Resources provided that the council is satisfied that the purchasing arrangements of the consortia or framework agreement in question comply with EC and UK legislation and provide value for money;
  - g) Contracts formalising the funding of particular voluntary sector bodies where the purpose of the contract is to establish the general conditions whereby the body may be funded by the Council.
- 2.3 All employees of the Council and firms/advisors employed to act in any capacity to manage or supervise a Contract must comply with these Procedure Rules and with the Council's Financial Regulations and Directors and each Head of Service must ensure such compliance in the contracting area for which they are responsible. The relevant Director must be kept informed by the Head of Service or Other Responsible Officer at all times of any proposed actions under these Contract Procedure Rules.



## CPR3: Responsibilities and Officers' Duties

### 3.1 Responsible Officers shall always:

- (a) seek value for money;
- (b) show no favour or disfavour to any Provider nor discriminate against Providers from other EC states;
- (c) conduct tendering and price testing in accordance with proper practices and the highest standards of propriety;
- (d) do nothing that contravenes EC or domestic law;
- (e) ensure that adequate Contract files are kept and retained for all Contracts upon which they are engaged, ensuring a copy is also passed to the Procurement Assistant for inclusion on the council's Contracts Register; and
- (f) consider any implications under the Transfer of Undertaking (Protection of employment) (TUPE) and obtain advice from the Head of Legal and Democratic Services before proceeding with the production of any Invitation to Tender documentation.

## CPR4: Compliance with Contract Procedure Rules and Legislation

- 4.1 Every Contract made by the Council or on its behalf shall comply with the European Community Treaty and all relevant European Union and domestic legislation, these Contract Procedure Rules and the Council's Financial Regulations subject to the following provision.
- 4.2 **Arrangements made to meet the requirements of any present or future domestic legislation or EU Directive shall take precedence over any provision of these Contract Procedure Rules.**

## CPR5: Exemptions from Contract Procedure Rules

- 5.1 Exemptions from the requirements of these Contract Procedure Rules **are to be the exception and not the rule**. They must not be granted as a matter of administrative convenience and must be supported by documented and evidenced reasons as to the legitimate need for the exemption to be granted.
- 5.2 When an exemption is sought from tendering or the requirement to obtain written quotations, the relevant Director or Head of Service will need to justify the use of an alternative method of selection so that propriety, value for money and **compliance with EU and domestic legislation** can be demonstrated. It will also include reasons such as:
- (a) that only one Provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive or proprietary rights;
  - (b) that time limits required for tendering cannot be met for reasons of extreme urgency and which (in EU cases) were unforeseen and unattributable to the Council;
  - (c) that additional goods, works or services are required which, **through unforeseen circumstances**, were not included in the original contract and which are either strictly necessary for the completion of the Contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience/additional costs;
  - (d) that goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
  - (e) That despite seeking the relevant number of quotations, insufficient quotations have been obtained (see 6.5 below)
- 5.3 The Director or Head of Service must keep a written record justifying any exemption(s) under paragraph (a) to (e) above and seek the **prior** agreement of [the relevant service committee](#).
- [5.4 Should it not be possible to first seek approval from the service committee due to the urgency of the matter, then the prior agreement of](#) both the Head of Legal and Democratic Services and the Director of Resources [should be sought](#). The Director or Head of Service must then report to the next possible meeting of the relevant Service Committee details of the granting of such exemptions and the reasons.
- 5.4 Exemption (on grounds other than 5.2 (a) to e)) from any of the following provisions of these Procedure Rules may be made only by the direction of the relevant Service Committee where such Service Committee is satisfied that the exemption is justified in special circumstances.

5.5 No exemption may be granted:

- (a) which would result in a breach of European or UK law;
- (b) from CPR 18 unless on grounds of extreme urgency (e.g. during civil emergency) (Acceptance of Tenders); from CPR 20 (Form of Contract); or from CPR 21 (Execution of Contracts).

## CPR6: Requirements to Obtain Quotations or Tenders

### Contracts not requiring tendering

6.1 The following contracts need not be tendered.

- (a) Contracts valued at £50,000 or less (unless required by EU law). It must be ensured that the contract value used in assessing this is the total value of a contract **over the full anticipated lifetime of supply**.

PROVIDED that such contracts are effected in compliance with the Council's Financial Regulations and all appropriate internal controls.

### Contracts valued at £50,000 or less

6.2 An official order shall be placed immediately using the Council's approved Purchase Ordering System.

6.3 A Contract made under CPR 6.2 where the estimated value is:

- (i) £5,000 or less may be made without written competitive quotations as long as the Contract is not part of a larger Contract. However, it must still be ensured that the best price is secured and value for money is maintained.
- (ii) over £5,000 but not exceeding £20,000 may be made after obtaining **at least** two written quotations;
- (iii) over £20,000 but not exceeding £50,000 may be made after obtaining **at least** four written quotations;

6.4 Under no circumstances should Contracts be broken down in size so as to have the effect of lowering the Contract value or to avoid the requirements for tendering or the need for written quotations. It must be ensured that the contract value used in assessing the above bandings is the total value of a contract **over the full anticipated lifetime of supply**.

6.5 Where the relevant number of quotations has been sought, but fewer quotations have been obtained, the Director or Head of Service may seek an exemption from the requirement to obtain the number of quotations specified above with the written agreement of the Head of Legal and Democratic Services and Director of Resources. The Director must then report details of any such exemption to the next possible meeting of the relevant Service Committee (see CPR5 5.3).

6.6 In all cases, except where it is impracticable for reasons of extreme urgency, confirmation of the Provider's terms of business (usually a written quotation) shall be obtained before an order is placed. The placing of an official order on the Council's approved Purchase Ordering System will also ensure the application of the council's own Terms and Conditions to the order.

## Contract Procedure Rules

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- 6.7 The Responsible Officer shall keep a written record of the Providers approached, their responses, details of any quotations provided, the subject matter of the quotation, the name of the Provider, the time and date of the quotation and details of the price offered and any other trading terms.

### **Contracts valued at more than £50,000**

- 6.8 All Contracts with an estimated value over £50,000 shall be subject to competitive tender in accordance with CPR 12, unless exempted in accordance with CPR 5 or awarded by way of extension to an initial Contract for works in accordance with CPR 12.1(b).

## CPR7: Award of Contracts without Tendering – Contracts less than £50,000 or greater than £50,000 with Exemptions

- 7.1 No Contract may be awarded unless the expenditure involved has been included in approved revenue or capital estimates. The Responsible Officer shall ensure that evidence of authority to spend, and the budget code to be used, is recorded on the Contract file.
- 7.2 Contracts with a quoted value of £50,000 or less may be awarded on behalf of the Council by the relevant Director to the Provider who offers the lowest price or in exceptional circumstances whose offer is considered by the Director, in consultation with the Director of Resources, to be the most economically advantageous to the Council, provided in both cases the price quoted is within the budgetary limits approved by the Council or by Policy and Finance Committee as a supplementary estimate.
- 7.3 Contracts with a quoted value in excess of £50,000 (where an exemption from Tendering has been granted) may be awarded on behalf of the Council by the relevant Director in consultation with the Chairman of the relevant Service Committee to the Provider who offers the lowest price or in exceptional circumstances whose offer is considered by the Director, in consultation with the Director of Resources, to be the most economically advantageous to the Council provided in both cases the price quoted is within the budgetary limits approved by the Council or by Policy and Finance Committee as a supplementary estimate.
- 7.4 No contract with a quoted value in excess of £50,000 (where an exemption from Tendering has been granted) shall be awarded until the Director of Resources has checked the Provider's financial standing and provided written confirmation that this is satisfactory for the Contract to be undertaken.
- 7.5 Details of all Contract awards shall be forwarded to the Procurement Assistant for inclusion on the Council's Contracts Register as soon as possible after the award and prior to works commencing. Such notification must also include evidence of the authority to enter into the Contract.

## CPR8: Interests of Officers in Contract Matters

8.1 Directors, Responsible Officers and any other person (whether or not in the employment of the Council) assisting either of them in connection with any part of the procurement process shall comply with all requirements applicable from time to time of the law and of the Council's Code of Conduct for Employees as regards:

- (a) the declaration of interests (either generally or in relation to a particular procurement matter), and;
- (b) refraining from participation in some or all stages of particular procurement matters.

NB: At the time of adoption of these Rules, the Current provisions are:

- Section 117(1) of the Local Government Act 1972;
- The Council's Code of Conduct for Employees.



## CPR9: Approved Lists

- 9.1 This Rule shall apply where, in the opinion of the relevant Director or Head of Service and subject to the approval of Policy and Finance Committee, it is considered appropriate to maintain a list of approved Providers for specific categories of work of a value not exceeding £50,000 over the full anticipated lifetime of supply. The use of online services for shortlisted or approved suppliers is included under this Contract Procedure Rule.
- 9.2 There shall be compiled and maintained lists of Providers in respect of Council contracts. Such lists shall contain the names of all Providers who wish to be included in them and who are approved by the relevant Committee according to written criteria.
- 9.3 With the exception of online services for shortlisted or approved suppliers, the relevant Head of Service shall maintain the approved lists and shall ensure they are reviewed at intervals not exceeding three years.
- 9.4 At least every three years a public notice shall be given in one or more local newspapers and such trade journals as are considered desirable inviting Providers to apply to have their names placed on the approved lists.
- 9.5 The approved list shall indicate for each included Provider the categories of Contract and the value or amounts in respect of those categories for which approval has been given.
- 9.6 The use of Providers on any approved list shall follow the same requirements as those listed under CPR6 with regard to number of quotes to be requested.

## CPR10: Estimates of Contract Value

- 10.1 Before inviting tenders or quotations for the execution of any work or for the provision of any goods or services the relevant Head of Service shall keep a written record of the estimate in writing of the likely expense of executing the work, or the provision of goods or services in a suitable manner.
- 10.2 For the purpose of these Contract Procedure Rules, the value of a contract is the expected amount of consideration (in money or money's worth) that will be received by the person or organisation that carries out the works or provides the services or supplies, **over the full anticipated lifetime of supply**.
- 10.3 Where some, or all of the contract price is funded by a third party, it must be the gross value of the goods or services that is used in any assessment of contract value.
- 10.4 Estimates of value and methods of valuation must be genuine and not designed to avoid exceeding any threshold contained in these Contract Procedure Rules.
- 10.5 No tender can be accepted where its value is in excess of the Public Procurement Rules (OJEU) threshold. Therefore any Head of Service that estimates a contract value that is **near** to such thresholds **must** undertake a Public Procurement Rules (OJEU) compliant tender exercise.

## CPR 11: Pre-Tender/Quotation Enquiries

11.1 Enquiries of Providers may be made before tenders or quotations are invited in order to:

- (a) establish whether the goods, works or services the Council wishes to purchase are available, within what price range and whether they would be the best option for the required outcome;
- (b) better inform the preparation of tender documents, price estimates, specifications and contract documents;
- (c) establish whether particular Providers wish to be invited to tender or quote.

11.2 In making enquiries:

- (a) no information will be disclosed to one Provider which is not then disclosed to all those of which enquiries are made or which are subsequently invited to tender or quote;
- (b) no Provider will be led to believe that the information they offer will necessarily lead to them being invited to tender or quote or be awarded the Contract.

## CPR12: Competitive Tendering – Contracts over £50,000 (or optionally below £50,000)

- 12.1 Subject to 13.3 below, no Contract, the estimated value of which exceeds £50,000 (or below £50,000 if formal tendering is chosen to be undertaken), shall be made unless:
- (a) at least 21 days' public notice has been given, stating the nature and purpose of the Contract, inviting tenders, providing web links to electronic versions of all contract documents and stating the last date when tenders will be received, on:
    - the council's website and optionally a local newspaper and such trade journals as the relevant Head of Service shall consider desirable; and
    - the Crown Commercial Service website Contracts Finder. In the case of those contracts with an estimated value in excess of the Public Procurement Rules (OJEU) threshold, the opportunity must not be published on Contracts Finder until it has first been notified as published in the Official Journal; or
  - (b) the proposed Contract, being a Contract for the execution of works, forms part of a serial programme of works, the terms of which having been previously settled with the Contractor on the basis of the application of a stated addition or deduction to the rates and prices contained in an initial Contract. Such a contract must have previously been awarded competitively following an invitation to tender in accordance with the provisions of (a) above. Such additions or deductions to the rates and prices are subject to a maximum extension under this Rule not exceeding 100% of the original Contract value or £50,000, whichever is the lower. Due consideration must be given to the potential of breaching any EU thresholds.

## CPR13: Tender Invitation

- 13.1 When tenders are invited following public advertisement and hard copy Contract documents are requested, these **must** be sent within five working days of the request being made, provided any specified fee, where applicable, has been paid.
- 13.2 Documents for **all** tender opportunities **must** be made available on the Council's website under the procurement webpages. This will include as a minimum the Invitation to Tender (ITT) document and any separate tender specification.
- 13.3 When tenders are invited for an OJEU Contract, the timescale given to providers to return tenders will be in accordance with the timescales as determined by the EU Public Contracts Directive. Appendix 1 sets out the current timescales.
- 13.4 Reasonable requests for further information relating to the Contract documents will be granted provided the request enables the Council to supply the information not less than six days (or four days in cases of emergency) before the date specified for receipt of completed tenders. Any responses given must be circulated to all known potential Providers and also published alongside the Contract documents on the council website.
- 13.5 Where a potential Provider considers that an enquiry or response will relate to commercially confidential information relevant only to itself and that it should not be circulated to other Participants, it must specify so together with reasons.
- 13.6 If the relevant Head of Service, together with the Head of Legal and Democratic Services and Head of Financial Services consider that, in the interests of a fair and open competition, it cannot respond to an enquiry on a confidential basis, the relevant Head of Service will notify the potential Provider and treat the enquiry as withdrawn. It will then be for the potential Provider to resubmit the enquiry without the requirement for confidentiality if it requires an answer.
- 13.7 If the relevant Head of Service, together with the Head of Legal and Democratic Services and Head of Financial Services consider that the request for a confidential response is justified, then the relevant Head of Service will provide a response which is not circulated to other potential Providers.
- 13.8 Every invitation to tender will state that a tender will only be considered if it is:
- (a) addressed to Ribble Valley Borough Council, marked for the attention of the Head of Legal and Democratic Services, Council Offices, Church Walk, Clitheroe BB7 2RA in a plain sealed envelope or package which shall bear the word "**TENDER**" followed by the subject to which it relates, **but shall not bear any name or mark indicating the sender**;

- (b) accompanied by an undertaking which shall become a condition of the Contract that the amount of the tender has not been calculated by agreement or arrangement with any person other than the Council and that the amount of the tender has not been communicated to any person other than the Council (by way of submission of tender documentation) and will not be communicated to any person until after the closing date for the submission of tenders (except for the purposes of obtaining any bond/surety where this is a requirement of the proposed Contract).

13.9 Tenders submitted by facsimile or electronic transmission will **not** be considered.

13.10 At the point of inviting tenders, the Head of Legal and Democratic Services must be informed of the closing date and time for receipt of tenders in order that necessary arrangements can be put in place for the opening of any tenders received (CPR14 and CPR15).

## CPR14: Receipt of Tenders

- 14.1 Envelopes and packages received in accordance with the provision of CPR 13 shall immediately on receipt be consecutively numbered and be placed in the custody of the Head of Legal and Democratic Services until the time appointed for the opening.
- 14.2 Any officer receiving tenders shall indicate on the envelope or package the date and time of its receipt by them.
- 14.3 Any tender received after the date and time indicated for the receipt of tenders shall not be considered unless in the opinion of the Director of Resources there is clear evidence that the tender was posted through the main council office's letter box or hand delivered at the main council offices before the date for receipt of tenders in which case the relevant Head of Service shall have discretion to admit the tender to opening and consideration. Subject to this exception tenders which are received late shall be retained **unopened** by the Head of Legal and Democratic Services until after the result of the tendering process has been published to tenderers.

## CPR 15: Opening of Tenders

- 15.1 All tenders with an estimated value in excess of £50,000 will be opened by the Head of Legal and Democratic Services or their nominated representative in the presence of the appropriate Committee Chairman or in their absence the Vice Chairman.
- 15.2 All tenders will be opened at the same time and place and shall be immediately signed and dated by the Officers required to be present in accordance with CPR 15.1 above.
- 15.3 The Head of Legal and Democratic Services or their nominated representative will, at the time the tenders are opened, record in the tender register;
- (a) the nature of the goods or materials to be supplied or the work to be executed;
  - (b) the name of each Provider by or on whose behalf a tender was submitted together with the consecutive number endorsed on the tender envelope;
  - (c) the amount of each tender;
  - (d) the date and time of the opening of the tender;
  - (e) the names of the persons present at the opening of the tenders.
- 15.4 The relevant Head of Service will keep securely all tenders with the envelopes received, with a copy being provided to the Head of Financial Services. From the date of the award of the Contract, such records must be retained for a period of no less than 6 years for the successful Provider and 1 year for any unsuccessful Providers, or such longer period as may be required by domestic or EU legislation.



## CPR16: Errors or Discrepancies in Tenders etc.

- 16.1 Where examination of tenders reveals arithmetical or copying errors present in the documents submitted at the time of tender these shall be corrected by the Responsible Officer and details shall be recorded and maintained on the appropriate Contract file. If the correction has the effect that the tender is no longer the most competitive tender then the next tender in competitive order is to be examined and dealt with in the same way.
- 16.2 Where examination of tenders or checking of a priced bill or specification submitted at the Council's request after tenders have been opened reveals errors or discrepancies (other than arithmetical errors in documents submitted at the time of tender as in CPR 16.1 above) which would affect the total tender figure(s) in an otherwise successful tender, the Provider is to be given details of such errors and discrepancies but no other information and afforded an opportunity of confirming or withdrawing their tender in writing. If the tenderer confirms their total tender figure, then all the rates and prices on which the total tender price was based shall be adjusted (upwards or downwards) by the same percentage so as to correspond with the total tender figure (corrected in accordance with CPR 16.1 above if there was also an error or discrepancy requiring to be dealt with under that CPR).
- 16.3 If the Provider withdraws, the next tender in competitive order is to be examined and dealt with in the same way. Any exception to the procedure outlined above may be authorised only by the appropriate Service Committee after consideration of a report from the Head of Service concerned.

## CPR17: Contract Negotiations

- 17.1 Negotiations following the receipt of a Tender shall not apply to any Contract that is governed by EU procurement directives, unless expressly allowed under the EU Procurement Regulations.
- 17.2 The Responsible Officer may negotiate the contract in the manner set out in CPR 17.3 below, subject to approval by the Director of Resources, and provided the terms of the contract remain substantially unaltered. This can only be undertaken where:
- (a) tendering produced no tenders, or inappropriate tenders, for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the approved or budgeted expenditure has changed since tenders were invited, or
  - (b) tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the Contract documents or offer variations on them or the works, supplies or goods fail to meet the tender specification.
- 17.3 The Responsible Officer shall invite all Providers to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the specification or bill of quantities) as the Responsible Officer specifies. All negotiations shall be conducted by at least two officers, **one of whom should not be otherwise involved in the contract evaluation or award**. The Responsible Officer shall keep a written record of all negotiations, including notes of all meetings and the names of those people present.
- 17.4 Clarifications of ambiguous Tenders does not constitute post tender negotiations.
- 17.5 At the conclusion of the post tender negotiation process, those Providers invited to negotiate will be formally invited to submit a best and final offer under the same procedure as for the receipt and opening of original Tenders or quotations.

## CPR18: Acceptance of Tenders

- 18.1 A tender **other than** that which meets the most economically advantageous tender (MEAT) criteria shall not be accepted until the Council or relevant Service Committee have considered and approved a written report from the relevant Head of Service. The MEAT criteria includes the 'Best Price-Quality Ratio' which means price or cost plus other criteria and equates to value for money. The use of Life Cycle Costing must also be ensured in the evaluation of Tenders. The evaluation of such costs must involve the assistance of the Council's Finance Section.
- 18.2 [The scoring of contracts will be undertaken by the relevant Head of Service and a team chosen by them. This team will also include a member of staff involved in procurement from within the Council's Financial Services Section. Scoring will first be undertaken individually and then later moderated as a team to arrive at a consensus score. Details of the scoring methodology will be included within the initial Invitation to Tender documentation.](#)
- 18.3 No Contract may be awarded unless the expenditure involved has been included in approved estimates or in capital or revenue accounts or has been otherwise approved by or on behalf of the Council.
- 18.4 The only exception permitted under this Procedure Rule is where works/supplies/services are ordered on grounds of extreme urgency (e.g. responding to a civil emergency). The Responsible Officer should consult with the Director of Resources and appraise them of the position, so that as soon as practicable arrangements can be made to report the matter to Council or the relevant Service Committee.
- 18.5 No contract with a quoted value in excess of £50,000 shall be awarded until the Director of Resources has checked the Provider's financial standing and provided written confirmation that this is satisfactory for the Contract to be undertaken.
- 18.6 The Responsible Officer shall work with the Procurement Assistant to ensure compliance with OJEU requirements for the publication of Contract Award Notices and provide copies of the Notice(s) to the Head of Legal and Democratic Services and the Director of Resources.
- 18.7 Details of all Contract awards shall be forwarded to the Procurement Assistant for inclusion in the Council's Contracts Register as soon as possible after the award and prior to works commencing. Such notification must also include evidence of the authority to enter into the Contract.

## CPR19: Nominated Sub-Contractors and Suppliers

- 19.1 Contract Procedure Rules apply to the nomination of a sub-contractor or nomination of a supplier for carrying out works or services or supplying goods or materials as part of a larger contract. This would generally be due to the specialist nature of the works, goods or services required.
- 19.2 Where the estimated amount of the sub-contracted work to be undertaken by the nominated sub-contractor, or the estimated value of the goods to be supplied by the nominated supplier does not exceed £50,000 then unless in the opinion of the responsible Director there could be grounds for exemption (in which case CPR5 must be followed in full), competitive written quotations shall be sought in accordance with CPR 6.3.
- 19.3 Where the estimated amount of the sub-contracted work to be undertaken by the nominated sub-contractor, or the estimated value of the goods to be supplied by the nominated supplier exceeds £50,000 then unless in the opinion of the responsible Director there could be grounds for exemption (in which case CPR5 must be followed in full), tenders shall be invited in accordance with CPR 12.
- 19.4 Any exemption from these Contract Procedure Rule requirements must comply with CPR 5.

## CPR20: Form of Contract

- 20.1 Every Contract exceeding £50,000 in value, or below £50,000 where a formal tendering process has been undertaken and in any other case where the Head of Legal and Democratic Services so decides, shall either be documented using an approved Standard Form of Contract or be in writing in a form approved by the Head of Legal and Democratic Services and shall specify:
- (a) the works or services to be performed and/or the goods or materials to be supplied;
  - (b) the parties to the contract including any guarantor;
  - (c) the price to be paid with a statement of discounts or other appropriate adjustments;
  - (d) the time within which the Contract is to be performed or carried out;
  - (e) that the Provider will not assign the Contract without the written consent of the Council;
  - (f) any appropriate restriction on sub-contracting by the Provider;
  - (g) where appropriate that the Provider will pay liquidated damages or other damages to the Council should the terms of the Contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable;
  - (h) any performance bond or parent company guarantee required and the Responsible Officer shall consult with the Director of Resources and Head of Legal and Democratic Services before including or excluding such a requirement in the tender documents;
  - (i) that the Provider will adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974;
  - (j) that the Council may cancel the Contract and recover any loss if the Provider, its employees, agents and sub-providers offer any reward relating to the Contract or commit any offence under the Prevention of Corruption Acts 1889 to 1916 or have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;
  - (k) that the Provider shall comply with UK Data Protection legislation and indemnify the Council in respect of the use, disclosure or transfer of personal data by the Provider, its employees, agents and sub-Providers;

- (l) that the Provider shall not unlawfully discriminate within the meaning of the Equality Act 2010 or any comparable statutory provision relating to discrimination in employment, and shall ensure that all employees, agents and sub-contractors do not unlawfully discriminate, and shall comply with all relevant codes of practice issued by the Equality and Human Rights Commission, or comparable body and, so far as is practicable, operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice;
- (m) that the Provider will indemnify the Council against:
  - any claim which may be made in respect of employers' liability against the Council or the Provider by any worker employed by the Provider or any sub-contractor in the execution of the work or in the provision of goods and services;
  - any claim for bodily injury to, or damage to property of, third parties;
  - any claim which may be made under the Health and Safety at Work etc Act 1974 against the Council or the Provider unless such claim is substantially due to the neglect of the Council or any of its Officers;
- (n) that in respect of (m) above, the Provider will be required to produce satisfactory evidence that they are insured against such claims;
- (o) that Providers shall hold the Council's interests paramount and strictly avoid conflict with other work or their own corporate interests;
- (p) the dispute resolution process to be followed in the event of any dispute;
- (q) the amount of notice period to be recognised by both parties in the event of a change to, or termination of, the Contract;
- (r) the recovery mechanism to be followed should any sum of money become recoverable from or payable by the Provider;
- (s) the requirements of the Freedom of Information Act and the Local Authorities Data Transparency Code;
- (t) that they must comply with the supply chain requirements under the Modern Slavery Act 2015;
- (u) that the Provider must comply with the principles of the Prevent Duty.
- (v) Details of any liquidated damages that may become due as a result of the contract. The calculation of such sums for inclusion in the contract documentation (and any invitation to tender where applicable) is to be undertaken with the assistance of the Financial Services section.

## CPR21: Execution of Contracts

- 21.1 Contracts with a value of less than £50,000 may be signed by the relevant Director.
- 21.2 Every Contract which exceeds £50,000 in value shall either be signed for and on behalf of the Council by the Chief Executive or Director of Resources or be executed as a deed.
- 21.3 A copy of such signed Contracts or Deeds must be retained by the legal section.

## CPR22: Contract Variation After Award

22.1 Where, after contract award, by reason of any extra or variation (other than a Contract extension under CPR 12.1(b)) it is apparent that:

- (a) the tender sum is to be exceeded by ~~40~~5 per cent; or
- (b) a timeframe variation would extend the Contract period by more than three months or by 50 per cent of the original Contract period; or
- (c) if the works, services or goods to be added or deleted from the Contract are substantially different in scope

the relevant Head of Service shall report in writing the same immediately to the Director of Resources and Head of Legal and Democratic Services.

22.2 Should further variations as set out in CPR 22.1 above arise after the Head of Service's initial report, these further variations shall also be reported as set out in CPR 22.1 above.

22.3 Details of all variations shall be recorded in the contract file and shall be reported to the appropriate Service Committee on a regular basis, and also as part of the regular monitoring/budgetary control process ensuring compliance with Financial Regulations.

22.4 In the case of any contracts covered under the EU Regulations, where the Contract Value increases by 50% or more from that at the point of Contract Award, then the tender opportunity must be re-advertised. The reporting requirements at 22.1 to 22.3 above must also be followed.



# ANNEX 1: EU Procurement Directives – Thresholds and Procedures

**FOR INFORMATION ONLY  
NOT FORMING PART OF THE COUNCIL'S ADOPTED CONTRACT PROCEDURE RULES**

**Any procurements that encompass these regulations must ensure involvement of the Head of Financial Services and Head of Legal and Democratic Services**

## Purpose

The purpose of the EU procurement rules, underpinned by the Treaty principles, is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition. The EU rules reflect and reinforce the value for money focus of the Government's procurement policy. This requires that all public procurement must be based on value for money, defined as 'the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought', which should be achieved through competition, unless there are compelling reasons to the contrary.

## Current Thresholds (January 2018~~20~~20)

	Value over the full anticipated lifetime of supply £
Supplies and Services	<u>189,330</u> <del>181,302</del>
Light touch regime services (Previously 'Part B' services)	<u>663,540</u> <del>615,278</del>
Works	<u>4,733,252</u> <del>4,551,413</del>
<del>PIN</del>	<del>615,278</del>
Small lots (Services)	<u>70,778</u> <del>65,630</del>
Small lots (works)	<u>884,720</u> <del>820,370</del>
<u>Utilities (Supplies and Services)</u>	<u>378,660</u>
Utilities (Works)	<u>4,733,252</u> <del>4,551,413</del>
<u>Utilities (Small Lots Supplies and Services)</u>	<u>70,778</u>
<u>Utilities (Small Lots Works)</u>	<u>884,720</u>

The value of a contract is the expected amount of consideration (in money or money's worth) that will be received by the person or organisation that carries out the works or provides the services or supplies, **over the full anticipated lifetime of supply.**

## Procurement Routes and Time Limits

### *Open Procedure*

This procedure is generally used where the expected number of responses is likely to be manageable. Any organisation expressing an interest in an advertised opportunity is invited to tender and is directed to the online tender pack. This must be completed fully and returned with any requested supporting information by a specified date and time. A panel of officers evaluate responses against pre-set criteria and the highest scoring tenderer is awarded the contract.

<b>Normal Minimum Time Limit</b>	<b>If Urgent</b>	<b>Where Prior Information Notice Published</b>	<b>Normal Minimum Time Limit for Local Government</b>
Minimum time limit for receipt of tenders 35 days	Minimum time limit for receipt of tenders 15 days	Minimum time limit for receipt of tenders 15 days	-

### *Restricted Procedure*

This procedure is generally used if a high level of interest is anticipated. This procedure requires organisations who express an interest to undergo an initial pre-qualification assessment to appraise such things as their economic and financial standing, capability and capacity and compliance with Health and Safety and Equal Opportunities. Normally organisations are sent a pre-qualification questionnaire which must be completed fully and returned by a specified date and time. A panel of officers evaluate responses against pre-set criteria and the most suitable applicants are then invited to tender.

<b>Normal Minimum Time Limit</b>	<b>If Urgent</b>	<b>Where Prior Information Notice Published</b>	<b>Normal Minimum Time Limit for Local Government</b>
Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for tenders 30 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In absence of agreement minimum time limit 10 days

### ***Competitive Procedure with Negotiation***

Under the Competitive Procedure with Negotiation, any Supplier may request to participate in the exercise. The council makes an initial evaluation of the candidates based upon the grounds of exclusion and the selection criteria published in the contract notice. It may limit the number of suitable candidates to be invited to participate in the procedure. The council then invites its chosen Suppliers to submit an initial tender.

The council will negotiate with tenderers the initial and all subsequent tenders submitted, except for the final tender, to improve their content. The minimum requirements and the award criteria are not subject to negotiation.

<b>Normal Minimum Time Limit</b>	<b>If Urgent</b>	<b>Where Prior Information Notice Published</b>	<b>Normal Minimum Time Limit for Local Government</b>
Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for initial tenders 30 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In absence of agreement minimum time limit 10 days

### ***Competitive Dialogue***

This is an option that allows for bidders to develop alternative proposals in response to the council's outline requirements. Only when their proposals are developed to sufficient detail are tenderers invited to submit competitive bids. The aims are to increase value by encouraging innovation and to maintain competitive pressure in bidding for complex contracts.

<b>Normal Minimum Time Limit</b>	<b>If Urgent</b>	<b>Where Prior Information Notice Published</b>	<b>Normal Minimum Time Limit for Local Government</b>
Minimum time limit for requests to participate 30 days	-	-	-
No time limits for submission of initial/subsequent tenders	-	-	-