

Section 6 - Contract Procedure Rules

Whole contract period total Value Excluding VAT *	Competition	Advertising and Process	Authority to procure	Authority to award a contract/ appoint contractor (signing/ sealing)
<u>Low value</u> Below £25,000	Evidence best value	<ul style="list-style-type: none"> • Best value must be demonstrated. <ul style="list-style-type: none"> ○ This might be a comparison of costs for services that you have procured previously and where you understand and can evidence the costs. ○ Or, where you have been able to compare costs with information published such as catalogues or framework pricing. • Consider local suppliers and/or local voluntary, charity and social enterprise (VCSE) sector interest. • Otherwise, identify at least three suppliers to obtain a simple quote. • The procurement process can be undertaken outside of the council's e-tendering portal. • Where the opportunity is above £20,833 you must publish a contract award notice on Central government's Contracts Finder. 	Director's delegated authority under Scheme of Delegation	<p>Operational decisions-Only assistant director or above are authorised to award and sign a contract.</p> <p>Key Decisions:</p> <p>Only assistant director or above are authorised to award and sign a contract, subject to approval or specific delegation by cabinet/cabinet member.</p>
<u>Medium Value</u> £25,001 to £75,000	4 quote process	<ul style="list-style-type: none"> • A minimum of 4 competitive quotes sought from appropriately qualified and competent suppliers. • Include at least two suppliers within the county and/or local VCSE and /or SME sector interest where appropriate. • Where 4 suppliers cannot be identified, the opportunity must be: <ul style="list-style-type: none"> ○ Openly advertised using the councils e-tendering portal or ○ Procured via a compliantly let framework agreement. (Note: framework agreements must have more than one supplier). • The procurement process for both scenarios must be undertaken using the council's e-tendering portal, unless another method has been approved by commercial services. 	<p>Director's as per delegated authority under Scheme of Delegation and FPR authorised spend levels</p> <p>Procurement above £50,000. Decision must be recorded as operational or non-key officer decision</p>	<p>All amounts exclude VAT.</p> <p>The following must be sealed by the council: contracts above the key decision value (£500,000);</p>

Whole contract period total Value Excluding VAT *	Competition	Advertising and Process	Authority to procure	Authority to award a contract/ appoint contractor (signing/ sealing)
		<ul style="list-style-type: none"> Where the opportunity is being openly advertised and is above £20,833, the opportunity must also be advertised on Central government's Contracts Finder. Advertising in trade journals and other local publications if appropriate (recommended). Where the opportunity is above £20,833 you must publish a contract award notice on Central government's Contracts Finder. 	Procurement that is above the key decision value (£500,000) must be subject to approval by cabinet/cabinet member.	all building and works-related contracts; and, other high risk contracts (as advised by Legal Services) where a longer limitation period of 12 years is required.
<p>High Value £75,001 to:</p> <ul style="list-style-type: none"> £177,897 (goods and services £213,477 Incl VAT) £4,447,447 (works £5,336,937 Incl VAT) £552,950 (light touch regime for health/ social services £663,540 Incl VAT) 	Open tendering	<ul style="list-style-type: none"> Open tendering procedures must be followed. The opportunity must be advertised using the Invitation to Tender template to the open market or Make the purchase via a compliantly let framework agreement. (Note: framework agreements must have more than one supplier). The procurement process must be undertaken using the council's e-tendering portal, unless another method has been approved by commercial services. The opportunity must also be advertised on Central government's Contracts Finder. Where the opportunity is above £20,833 you must publish a contract award notice on Central government's Contracts Finder. 		

Part 4 – Procedure Rules

Updated: 30 January 2022

Unless otherwise stated all figures **exclude VAT**

*Note UK Threshold Figures have changed on 1st January 2022 (PPN 10/21) they have also been stated as including VAT, a departure from previous updates. In order to maintain continuity in these rules we have included the excluding VAT figures where thresholds are referred to.

Whole contract period total Value Excluding VAT *	Competition	Advertising and Process	Authority to procure	Authority to award a contract/ appoint contractor (signing/ sealing)
<p>UK Tenders. Over:</p> <ul style="list-style-type: none"> • £177,897 (goods and services £213,477 Incl VAT) • £4,447,447 (works £5,336,937 Incl VAT) • £552,950 (light touch regime for health/ social services £663,540 Incl VAT) 	Use UK compliant procedures	<ul style="list-style-type: none"> • Open tendering procedures must be followed, or • Make the purchase via a compliantly let framework agreement. (Note: framework agreements must have more than one supplier). • The procurement process must be undertaken using the council's e-tendering portal, unless another method has been approved by commercial services. • The opportunity must also be advertised on Central government's Contracts Finder and the UK Find a Tender service (FTS). Contract award notices must also be published on these portals. • Seek advice and support from the Commercial Services Team before progressing the procurement. 		
<p><u>Framework Agreements</u></p>	<p><u>New framework</u> Use one of the above procedures relative to the framework value.</p>	<p>The opportunity must be advertised and undertaken utilising the council's e-tendering portal. The opportunity should also be advertised using:</p> <ul style="list-style-type: none"> • FTS advert and contract award notice (where above UK threshold); and, • Central government's Contracts Finder (mandatory); or, • Make the purchase via a compliantly let framework agreement. 		<p>New frameworks must be sealed by the council</p>

Part 4 – Procedure Rules

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Whole contract period total Value Excluding VAT *	Competition	Advertising and Process	Authority to procure	Authority to award a contract/ appoint contractor (signing/ sealing)
		You must follow the procedure set out in the framework agreement for direct awards and mini competitions.		

Part 4 – Procedure Rules

Updated: 30 January 2022

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INTRODUCTION

What are Contract Procedure Rules?

- 4.6.1 The Contract Procedure Rules (CPRs) provide the policy for procurement activity across the council, setting out how contracts for goods, works, services and utilities should be put in place and managed, and detailing the record keeping and reporting requirements related to procurement activity. They apply to all services across the council.
- 4.6.2 The CPRs should not be seen in isolation, but rather as part of the overall regulatory framework of the council as set out in the Constitution.
- 4.6.3 The content of these CPRs is supported by additional guidance and documentation contained in the Commercial Services section of the council intranet.

Why are CPRs Needed?

- 4.6.4 The Local Government Act 1972 requires the council to have standing orders for how it enters into contracts. These CPRs are the standing orders required by the 1972 Act. They form part of the council's Constitution and are, in effect, the instructions of the council to officers and elected members for entering into contracts on behalf of the council. The purpose of these CPRs is to set clear rules for the purchase of works, goods, services, consultancy, grants and concessions for the council and are intended to promote good purchasing practice, public accountability and to deter bribery and corruption, in which the probity and transparency of the council's procurement process will be beyond reproach or challenge. In acting on behalf of the council, officers must also have regard to any guidance and procedures issued to support compliance with CPRs.
- 4.6.5 The council is also subject to UK law with regard to public procurement, which requires all contract procedures, of whatever value, to be open, fair and transparent. These CPRs and associated guidance provide a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the council has a procurement regime that is fully accountable and compliant with UK law.
- 4.6.6 The council is under a legal duty to promote Best Value and to consider the Public Services (Social Value) Act 2013 and the Public Sector Equality Duty and every officer engaged in the letting of contracts shall have regard to these duties and associated council policies. Where compliance with these duties contradicts the requirements of any statutory legislation or specific best practice guidance, the views of legal and commercial services teams must be obtained.
- 4.6.7 The CPRs apply to all contracts for the supply of works, goods, services, consultancy, grants and concessions to the council, regardless of value. The CPRs do not apply to:
- (a) Contracts for the actual purchase or sale of any interest in land (including leasehold interests) for which the financial regulations applies. Note that this

does not apply to any external professional services linked to the purchase or sale.

- (b) Contracts of employment for the appointment of individual members of staff, including members of staff sourced through employment agencies under a corporate contract.
- (c) Grant agreements, where the council is giving an unconditional grant.
- (d) Sponsorship agreements regulated by the sponsorship rules.
- (e) Supply of works, goods and services by the council. However, the solicitor to the council must be consulted where the council is contemplating this route.
- (f) Contracts procured in collaboration with other local authorities where the council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the council). The CPRs of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own contract procedure rules.
- (g) Litigation advice and services.

4.6.8 **Authority to conduct procurement activity**

The authority for an officer to undertake;

- (a) a procurement;
- (b) award a contract;
- (c) extend or vary a contract;
- (d) terminate a contract during a contract period (early contract termination).

is provided by either of the following;

- (a) scheme of delegation either as an operational or non-key executive decision,
- (b) any key executive decision for example through a Cabinet or Cabinet member decision.

Basic Principles

4.6.9 All procurement procedures must:

- (a) Realise value for money by seeking to achieve the optimum combination of whole life costs and quality of outcome,
- (b) Be consistent with the highest standards of integrity,
- (c) Operate in a transparent manner,
- (d) Ensure fairness in allocation of public contracts,
- (e) Support all relevant Council priorities and policies including the Medium Term Financial Plan,
- (f) Comply with the Council's Procurement Strategy, the Social Value Statement, and:
- g. Comply with all legislative requirements including Public Contract Regulations (2015) Procurement Principles, which are as follows:

- i. transparency - contract procedures must be transparent and contract opportunities should generally be publicised;
- ii. equal treatment and non-discrimination - potential suppliers must be treated equally;
- iii. proportionality - procurement procedures and decisions must be proportionate;
- iv. – procurement procedures must be designed in a manner that does not intentionally seek to exclude it from the rules

(g) Be funded through the allocation of an appropriately established budget.

4.6.10 These Rules shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise

Operational or non-key executive decisions

4.6.11 Where the scheme of delegation provides the authority and in accordance with financial procedure rules:

- (a) officers as agreed by the director or assistant director in the corporate centre may authorise commencement of a procurement activity or commencement of a contract variation activity for total aggregate contract value up to £25,000.
- (b) managers who report to heads of service may authorise commencement of a procurement activity or commencement of a contract variation activity for total aggregate contract value up to £100,000.
- (c) heads of service (as defined by head of service pay grades) may authorise commencement of a procurement activity or commencement of a contract variation activity for total aggregate contract value up to £250,000.
- (d) assistant directors, directors or the chief executive (as defined by the requisite pay grade) may authorise commencement of a procurement activity, or commencement of a contract variation activity for total aggregate contract value up to £500,000.
- (e) Commencement of a procurement activity, or contract variation for a contract in excess of £500,000 must be authorised by directors or the chief executive (as defined by the requisite pay grade).

4.6.12 Where an award of a contract is above £50,000, a decision will be required and will need to be published, including the financial amount in the decision / recommendation. Additionally, a decision will be required for procurements of contracts jointly with one or more other contracting authorities.

4.6.13 Where a contract extension is incorporated in the original contract agreement and the aggregate value of the contract is under £500,000 there is no need for a new decision, if the original decision to procure/award the contract authorised the extension.

A decision will be required for:

- (a) Contract extensions where the aggregate value of the contract is above £50,000, if the original decision did not authorise the extension.

- (b) All contract extensions where the aggregate value of the contract is £500,000 or above.
- (c) Contract extension where the extension was not incorporated as part of the original contract agreement, as this is deemed to be a contract variation.

For contract variations where the aggregate value of the contract is above £50,000, a decision will be required and must be published.

Additionally, a decision will also be required for variations where:

- (a) Extension of contracts where the extension was not incorporated as part of the original contract agreement.
 - (b) Price increases in contracts where the proposed price increase is either:
 - Above that provided for in the contract; or
 - Above inflation (consumer price index (CPI))
- 4.6.14 Officers must give due regard to the CPR Guidance which sets out the required approval process for contract variations, extensions and exemptions to the CPRs.

Key Executive Decisions

- 4.6.15 Where the authority to commence a procurement activity, contract variation or award a contract is from a key decision taken (for example a capital investments programme decision), the scope of the authority must be set out as a recommendation in the decision and procurement options considered must be documented as an element of the report.

Planning a Procurement

- 4.6.16 Sufficient planning time must be built into any procurement activity to allow for adequate pre-tender market engagement /testing where relevant, development of good quality specifications and tender documentation, and a reasonable time for the market to respond to the tender paying due regard to the recommended procurement timescales which can be found on the commercial services intranet pages.
- 4.6.17 When engaging with potential suppliers, the council must not seek or accept technical advice on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, and where this may prejudice the equal treatment of all potential bidding organisations or distort competition.

Specifications and Options appraisal

- 4.6.18 At the start of any commissioning activity that will require a procurement, the commissioning officer must develop and present service specifications and/or existing service designs for approval with the requisite business case or service plans that identifies at a minimum:
- (a) Why the service is being commissioned; what is the need?
 - (b) What is the best form of community or service-user engagement or consultation? Consideration should be given to how service users can

actively participate in the designing, delivery and quality-monitoring of their service.

- (c) Which social value outcomes will be achieved from the commissioning exercise, and how can it contribute towards meeting the council's overall priorities.
- (d) Alternative options that have been considered.
- (e) Financial implications.
- (f) Risks associated.

4.6.19 Decisions must clearly document the procurement options considered and recommendations to be taken forward.

Procurement Thresholds

4.6.20 **Low value contracts/purchases (under £25,000)** – no requirement for formal quotations or tender process but officers must be able to demonstrate value for money has been obtained and that all other relevant aspects of the CPRs have been followed and can be evidenced.

Officers must use appropriate council templates for quotation requests and contracts when engaging suppliers for goods/services where appropriate. These can be found on commercial services intranet pages.

Consideration must be given as to whether the procurement would be of interest to local suppliers and/or local voluntary, charity and social enterprise (VCSE) sector, who should be engaged to provide quotations where appropriate to do so.

A contract award notice must be published on Contracts Finder for all quotes/tenders above the value of £20,833.

4.6.21 **Medium value contracts/purchases (between £25,001 and £75,000)**

No contract with an estimated total cost over £25,001 shall be let, or any purchase of that value made, unless at least four written quotations have been sought from appropriately qualified and competent suppliers, suppliers within the county and/or local VCSE and /or SME sector where appropriate.

Formal tender documents must be used outlining the terms of the procurement. Tender must be advertised for a minimum of 15 working days.

For closed competitions up to £25,000, e-mail can be used to obtain quotes. The council's e-tendering portal should normally be used to obtain quotations with a value above £25,000. Other mechanisms may be used having secured written approval from the Commercial Services Team where the value of the contract is very low and/or the contract is of a specialist nature.

For purchases where four appropriately qualified and competent suppliers cannot be identified you must either: advertise the opportunity to all suppliers using the council's e-tendering portal; or, make the purchase via a compliantly let Framework Agreement. Regard should also be given to advertisement of the opportunity within trade journals and other publications as appropriate.

Contracts with an estimated total value of over £25,000 that are openly advertised must also be advertised on Central government's Contracts Finder.

A contract award notice must be published on Contracts Finder for all quotes/tenders above the value of £20,833.

4.6.22 High value contracts/purchases (between £75,001 and up to relevant UK threshold Limit)

Open tendering procedures must be followed.

Formal tender documents must be used to outline the terms of the procurement.

All tenders must be advertised on Central Government's Contracts Finder and the council's e-tendering portal. Contract award notices must also be published on Contracts Finder.

Tender must be advertised for a minimum of 15 working days

4.6.23 Above the relevant UK threshold limit (currently £177,897 (£213,477 Incl VAT) for goods and services, £4,447,447 (£5,336,937 Incl VAT) for works and £552,950 (£663,540 Incl VAT) for light touch regime services)

Contracts with a value in excess of the relevant UK threshold must be let in accordance with the relevant procurement legislation. Formal tender documents must be used and the entire process of advertising, selecting suppliers to tender, through to final award, is highly prescribed under UK law for all procurements over the relevant threshold. Advice must be sought from the commercial services team before commencing projects of this nature (including ensuring sufficient time is allowed to carry out a compliant process, which can take up to 18 months to prepare).

Note UK Threshold Figures have changed on 1st January 2022 in line with Procurement Policy Note 10/21. New figures are now stated as including VAT. This a departure from previous updates. However for the purposes of advertising, the estimated contract value will continue to be provided exclusive of VAT. Similarly for contract award notices, these will continue to be published exclusive of VAT.

Therefore in order to maintain continuity in these rules and avoid confusion we have included the excluding VAT figures where these thresholds are referred to.

Reserving below UK threshold procurements

4.6.24 In line with Procurement Policy Note 11/20, on a case by case basis, supplier participation in procurements below the UK threshold may be reserved:

- (a) By supplier location - this means being able to run a competition and specify that only suppliers located in a geographical area can bid; and
- (b) For Small and Medium sized Enterprises (SMEs) / Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.

4.6.25 The provision of 4.6.24(a) only applies to services contracts where it is necessary and expedient to do so to enable or facilitate compliance with a duty imposed by section 1 of the Public Services (Social Value) Act 2012.

4.6.26 Specific considerations and criterion must be met when using the provision of 4.6.24, therefore officers must engage with Commercial Services for further guidance and written approval to use this provision.

EVALUATION CRITERIA AND STANDARDS

Evaluation Criteria

4.6.27 In any procurement exercise the successful bid should be the one which either:

- (a) Offers the lowest price, or:
- (b) Offers the most economically advantageous balance between quality and price.

The choice between (a) or (b) must be based on careful consideration as to whether price alone or price and quality must be used to determine the successful bid.

In the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, social value, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion.

4.6.28 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids. The criteria can include, for example sustainability considerations, support for the local economy, or the use of subcontractors. The bidding organisations' approaches to continuous improvement and setting targets for service improvement or future savings could also be included. All criteria must relate to the subject matter of the contract, be in line with the Council's corporate objectives and must be objectively quantifiable and non-discriminatory.

4.6.29 These criteria should be assessed through either:

- (a) Essential Criteria – assessed on a pass / fail basis, or:
- (b) Technical Questions – assessed on a scored basis.

4.6.30 The procurement documentation should clearly explain the basis of the decision to bidding organisations, making clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria

4.6.31 As part of the evaluation process the Council must undertake due diligence checks which seek to determine the commercial stability of the shortlisted Bidders to inform the decision to award a contract. This can include:

- (a) Search on the governments Companies House database
- (b) A recent credit report on the organisation
- (c) An assessment of completed financial workbook
- (d) A recent assessment of fraud

Awarding a contract (signature and sealing).

4.6.32 Where the scheme of delegation provides the authority:

- (a) service directors and directors within the relevant directorate (as defined by the requisite pay grade) have authority to award and sign a contract, authorise a contract variation/ extension or authorise an early contract termination of a contract value up to £500,000
- (b) directors within the relevant directorate (as defined by the requisite pay grade) and the chief executive have authority to sign a contract, authorise a contract variation/ extension or authorise an early contract termination of a contract value in excess of £500,000, providing authority to award the contract has been obtained by way of a key decision.

4.6.33 Contracts can be signed by the authorised officer as set out in 4.6.32 however contracts must be executed as deeds by affixing the common seal of the council in the following circumstances::

- (a) contracts above the key decision value – unless agreed otherwise by legal services;
- (b) new framework agreements;
- (c) all building and works-related contracts – unless agreed otherwise by legal services;
- (d) where there is no consideration (i.e. money or money's worth) by one party (e.g. grant agreements, where the council is paying a voluntary sum to an organisation but the organisation is not giving anything in return); and,
- (e) other high risk contracts (as advised by legal services) where a longer limitation period of 12 years is required.

4.6.34 Before a contract can be sealed by the council, the officer must provide legal services with the relevant decision to award in writing from the appropriate decision maker. The sealing of the contract by legal services is simply affixing the common seal and does not indicate that legal advice has been sought or that legal services approve the contract.

4.6.35 Officers shall ensure that each contract is entered into in accordance with the finance procedure rules.

Exemptions (Waivers)

- 4.6.36 An exemption to the CPRs is a permission to proceed without complying with one or more of the rules. Officers are responsible for ensuring that exemptions to the rules are approved in advance of any action undertaken in all instances where CPRs cannot be complied with such as, but not limited to: no quotations have been sought or the purchase cannot be made via a compliant framework agreement. If an application to let a contract without genuine competition is granted, the officer responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value.
- 4.6.37 Exemptions from the contract procedure rules should be by exception and not standard practice. Exemptions should not be considered for administrative convenience or because of lack of time caused by inadequate forward planning.
- 4.6.38 An “Exemption to Contract Procedure Rules” form must be completed by the officer seeking the exemption, and must provide evidenced reasons as to the legitimate need for the exemption to be granted.
- 4.6.39 The exemption form must be completed in consultation with commercial, finance and legal services, and the completed form considered by the assistant director or director as the accountable officer. Based on this judgement the assistant director or director will agree or not, the validity of the exemption.
- 4.6.40 All exemptions must be supported by a decision, the reasons for the exemption, appointment of the supplier and value for money justification of that appointment must be published as part of the decision to award the contract.
- 4.6.41 Officers must ensure completed exemption forms are returned to commercial services who will record them on the exemptions register.

Urgent decisions

- 4.6.42 Tenders need not be invited in accordance with the provisions of the council’s CPRs if an urgent decision is required, for example for the protection of life or property or to maintain the functioning of a public service, if in the opinion of the relevant Director it is considered to be in the council’s interests or necessary to meet the council’s obligations under relevant legislation.
- 4.6.43 The council must be able to evidence that it is a genuine emergency, that the events causing extreme urgency were unforeseeable, that is impossible to comply with the usual timescales for a procurement including through a framework or accelerated procurement, that the situation is not attributable to the council (contracting authority).
- 4.6.44 Wherever possible though, at least 3 credible quotations must be sought and any decision made or contract awarded shall be reported to the relevant director and cabinet member.

4.6.45 Such emergency contracts should be let for as short a period as possible to allow their replacement with a contract that is fully compliant with the CPRs at the earliest practical opportunity.

4.6.46 A formal record of the decision to award a contract must be published for contract values above £50,000 and financial value included within the decision.

Contract Management

4.6.47 Every contract entered into by the council will have a contract manager appointed by the relevant Director or Assistant Director in the Corporate Centre to manage that contract.

4.6.48 All contracts over £5,000 are to be entered on the council's contract register by the contract holder in order to comply with the transparency information/code. This information should be updated if there is a change in the contract value. Contracts and commissioning officers are to update and add additional contracts to the register, as they are let, using the register to inform subsequent tender planning.

4.6.49 The contract manager shall manage the contract throughout its life cycle in accordance with the council's Contract Management Framework and in particular shall:

- a) Classify the contract as Tier-3 "routine", Tier-2 "focused /leveraged", "and Tier-1 "strategic" by value and risk;
- b) Undertake a series of activities for each stage of the contract's life cycle – set up, delivery and exit; and
- c) Undertaking a formal contract review in accordance with the framework

4.6.50 The contract manager shall manage the contract throughout its life cycle having regard to the council's Contract Management Toolkit and good contract management practices.

Training

4.6.51 Where appropriate any officer leading a procurement activity shall be appropriately trained or have experience commensurate with the nature of the procurement activity being undertaken.

4.6.52 Where appropriate any officer designated contract management responsibilities shall be appropriately trained or have experience commensurate with the nature of the contract management activity being undertaken.

4.6.53 Completion of the Council's introductory finance and procurement module shall be mandatory for all officers with designated contract management or procurement responsibilities.