

# CONSTITUTION – PART 4 – CONTRACT PROCEDURE RULES

(Last revised May 2022)

## Contract Procedure Rules

### 1. INTRODUCTION

- 1.1 These Contract Procedure Rules (“CPR”) meet the requirements set out in section 135 of the Local Government Act 1972 for the Council to have standing orders covering how it enters into contracts. They are part of the Council's Constitution and instruct Council officers and members on the process for entering into contracts on behalf of the Council.
- 1.2 The purpose of the Rules is to provide clear procedures for the purchase of goods, services and works to ensure that the Council obtains value for money and has in place a procurement system of integrity and accountability to prevent unfair and unlawful practices including fraud and corruption.
- 1.3 Every Contract shall comply with all relevant applicable legislation and government guidance including;
  - (a) UK Law
  - (b) Acts of Parliament
  - (c) Statutory Instruments including, but without limitation, the Public Contracts Regulations 2015.
- 1.4 These Rules apply to all relevant contracts. A relevant contract is any arrangement made by, or behalf of the Council for the carrying out of works or for the supply of goods, materials or services. Relevant contracts do not include contracts of employment, interests in land, and financial instruments(including, but without limitation, shares, bonds, bills of exchange, future or options contracts) (which are covered by the Financial Procedure Rules). They also do not apply to the supply of works, goods and services by the Council.
- 1.5 Where the Council has awarded a contract to any person to supervise or otherwise manage a contract on its behalf such a person shall be required to comply with these Rules as if they were an Officer of the Council.
- 1.6 The Council’s Corporate Procurement Unit provides specialist advice and guidance on procurement and should be consulted in respect of all procurements in excess of £25000. The Corporate Procurement Unit is also responsible for administering procurements through the quotation, tendering, evaluation and award stages.

1.7 Where the total contract value for procurement is within the values in the first column of Tables 1 and 2, below, the procedure in the second column must be followed.

**Table 1: Goods, Services and Works (excluding Social & Other Specific Services)**

Total Value	Requirement for Competition	Authority to accept bids subject to budget provision	Evaluation	Signature
Below £25k  -exclusive of VAT	Recommend seeking 3 written quotations. No formal competitive process required but need to be able to demonstrate value for money.	Director or officer s/he has delegated to in writing	Value for Money	Director
£25k-£75k  -exclusive of VAT	At least 3 competitive quotations invited which must be advertised using the E-Sourcing System and published to Contracts Finder. Whenever possible, be based in the Leeds City Region or North Yorkshire County areas.	Director or officer s/he has delegated to	Price or MEAT	Director
£75k to Above UK Procurement Threshold (Currently being £177,898 (exclusive of VAT VAT £213,477 (**inclusive of VAT)) for services and £4,447,448 (exclusive of VAT) £5,336,937	Formal tender process using the E-Sourcing System and published to Contracts Finder.	Director up to £150,000 for revenue expenditure or £250,000 for capital expenditure Cabinet Members up to £500k Over £500k Cabinet	MEAT unless exception granted	Director can sign but contracts for works must be under seal

(**inclusive of VAT) for works )				
Above UK Procurement Threshold	Above UK Procurement process as advised by Corporate Procurement Unit and Legal Services	As above	MEAT unless exception granted	Chief Solicitor or Head of Legal & Governance must sign and contracts for works must be under seal

\*\*When calculating the estimated value of the contract to determine whether the regulations apply, the contract value estimation should be inclusive of VAT

## Table 2: Social & Other Specific Services

The Public Contracts Regulations 2015 (“the Regulations”) contain a specific set of rules (often referred to as ‘light touch regime rules’) for certain services that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list also includes Legal services, and some catering provisions (this is not an exhaustive list) .

Total Value	Requirement for Competition	Authority to accept bids subject to budget provision	Evaluation	Signature
Below £25k -exclusive of VAT	Recommend seeking 3 written quotations. No formal competitive process required but need to be able to demonstrate value for money.	Director or officer s/he has delegated to in writing	Value for Money	Director
£25k-£75k -exclusive of VAT	Invitation to Quote (ITQ) At least 3 competitive quotations invited which must be advertised using the E-Sourcing System and published to Contracts Finder. Whenever possible, be based in the Leeds City	Director or officer s/he has delegated to	Price or MEAT	Director

Total Value	Requirement for Competition	Authority to accept bids subject to budget provision	Evaluation	Signature
	Region or North Yorkshire County areas.			
£75k to Above UK Procurement Threshold (currently £552,950 (exclusive of VAT £663,540 (**inclusive of VAT)	Invitation to Tender (ITT) Formal tender process using the E-Sourcing System and published to Contracts Finder.	Director up to £150,000 for revenue expenditure or £250,000 for capital expenditure Cabinet Members up to £500k Over £500k Cabinet	MEAT unless exception granted	Director can sign but contracts for works must be under seal
Above UK Procurement ThresholdTenders – (Light Touch Regime)	Above UK Procurement Threshold process as advised by Corporate Procurement Unit and Legal Services	As above	MEAT unless exception granted	Chief Solicitor or Head of Legal & Governance must sign and contracts for works must be under seal

\* Officers should consult with the Corporate Procurement Unit to confirm what contracts qualify for the Light Touch Regime.

\*\*When calculating the estimated value of the contract to determine whether the regulations apply, the contract value estimation should be inclusive of VAT

## 2. STEPS TO BE TAKEN PRIOR TO UNDERTAKING ANY PROCUREMENT PROCESS

2.1 Prior to undertaking any procurement process officers must:

- i. ascertain whether a contractual arrangement is already in place or central purchasing arrangements exist or are being contemplated;
- ii. appraise the need for the expenditure and its purpose;
- iii. define the objectives of the purchase;
- iv. ascertain whether the service can be undertaken in-house from within the Council's own resources;

- v. consider what procurement method is most likely to achieve the purchasing objectives, including using a framework agreement, consortium, collaboration with other purchasers, partnering and long-term relationships;
- vi. identify the budget/source of funds and obtain any internal approvals that may be required;
- vii. estimate and establish the value and record how that estimate was arrived at. In order to establish the correct value of a procurement the 'whole life costing' needs to be taken in to account. This means the value of the supplies, services or works over their lifetime from inception to disposal including running and maintenance costs, training and any appropriate sustainability issues;

### **3. RULES APPLICABLE TO ALL CONTRACTS**

#### **Compliance**

- 3.1 Every contract entered into on behalf of the Council must comply with these CPR's; the Council's Financial Procedural Rules; and all relevant legislation.
- 3.2 Each Director is responsible for ensuring that his/her service complies with these CPR's and for keeping adequate records to show such compliance. A Director may authorise another officer to carry out his/her duties in respect of a particular contract or contracts generally.
- 3.3 All members of staff engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these CPR's.
- 3.4 Work must not begin under a contract until the contract document has been signed by both parties (or, if the only contract document is a purchase order, until the purchase order has been issued).
- 3.5 Non-compliance with these CPR's may lead to serious financial and reputational damage to the Council and may constitute grounds for disciplinary action including gross misconduct.

#### **Legal Authority and Key Decisions**

- 3.6 Officers shall ensure that the Council has the legal authority to enter into any contract and that in respect of all contracts, regardless of whether they involve the procurement or provision by the Council of works, supplies, Services or Social and Other Specific Services, Directors shall ensure that no contract shall be entered into which is ultra vires.
- 3.7 Where the decision to let a contract amounts to a Key Decision under the Constitution, Officers shall ensure that it is entered on to the Forward Plan and treated as a Key Decision in all respects. Further Guidance on Key Decisions can be obtained from Legal Services and/or Democratic Services.

#### **Conflicts of Interest**

- 3.8 All members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Officer's Code of Conduct, which all employees of the Council have agreed to be bound by.
- 3.9 To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required. This must be completed by all members of the evaluation panel upon commencement of the project. Such documentation is available from the Corporate Procurement Unit.
- 3.10 If an elected member of the Council or a member of staff has an interest, financial or otherwise, in a contract or proposed contract, then that member must declare it in writing to the Monitoring Officer as soon as he/she becomes aware of the interest and if an employee then he/she must complete the outside interests declaration form and send it to Directorate Support.
- 3.11 An elected member or member of staff who has an interest in a contract must not take part in the procurement or management of that contract.

### **Valuation of Contracts & Aggregating Requirements and Purchases**

- 3.12 The Director responsible for each contract must record an estimated value for the contract before any offers are sought.
- 3.13 The value of a contract is the total amount that the Council expects to pay or receive for the contract, including any contract extension period. This may be a lump sum or the total of periodic payments. All Calculations for above Threshold contracts must be made inclusive of VAT. If the contract is for an indefinite term, the value is the amount the Council expects to pay or receive over four years.
- 3.14 When considering the value of a contract and which procurement procedure to use, it is the contract value calculated as shown above at CPR 3.13 that should be used for informing decisions.
- 3.15 Procurement for the same or similar works, goods or services must not be split into smaller, separate contracts to avoid using the proper procurement procedure under these CPR's or the Public Contracts Regulations 2015..
- 3.16 Where a reoccurring pattern of purchases can be seen for supplies, services or works, consideration should be given as to whether one or more corporate contracts would represent better value in terms of price, service, invoicing or other administration costs. Where the aggregate annual spend on a given category of supplies or services exceeds the relevant UK threshold, all such requirements must be advertised under UK Directives.

### **External Body Grant Funding**

3.17 Advice must be sought from the Head of Legal & Governance or the Chief Solicitor as to whether these CPR's and if applicable above threshold UK Procurement legislation apply to the award of a grant by an external body.

## **4. Use of Frameworks and Collaboration**

4.1 Where appropriate Frameworks Agreements are available these must be assessed in consultation with the Council's Corporate Procurement Unit for suitability before deciding to conduct a tender exercise. A Framework agreement is a general term for agreements with suppliers/contractors which set out terms and conditions under which specific purchases (or "call offs") can be made during the period of the Agreement.

4.2 Wherever possible and practicable, procurements should be undertaken in collaboration with other public authorities.

4.3 A decision at the appropriate level will still be required to award a contract procured through Framework Agreements or collaborative arrangements with other public authorities.

4.4 To select a supplier for a specific contract under a single or multi-supplier Framework Agreement or to conduct a Framework Agreement mini competition, the Director, must act in accordance with the advice of Legal Services and the Corporate Procurement Unit as to the correct procedure for awarding contracts based on the Framework Agreement.

## **5. Contract Terms**

5.1 All contracts over £25,000 must be evidenced in writing (by the use of a purchase order, exchange of correspondence or other written medium)

5.2 All contracts should include:

- i. a clear description of the works, goods or services to be supplied;
- ii. the price to be paid by the Council;
- iii. appropriate warranties as to quality, reasonable skill & care;
- iv. appropriate and adequate levels of insurance cover;
- v. the time or times within which the contract is to be performed;
- vi. a provision requiring the supplier to comply with requests under the Freedom of Information Act 2000 for information relating to the contract;
- vii. a right for the Council to terminate the contract immediately in the event of corrupt activity and for the Council to recover its losses arising from the termination;
- viii. a requirement for the supplier to comply with current legislation regarding Health & Safety at Work and equal opportunities;
- ix. a requirement for the supplier to comply with anti-money-laundering legislation and the Council's Counter-Fraud and Corruption, Whistle-blowing and Anti-Money Laundering Policies; and



- x. a requirement for the supplier to observe other relevant Council policies.
- 5.3 All contracts must provide for payment by the Council after supply of the works, goods or services. Periodic or staged payments under a contract are acceptable. Exceptionally, and only with the consent of the Head of Finance, a contract may provide for payment in advance of contract performance.
- 5.4 Contracts or orders for the supply of software, ICT related services or supply of hardware that will connect to the Council's network must involve technical input from ICT to the specification and must complete the technical assurance approval process before contracts are signed or an order placed.

## **6. RULES APPLICABLE TO CONTRACTS BELOW £25,000**

### **Requirement for competition**

- 6.1 The Director need not proceed with a competitive quotation process with an agreed submission timeframe for contracts of less than £25,000 in value but must be able to evaluate and demonstrate that the Council is receiving value for money and must maintain an audit trail of the procurement. It is recommended that this be achieved by approaching at least 3 suppliers to obtain written quotes.
- 6.2 If 3 written quotes are not sought, the relevant Officer must fill in and complete a Best Value form. This document must be signed off by the Director or appropriate Officer with delegated authority and sent to the Corporate Procurement Unit.
- 6.3 It is the relevant Officer's responsibility to keep a record of quotes sought for audit purposes and to demonstrate that best value has been achieved.
- 6.4 For the avoidance of doubt, there is no requirement to fill in and complete a Best Value form if an Officer has sought 3 written quotes. However, the relevant Officer's must still notify the Corporate Procurement Unit of the spend in order that it can be published on the Council's Contracts Register.
- 6.5 There is no requirement to use the E-Sourcing system or publish the opportunity on Contracts Finder. However, the contract must be recorded on the Council's Contracts Register.

### **Contract Terms**

- 6.6 Where reasonably possible contracts must be in writing and a purchase order must be issued for every contract.

### **Award of Contract**

- 6.7 Directors have delegated authority to enter into contracts below £25,000 provided that a budget has been allocated for that expenditure.

### **Contract Signature**

6.8 Contracts below £25,000 must be signed for and on behalf of the Council by the Director responsible for the contract or an officer authorised by him/her.

## **7. RULES APPLICABLE TO CONTRACTS BETWEEN £25,000 AND £75,000**

### **Requirement for competition**

7.1 In consultation with the Corporate Procurement Unit, competitive quotations must be sought via the Corporate Procurement Unit for contracts from £25,000 to £75,000 in value.

7.2 Invitations to quote must be sent to at least three suppliers via an E-Sourcing system, and should be, whenever possible, based in the Leeds City Region or North Yorkshire County areas.

7.3 Officers must ensure that a clear and comprehensive specification of the Council's requirements has been prepared with regard to the works, goods or services to be supplied and is provided to the Corporate Procurement Unit sufficiently in advance of the date when quotations are to be invited.

7.4 The invitation to quote must include:

- i. the date and time for submission of tenders;
- ii. instructions to tenderers;
- iii. suitability assessment questions;
- iv. evaluation criteria;
- v. the Council's specification;
- vi. the terms and conditions of contract, in a form drafted by or approved by legal services;
- vii. a pricing document and confidentiality statement for completion by the bidder.

7.5 The invitation to quote should state whether quotations will be evaluated on the basis of most economically advantageous tender (MEAT) to the Council or on the basis of price only. If it is on the basis of most economically advantageous the invitation to quote, the criteria for evaluation must be set out in descending order of priority, with the weightings to be given to them and any sub-criteria and their weightings.

7.6 Officers should allow sufficient time for submission of quotations. The recommended minimum is fourteen days from the date of the invitation to quote

7.7 Directors must be satisfied that the suppliers invited to quote have the legal, financial and technical capacity (including their health & safety and equal opportunities policies) to undertake the contract for the Council and that they will provide value for money.

7.8 A quotation cannot be accepted where the value exceeds the relevant UK Procurement Threshold. If the value of the quotation exceeds the relevant Threshold a Director must undertake a formal tender process in accordance with Rule 9.

## **Contract Terms**

7.9 Refer to CPR 5

## **Authority to Invite & Evaluate**

7.10 Refer to CPR 10.1.

## **Award of Contract**

7.11 Refer to Refer to CPR 10.2 and 10.5.

7.12 As soon as practicable after the decision to award the contract has been made, the Director must complete and sign an acceptance of bid form to authorise the Corporate Procurement Unit to issue award notifications. The notifications to be published on Yortender and Contracts Finder.

## **Contract Signature**

7.13 Contracts below £75,000 must be signed for and on behalf of the Council by the Director responsible or the officer nominated by him/her.

# **8. RULES APPLICABLE TO CONTRACTS BETWEEN £75,000 TO ABOVE UK PROCUREMENT THRESHOLD**

## **Requirement for competition**

8.1 In consultation with the Corporate Procurement Unit competitive tenders must be sought via the Corporate Procurement Unit for contracts £75,000 or more in value.

8.2 The Director must ensure that a clear and comprehensive specification of the Council's requirements has been prepared with regard to the works, goods or services to be supplied and is provided to the Procurement Unit sufficiently in advance of the date when tenders are to be invited.

8.3 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable assessment of whether the Council's requirements are being met by the supplier.

## **Contract Terms**

8.4 Refer to CPR 5.

## **Authority to Invite & Evaluate Tenders**

8.5 Refer to Rule 10.1.

## **Tender Process**

- 8.6 A formal tender process must be followed when letting contracts from £75,000 to the relevant UK Threshold.
- 8.7 Advice should be sought from the Corporate Procurement Unit as to whether a shortlist of suppliers can be identified through suitability assessment questions which must be relevant to the subject matter of the contract. If a shortlisting process can take place then where possible at least 3 suppliers should be invited to tender from:
- i. open competition responses;
  - ii. an established approved list of suppliers for below UK Threshold procurements. Such lists can be compiled from a formal open, documented process taking into account suppliers financial and technical capacity and capability in relation to the area of activity concerned.
- 8.8 If there are fewer than 3 expressions of interest in being invited to tender, then the minimum number of suppliers to be invited to tender may be reduced as appropriate. The invitation to tender must include:
- i. the date and time for submission of tenders;
  - ii. instructions to tenderers;
  - iii. suitability assessment questions;
  - iv. evaluation criteria;
  - v. the Council's specification;
  - vi. the terms and conditions of contract, in a form drafted by or approved by legal services;
  - vii. a pricing document and confidentiality statement for completion by the tenderer.
- 8.10 Appropriate time must be allowed for submission of tenders. The minimum is fourteen days from the date of the invitation to tender.
- 8.11 Amendments to invitation to tender documents, made after the invitations have been sent out, must be clearly headed "**ITT Amendment**" and published with full explanation of the change/s. This will be sent to all suppliers who have registered against the opportunity and be available to any subsequent suppliers registering.
- 8.12 One or more amendments must be numbered consecutively. Amendments must be sent out in sufficient time to allow suppliers to adjust their tenders before close of tenders. If necessary, the tender period must be extended to allow for this.
- 8.13 Negotiations with suppliers who have tendered for a contract are not permitted. After tenders have been opened, **and before the tenders have been scored**, the Director may require one or more tenders to be clarified by the tenderer. Clarification questions and answers must be fully documented and the relevant clarifications incorporated in the contract document.
- 8.14 Clarifications must not make any substantive changes to the tender. Clarification questions and answers must be fully documented in a form approved by the Corporate Procurement Unit.

- 8.15 Tenders must not be scored until clarifications have been completed.
- 8.16 A supplier's tender is his offer to the Council, which the Council may accept as it stands. Once submitted, a tenderer cannot alter the amount of the tender or any of his tender proposals.
- 8.17 If a tenderer attempts to alter his tender after the last date for receipt of tenders, he must be given the opportunity to stand by or withdraw his original tender. Correction of an obvious arithmetical or administrative error, which would reduce the price to be paid **by** the Council or increase the price to be paid **to** the Council, may be accepted.
- 8.18 In the event that a tender exceeds the budget allocated then the provisions in Rule 8.25 should be followed.

### **Evaluation of Tenders**

- 8.19 Subject to 8.22, tenders should be evaluated on the basis of either:
- i. "price or cost" using a cost effectiveness approach, such as, life cycle costing; or
  - ii. offers the most economically advantageous balance between quality and price.
- 8.20 In relation to Rule 8.19 (ii), 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, functional and environmental characteristics, after-sales service, technical assistance, delivery date, and period of completion.
- 8.21 The basis of evaluation must be stated in the invitation to tender. If the basis of evaluation is 'most economically advantageous', the criteria for evaluation must be set out in the invitation to tender, in descending order of priority, with the weightings to be given to them and any sub-criteria and their weightings.
- 8.22 All contracts over £75,000 must be evaluated on the basis of 'most economically advantageous tender' (MEAT) unless an exception to this is obtained from the Head of Finance.
- 8.23 If the basis of evaluation is 'most economically advantageous tender' (MEAT) , the Director must together with the Council's Corporate Procurement Unit arrange for an appropriate evaluation panel to consider the tenders and evaluate them against the criteria and weightings stated in the invitation to tender.
- 8.24 All valid tenders received must be evaluated. Tenders can only be accepted in accordance with the outcome of the evaluation or not at all.
- 8.25 If a tender exceeds the budget allocated, the Director must obtain an additional allocation of funds in the budget before the tender may be accepted. Tenders must not be value-engineered with one or more suppliers except with the specific consent of and in consultation with Corporate Procurement Unit and Legal Services. This is to ensure that no post-tender negotiations take place.

8.26 The Director is responsible for producing a completed tender evaluation spread sheet, which should:

- i. be based on the template provided by the Procurement Unit;
- ii. list the tenders received;
- iii. list the evaluation criteria and weightings; and
- iv. show the scoring of tenders on evaluation and any comments thereon.

### **Award of Contract**

8.27 Refer to CPR 10.2 and 10.5.

8.28 As soon as practicable after the decision to award the contract has been made, the Director must complete and sign an acceptance of bid form to authorise the Corporate Procurement Unit to issue award notifications. The notifications to be published on Yortender and Contracts Finder.

### **Contract Signature**

8.29 Contracts for tenders must be signed for and on behalf of the Council by the Director responsible for the service or an officer authorised by him/her. The Director or officer signing the contract is responsible for ensuring that legal services have approved the contract terms.

8.30 Works contracts must be executed as deeds, by affixing the Council's Common Seal.

8.31 A tender cannot be accepted where the value exceeds the relevant UK Procurement Threshold. If the value of the Tender exceeds the relevant UK Procurement Threshold a Director must seek tenders in accordance with Rule 9.

## **9. RULES APPLICABLE TO CONTRACTS ABOVE UK PROCUREMENT THRESHOLD**

### **Requirement for competition**

- 9.1 Competitive tenders must be sought via the Corporate Procurement Unit for contracts Above the UK Procurement Threshold.
- 9.2 The Director, in consultation with the Corporate Procurement Unit and Legal Services, must follow the tender procedures for an above threshold tender set out in the Public Contracts Regulations 2015 when letting contracts above the UK Procurement Threshold. The Corporate Procurement Unit will be responsible for administering the tender.
- 9.3 The Director must allow sufficient time for submission of tenders and should take advice from the Corporate Procurement Unit when first considering the procurement to ensure adequate planning. Larger value or more complicated contracts will require a longer procurement period.

### **Tender Process**

- 9.4 The following above UK Threshold Procurement tender processes shall be used to invite tenders for contracts with a value in excess of the relevant above UK Threshold:
- i. the Open Procedure
  - ii. the Restricted Procedure
  - iii. the Competitive Procedure with Negotiation
  - iv. the Competitive Dialogue Procedure
  - v. the Innovation Partnership Procurement
  - vi. Negotiated Procedure without prior publication
  - vii. Framework Agreement
  - viii. Dynamic Purchasing System
  - ix. Electronic auctions
  - x. Electronic catalogues
  - xi. Social and Other Specific Services (Light Touch Regime)

and such identified process shall be used for the invitation of above Threshold Tenders in accordance with the requirements of the CPR's.

- 9.5 Before an above Threshold tender is requested the evaluation criteria to be applied to the above Threshold tender must be recorded in writing in the ITT evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the ITT sent to tenderers.
- 9.6 Irrespective of the procurement process being undertaken, a notice must be published on the Find a Tender Service System, where possible this should be through the E-Sourcing system.

- 9.7 All tenderers invited to submit above Threshold tenders shall be provided in all instances with identical instructions and information.
- 9.8 The relevant Director must ensure that a clear and comprehensive specification of the Council's requirements has been prepared with regard to the works, goods or services to be supplied. It must be provided to the Corporate Procurement Unit sufficiently in advance of the date when tenders are to be invited.
- 9.9 The specification should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable assessment of whether the Council's requirements are being met by the tenderers. .
- 9.10 Where relevant, every Contract shall specify that materials used, goods provided, services supplied or works undertaken shall comply with applicable standards. Such standards are, in order of priority:-
- (a) EU UK Standards
  - (b) British Standards implementing international standards
  - (c) British Standards
- . Brand names should not be used except in exceptional circumstances. Where there are exceptional circumstances which mean it is necessary to use brand names to describe a product, a documentary trail of the reasons for the brand name being provided should be available.
- 9.11 All necessary professional and technical advice and assistance must be obtained in preparing the specification, to ensure a comprehensive document that expresses the Council's requirements and protects its interests.
- 9.12 Consultants who assist in the preparation of a specification must not be invited to tender for the contract.
- 9.13 The evaluation of the above Threshold tender submissions shall be carried out by Officers who are considered appropriate having regard for the subject matter and value of the contract.

### **Contract Terms**

- 9.14 For contracts above the UK Procurement Threshold, full instructions must be provided at the earliest opportunity and in any event not later than submitting the procurement request to the Corporate Procurement Unit, to Legal Services to draft the terms and conditions of contract or to approve standard terms and conditions of contract.
- 9.15 For all contracts above the UK Procurement Threshold, the following terms and conditions must be included in addition to those at CPR 5, above where appropriate:
- i. provisions to ensure that valid and undisputed invoices will be paid by the Council within 30 days and a similar obligation for the payment of subcontractors



- ii. if the supplier's failure in performance would cause the Council financial loss, a provision for payment of liquidated damages where it is possible for liquidated damages to be assessed;
- iii. other provisions for termination and consequences thereof;

9.16 Provisions requiring the supplier to maintain appropriate and adequate levels of insurance cover, in consultation with the Council's Insurance Manager, for employer's liability, public liability, products liability, all risks/contract works and professional indemnity insurance. Unless otherwise agreed by the Insurance Manager, the minimum levels of cover shall be;

- i. £10 million for employer's liability insurance
- ii. £5 million for public liability and products liability insurance
- iii. £5 million for professional indemnity insurance.

## **Evaluation of Tenders**

9.17 Refer to CPR 8.19 -8.26 and also CPR 10.1.

### **Further Rules relating to above UK Procurement Threshold tenders**

- 9.18 Only in circumstances where an above Procurement Threshold tender is agreed by the responsible officer and Corporate Procurement Unit to be an abnormally low tender in accordance with the Regulations can an above Procurement Threshold tender other than 'most economically advantageous tender (MEAT) be accepted. In those circumstances a signed and dated record of the reasons for the action taken shall be made.
- 9.19 If, as a result of the above Procurement Threshold tender evaluation process the Corporate Procurement Unit are satisfied that an arithmetical error has been made inadvertently by a tenderer such an error may, after clarification with the tenderer, be corrected. The Corporate Procurement Unit shall record any such clarification in writing.
- 9.20 On completion of the evaluation of the above Procurement Threshold tenders received and once all internal approvals have been obtained the Corporate Procurement Unit shall write to all tenderers informing them of the outcome of the above Procurement Threshold tender evaluation and provide feedback on the content of their submission, in accordance with Regulation 55 of the Regulations.

### **Award of Contract**

- 9.21 Refer to CPR 10.2 -10.4.
- 9.22 As soon as possible after the decision to award the contract has been made and taking call-in procedures into account, the Director must complete and sign an acceptance of bid form to authorise the Corporate Procurement Unit to issue award notifications.
- 9.23 The Notifications to be published in the Find a Tender System, the Council's E-tendering system and Contracts Finder The notification must follow the form as set out in the Public Contracts Regulations ("the Regulations") and must state that award of the contract is subject to signature by both parties of the contract document.
- 9.24 The contract document must not be signed or sealed (as appropriate) before the expiry of ten days (the standstill period) following the date the notification of the decision to award the contract was sent.
- 9.25 The Corporate Procurement Unit shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the contract.

### **Contract Signature**

9.26 Refer to CPR 10.8 -10.9.

## **10. Authority to Invite and Evaluate Tenders and Award Contracts**

### **Authority to Invite and Evaluate Tenders**

10.1 Directors have delegated authority to invite and evaluate tenders provided that the procedures in these CPR's are followed. This authority applies to all contracts regardless of their value.

### **Authority to Award Contracts**

- 10.2 Directors have delegated authority to award a contract of up to £150,000 for revenue expenditure or £250,000 for capital expenditure within the scope of their service, provided that a budget has been allocated for that expenditure.
- 10.3 Cabinet Members have delegated authority to award a contract of up to £500,000 (notwithstanding the £100k threshold in the Executive Procedural Rules) within the scope of their portfolio, provided that a budget has been allocated for that expenditure. The decision will be made following a report to the Cabinet Member and must be recorded on an Individual Cabinet Member's Decision Notice.
- 10.4 Only Cabinet may authorise the award of a contract above the thresholds set out above and again subject to a budget having being allocated for the expenditure. Cabinet may delegate authority to a portfolio holder or service director to award a contract of higher value, provided that a budget has been allocated for that expenditure. The decision to award or delegate authority to award must be recorded in Cabinet minutes.
- 10.5 Any award must be subject to satisfactory financial and technical capability and capacity checks, being made.

### **Bonds and Parent Company Guarantees**

- 10.6 For every contract of £100,000 or more in value, the Director in consultation with the Chief Solicitor must decide, whether the circumstances justify the Council requiring the supplier to provide a parent company guarantee or a bond.
- 10.7 All parent company guarantees and bonds must be in a form approved by Legal Services.

### **Contract signature – Above UK ThresholdTenders**

- 10.8 Contracts above the UK Procurement threshold must be signed for and on behalf of the Council by the Chief Solicitor or Head of Legal & Governance.
- 10.9 Works contracts must be executed as deeds, by affixing the Council's Common Seal.

## **11. EXCEPTIONS TO CONTRACT PROCEDURE RULES**

- 11.1 The Corporate Procurement Unit must be consulted in relation to all exceptions to the CPRs.
- 11.2 If a contract for the supply of goods, services and works is being procured in collaboration with other local authorities, the CPR of the lead authority shall apply. Assurance should be sought that the lead authority is in compliance with its own CPR. If it complies with the rules of the lead authority, the procurement will be deemed to comply with the Council's CPR.
- 11.3 Subject to the approval of the Head of Legal and Governance or the Chief Solicitor, a formal tender process under Rule 7 or 8 of the CPR will not be required in the following circumstances:
- i. where a grant or other external funding is received by the Council, (either in its own right or as an accountable body,) and the terms of such grant or other external funding stipulate how such grant or other external funding must be applied.
  - ii. in relation to time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this.

For the avoidance of doubt, above UK Procurement Threshold tenders are excluded from this exception.

- 11.4 Subject to the Application for Exception in Rule 12 below, (such application must be approved by the Corporate Procurement Unit in consultation with the Head of Legal & Governance or the Chief Solicitor) a formal tender process under Rule 7 or 8 of these CPR will not be required in the following circumstances:-
- i. Contracts for the purchase of supplies, works, services or social and other specific services which are of such a specialised nature as to be obtainable only from one contractor and for which no reasonably satisfactory alternative is available. or
  - ii. Contracts for repairs to or the supply of parts for existing proprietary machinery or plant where to obtain such supplies from an alternative supplier would invalidate the warranty or contractual provisions with the existing supplier; or
  - iii. where for reasons of extreme urgency brought about by unforeseeable events which are not attributable to the Council, the timescales for obtaining quotes and tenders cannot be met.

For the avoidance of doubt, above UK Procurement Threshold tenders are excluded from this exception.

## **12. APPLICATION FOR EXCEPTION**

- 12.1 Exceptions under 11.4 may only be approved by Cabinet Member following consideration of a written report from the relevant Director or delegated officer setting out the special circumstances as described in Rule 11.4 of the CPR's which justify an exception SAVE THAT for Harrogate Convention Centre (HCC) contracts not exceeding £500,000, the Director of HCC can approve exceptions following

consideration by the HCC Board. For the avoidance of doubt, exceptions above the UK Procurement Threshold will not be permitted.

12.2 The Corporate Procurement Unit will keep a register of all exceptions to the CPR.

12.3 An application for an exception to the CPR, to allow a contract to be let without genuine competition will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to the CPR.

12.4 If an application to let a contract without genuine competition is granted, the Director 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 for money.

12.5 Where an exception is necessary because of an unforeseeable emergency involving immediate risks to person, property or serious disruption to Council services, Directors may approve the exception in consultation with the Corporate Procurement Unit and Head of Legal & Governance but they must prepare a report for the next Cabinet Meeting to set out the action taken.

12.6 Due to the nature of HCC's business, an emergency may arise outside of normal working office hours or at weekends and the Director of HCC may not be able to consult with the HCC Board (as set out in Rule 12.1 above) prior to the award of the contract. In these exceptional circumstances, the Director of HCC can award a contract without consultation with the HCC Board subject to the Director of HCC notifying board members and the Corporate Procurement Unit of the contract award and spend on the next working day. Where an exception is necessary as per Rule 11 above in respect of HCC, they must prepare a report for the next HCC board meeting to set out the actions taken. The Corporate Procurement Unit shall be notified on the next working day.

## **13. RULES APPLICABLE TO CONTRACTS WHICH HAVE COMMENCED**

### **Contract Management**

13.1 A contract must not start until the contract documents have been signed or sealed and dated. Officers must allow time for this in the contract programme.

13.2 The Corporate Procurement Unit must add the details of the contract onto the Council's Contracts Register and record the following:

- i. the works, goods or services to be supplied;
- ii. the name of the supplier,
- iii. the contract value;
- iv. the commencement and completion dates;
- v. any extension options
- vi. The current status of the contract

These details must be maintained and updated according to Council policies to ensure the Council meets the requirements of the transparency agenda.

13.3 The Director shall be the contract manager for the contracts for which he/she is responsible, but he/she may authorise another officer to have day-to-day responsibility for managing the contract.

13.4 The contract manager is responsible for:

- i. managing the contract and ensuring that it is carried out in accordance with its terms and conditions;
- ii. monitoring the supplier's performance and carrying out mid-contract reviews to determine ongoing value for money;
- iii. making the contractor aware that he is expected to comply with the Council's equal opportunities, counter-fraud and corruption, whistle-blowing and anti-money laundering policies;
- iv. ensuring that the supplier maintains the insurance policies required by the contract;
- v. agreeing any minor changes to the contract (but not changes to prices) before they are carried out;
- vi. keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the contract;
- vii. deducting liquidated damages, if appropriate;
- viii. notifying the Procurement Unit of any updates required to the status of their contract on the Council's Contracts Register; and
- ix. managing the transition between the ending of one contract and the beginning of another

13.5 As part of the monitoring and review process the contract manager shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded. Such records shall also be used on the basis for any permitted extension to the Contract.

13.6 The Director **must** consult Legal Services for consideration of the Council's legal position:

- i. before any contract is to be terminated or suspended;
- ii. in the event of a claim for payment not clearly within the terms and conditions of contract;
- iii. before making any deduction from payments due to a supplier or withholding payment from a supplier;
- iv. before making any extension to a contract or variation of the scope of a contract.

## CONTRACT VALUE £25k - £75k

- Estimate value of contract and obtain budget approval
- Consult Procurement Unit and complete and submit Procurement Initiation Form
- Notify Democratic Services if it is a Key Decision (i.e. it impacts significantly on 2 or more wards)



- Endeavour to obtain at least 3 competitive quotes, including where possible from supplier based in Leeds City Region and/or North Yorkshire county area



Service evaluate quotes



- Once decision made submit evidence of acceptance of bid to Procurement Unit
- If it is a Key Decision observe 5 day call in period
- Procurement Unit issue notifications and publish on Contract Register
- Contract signed by Director or a delegated officer unless it is a works contract, which should be executed as a Deed under Seal (held by Legal)



## CONTRACT VALUE £75,000 TO UK PROCUREMENT THRESHOLD

- Estimate value of contract and obtain budget approval
- Consult Procurement Unit and complete and submit Procurement Initiation Form
- Notify Democratic Services if a Key Decision
- Prepare Specification

Procurement Unit advise if there is an appropriate framework

Procurement Unit seek competitive tenders

- Service evaluates tenders in accordance with MEAT; can only evaluate on price only if Head of Finance approved
- Complete tender evaluation sheet

- Report on tender outcome to decision maker which will be Director for values of up to £150k revenue expenditure and £250k capital; over this value and up to £500k it needs Cabinet Member decision to accept; over £500k it is for Cabinet to approve
- Consult with Chief Solicitor if contract over £100k as to requirement for parent company guarantee or bond

- Once decision made submit evidence of acceptance of bid to Procurement Unit
- If it is a Key Decision observe 5 day call in period
- Procurement Unit issue award notifications and publish on Contract Register
- Contract signed by Director unless it is a works contract which should be executed as a Deed under Seal (held by Legal)

**CONTRACT VALUE ABOVE UK PROCUREMENT THRESHOLD  
(£177,898 EX VAT & £213,477 (INCL VAT) SERVICES AND SUPPLIES AND  
£4,447,448 EX VAT & £5,336,937 (INCL VAT) WORKS)**

- Estimate value of contract and obtain budget approval
- Consult Procurement Unit and complete and submit Procurement Initiation Form
- Notify Democratic Services if a Key Decision
- Prepare Specification

Procurement Unit advise if there is an appropriate framework

Procurement Unit seek competitive tenders

- Service evaluates tenders in accordance with MEAT; can only evaluate on price only if Head of Finance approved
- Complete tender evaluation sheet

- Report on tender outcome to decision maker which will be a Director for values of up to £150k revenue expenditure and £250k capital; over this value and up to £500k it's the Cabinet Member, over £500k it is Cabinet to accept.
- Consult with Chief Solicitor as to requirement for parent company guarantee and bond

- Once decision made submit evidence of acceptance of bid to Procurement Unit
- If it is a Key Decision observe 5 day call in period
- Procurement Unit issue notifications and publish on Current Register
- Observe 10 day standstill period
- Contract signed by Chief Solicitor or Head of Legal & Governance; works contracts to be executed as a Deed under Seal (held by Legal)