

Contract^[CMM1] **Procedure Rules**

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Introduction

- (1) *These Contract Procedure Rules (CPRs) set out the rules for every contractual arrangement needed to deliver the Council's services to the residents of Reigate and Banstead and beyond where relevant. CPRs are part of the Constitution and form an element of the hierarchy of documents which are supported by the Corporate Procurement Strategy. They should be read in conjunction with the Council's Financial Procedure Rules, the Procurement Strategy and the Procurement ToolKit.*
- (2) *The main objectives of these CPRs are to:-*
 - *ensure compliance with Public Procurement law*
 - *obtain best value from the resources available by delivering public services in a cost effective way*
- (3) *The application of these CPRs will also achieve:-*
 - *the best use of shared buying power and partnerships in procurement, where these deliver benefits to the Council*
 - *consistency and transparency in all the Council's procurement*
- (4) *Compliance with CPRs is subject to internal and external audit.*
- (5) *CPRs set out minimum requirements that must be followed and seek to safeguard employees from suggestions of impropriety and ensure Contractors comply with Council policies and procedures.*

DEFINED TERMS AND INTERPRETATIVE PROVISIONS: CPR 1.9

Defined Terms

Term	Definition
"Approved List"	a select list or a list of named contractors provided through a Supplier offering a pre-qualification service to the Council approved from time to time by the Executive;
"Best Value"	the Council's duty under section 3 of the Local Government Act 1999 to make arrangements to secure continuous improvement in the way the Council exercises its functions, having regard to a combination of economy, efficiency and effectiveness, and references to securing or achieving best value signify the discharge of this statutory duty;
"Call-off Contract"	a contract between the Council and a Supplier for the provision of services, supplies or works on agreed terms including price for a specific period against which orders may be placed if and when required during the contract period;
"Clarification"	the process whereby aspects of a quotation or tender which may be unclear can be clarified;
"Competitive Dialogue Procedure"	the procedure for award of a particularly complex contract under Public Procurement Regulations which is not appropriate under the Open or Restricted Procedure referred to in CPR11.
"Consortium":	two or more organisations acting jointly for the purpose of awarding or being awarded a public contract
"Constitution":	the Constitution of the Council;
"Contract"	a legally binding agreement between the Council and another party;
"Contracts Register"	a list of contracts entered into by or on behalf of the Council maintained by the Head of Service responsible for Finance;
"Contract Manager"	the person appointed by the Council to manage the relationship with the Supplier to ensure service delivery and compliance with contractual obligation;

Term	Definition
"Contract Notice";	a pre-tender notice which must be sent to OJEU advertising a contract, as mentioned in Appendix D;
"Contract Standing Orders"	the rules of procedure for entering into contracts used by other public sector organisations;
"Council":	Reigate and Banstead Borough Council;
"CPR":	any of these Contract Procedure Rules;
"Delegated Officer"	the officer authorised to undertake, administer and monitor the tendering or quotation procedure.
"Decision-making person or body"	that officer or Member body who is duly authorised to award contracts;
"Executive Member"	A member of the Council's Executive to whom the Leader has allocated responsibility for specific services provided by the Council or in their absence a nominated deputy;
"Exemption"	the exemptions from the CPRs, referred to in CPR 2.1 and listed in Appendix A;
"EU Procurement":	a European Union procurement within CPR 12.1;
"EU Procurement legislation"	the legislation and regulations arising out of European Directives including the Public Procurement Regulations;
"Financial Procedure Rules":	the Council's Financial Procedure Rules;
"Framework Agreement"	an overarching agreement with one or more Suppliers which establish terms on which the parties will enter into a call-off or other type of contract(s) during the period the framework agreement applies.
"High Value Procurement":	as defined in CPR 5.5(d)
"Intermediate Value Procurement":	as defined in CPR 5.5(c)

Term	Definition
"KPI"	key performance indicator
LSM	Legal Services Manager
"Low Value Procurement":	as defined in CPR 5.5(a)
"MEAT"	“most economically advantageous tender”: a basis for the evaluation of quotations or tenders where both price and quality are taken into account in assessing quotations or tenders as set out in CPR 13;
“Minimal Value Procurement”	as defined in CPR 5.5(a);
"Negotiated Procedure":	the procedure for the selection of Suppliers to tender set out in CPR 11;
"OJEU"	the Supplement to the Official Journal of the European Union;
"Open Procedure":	the procedure for the selection of Suppliers to tender set out in CPR 9;
"Part A Services":	the services listed as Part A in the Public Procurement Regulations (referred to in CPR 12 and set out in APPENDIX C);
"Prior Information Notice (PIN)":	a Contract Notice despatched to OJEU as set out in Appendix D.
"Procurement Toolkit":	the procurement guidance manual issued by the Finance and Procurement Unit to be available on the Council's Intranet;
"Procurement Strategy"	the procurement strategy adopted by the Council and any revisions thereto;
"Procurement":	the procedure or process used for obtaining or receiving goods, services or works;
"Public Procurement Regulations":	the Public Contracts Regulations 2006 (or as amended subsequently);
"Quotation":	a quotation invited pursuant to CPR 7;
"Restricted Procedure":	the procedure for the selection of Suppliers to tender set out in CPR 10;

Term	Definition
"Services":	services which under a written contract are defined as a public services contract for the purposes of the Public Procurement Regulations;
"Strategic Procurement":	as defined in CPR 5.5(e)
"Supplier":	any person from whom the Council may obtain supplies, services or works in a procurement;
"Supplies":	goods which, in the context of a particular procurement, would under a written contract be the subject of a public supply contract for the purposes of the Public Procurement Regulations;
"Tender":	a tender invited pursuant CPR 8;
"Works":	under a written contract are defined as a public works contract for the purposes of the Public Procurement Regulations;

Interpretative Provisions

The following provisions shall apply for the interpretation of these CPRs:-

1. References to the lowest quotation or tender in these CPRs assume a procurement in which the Council is to make payment. Where the Council is to receive payment the references should be taken as being to the highest quotation or tender.
2. A reference to a numbered CPR, without specifying any particular paragraph within it, shall be taken as a reference to all paragraphs of the CPR;
3. A reference to any legislation (primary or subordinate) shall be construed as a reference also to any guidance, code or the like issued under that legislation.
4. A reference to any legislation (primary or subordinate), guidance or code issued under it (or otherwise adopted by the Council) shall be construed as a reference also to that legislation, guidance or code as amended, re-enacted or re-issued from time to time.
5. A reference to any particular officer post or department of the Council shall be construed as a reference to any future post or department which assumes the same functions in the future.
6. A requirement that anything be done, confirmed or recorded in writing will be satisfied by the use of digital electronic communication and storage. This is subject, in the case of electronic quotations or tenders pursuant to CPRs 7 and 8, to there being an approved scheme in place or otherwise pursuant to CPR 17.

APPLICATION OF CONTRACT PROCEDURE RULES

- 1.1 These Contract Procedure rules ("CPRs") are made pursuant to Section 135 of the Local Government Act 1972 and shall come into force on 3rd September 2007.
- 1.2 Officers with delegated authority to incur expenditure on behalf of the Council at any level are responsible for ensuring that they are familiar with, and comply with, these CPRs at all times.
- 1.3 Subject to CPRs 1.5 and 2.1 every contract made by or on behalf of the Council shall comply with:-
 - (a) these CPRs;
 - (b) the Financial Procedure Rules;
 - (c) the Procurement Strategy;
 - (d) the Procurement ToolKit; and
 - (e) the Law and Government regulations
- 1.4 These CPRs cover any type or value of transaction in which the Council acquires goods, services or works (whether or not payment is to be made by or to the Council)
- 1.5 If these CPRs conflict with the law in any way, the law must be observed. If the law is changed in a way that affects these CPRs, the law must be observed until these CPRs are revised to secure compliance with it.
- 1.6 The Head of Service responsible for Finance is responsible for keeping the CPRs under review to reflect any changes in procurement methods or best practice. The Monitoring Officer is responsible for ensuring the whole Constitution of the Council is compliant with the law.
- 1.7 Where any provision of these CPRs enables or requires any person or decision-making body to determine, be satisfied as to, or approve any matter or thing or to award any contract:-
 - (a) that provision shall constitute a delegation to that person or decision-making body pursuant to section 101 of the Local Government Act 1972 (dealing with arrangements for discharge of its functions); and
 - (b) a written record will be made of the decision-making process leading to the conclusion reached in the particular case leaving a clear audit trail.
- 1.8 Where required by law, these CPRs shall apply to the award of contracts to in-house Suppliers and any of its sub-contractors in the same way as they do to the award of contracts to external Suppliers.
- 1.9 Terms defined in these CPRs shall bear the same meaning throughout these CPRs (including the Appendices), unless otherwise stated or indicated by the context.

2. EXEMPTIONS FROM CPRS

- 2.1 These CPRs do not apply in the situations set out in Appendix A.
- 2.2 Where any one or more of the above exemptions from CPRs is considered to apply, a record of the reason for applying the exemption, confirmation that value for money and compliance if appropriate, with EU procurement legislation, must be maintained. In the case of High Value Procurements the use of an exemption must be reported to the Executive for ratification where deemed appropriate. Exemptions in relation to the use of Intermediate Value Procurements must be ratified by the relevant Head of Service.
- 2.3 No exemptions may be made from these CPR which would contravene CPR 12 (EU Procurement) or the Public Procurement Regulations.
- 2.4 Use of an exemption to CPRs may only be granted by the relevant Delegated Officer or Member body with authority to award contracts in accordance with CPR 14.

3. CONSEQUENCES OF NON-COMPLIANCE

- 3.1 Any failure to comply with these CPRs may be subject to disciplinary action. Employees have a duty to report breaches of CPRs to an appropriate Senior Manager and Internal Audit.

4. DECLARATIONS OF INTERESTS

- 2.1 No officer, Member or external consultant shall take any personal or private benefit from any contract entered into by the Council or on its behalf with a third party. Officer's and Member's Codes of Conduct must be followed at all times.

5. PROCUREMENT VALUES

- 5.1 The value of every procurement prior to a contract being entered into shall be estimated in accordance with the procedure and requirements set out below and shall then be used to determine the type of procurement procedure that must be followed under CPRs.
- 5.2 The value shall be the greater of:-
 - (a) the estimated total consideration (in money or money's worth), net of VAT, to be given by the Council over the contract period or (where the contract is renewable with no fixed period) over a period of four years; or
 - (b) the estimated total turnover net of VAT of the economic activity comprised in the requirement which is the subject of the procurement (regardless of sums to be paid by, or received by, the Council) over the same period as in CPR 5.2(a).
- 5.3 The estimate under CPR 5.2 shall include likely additional orders arising under the contract and shall take into account any provision for indexation of sums to be paid under the contract.

- 5.4 The value of contracts shall be aggregated with others to be let to the same contractor or where the same contractor could be used wherever practicable to maximise the cost benefits to the Council and satisfy EU Public Procurement legislation. Recurring requirements shall wherever practicable be met by a Call-off Contract (see CPR 14.1 and CPR 17.3).
- 5.5 Apart from EU Procurements under CPR 12, for the purpose of determining the procedure to be followed on a procurement, the following categories of procurement will apply:-
- (a) **Minimal Value Procurement** – a value up to but not exceeding £2,000;
 - (b) **Low Value Procurement:** a value of more than £2,000 but not exceeding £10,000;
 - (c) **Intermediate Value Procurement:** a value of more than £10,000 but not exceeding £75,000;
 - (d) **High Value Procurement:** a value of more than £75,000 but not exceeding £250,000;
 - (e) **Strategic Procurement:** a value of more than £250,000 or a procurement designated as such by the relevant Head of Service in consultation with the Head of Service responsible for Finance and the Legal Services Manager.
- 5.6 Minimal Value, Low Value and Intermediate Value Procurements shall be carried out by inviting quotations in accordance with CPR 7.
- 5.7 High Value and Strategic Procurements shall be carried out by inviting tenders in accordance with CPR 8.

6 CONSORTIUM AND JOINT CONTRACTS

- 6.1 In respect of any consortium or joint contract the lead Council or organisation's CPRs shall apply to the procurement. The total requirements under the procurement shall be aggregated over the organisations in estimating the value in accordance with CPR 5.2.
- 6.2 These procurement options are available for all values of procurement but must always be investigated and used in relation to High Value and Strategic Procurements where the relevant Delegated Officer or the Executive is satisfied best value will be achieved;
- 6.3 Joint contracts to implement the shared services agenda by way of partnership working and the collaboration strategy approved by any agreed partnership arrangement should always be considered for common procurement requirements to help achieve economies of scale and efficiency savings whether cashable or otherwise.
- 6.4 Where the Council is part of a consortium and not the lead authority an exemption to CPRs will be required in accordance with CPR 2.1(g);

7 Quotations (Minimal, Low and Intermediate Value Procurements)

- 7.1 Where a product or service is not available through a Framework Agreement or Consortium contract, quotations shall be invited.
- 7.2 Where a suitable Framework Agreement or Consortium contract exists, it must be used unless there is justification for not taking advantage of such contract.
- 7.3 The number and nature of quotations invited is dictated by the estimated value of the contract as follows:

Minimal Value Procurement (£0 - £2,000)	:	One verbal quotation (acceptance to be confirmed in writing)
Low Value Procurement (£2,001 - £10,000)	:	One written quotation
Intermediate Value procurement (£10,001 - £75,000)	:	Three written quotations

See APPENDIX B.

Note: these are the MINIMUM requirements.

It may be necessary to invite more than the minimum number of quotations to obtain sufficient response in order to secure and demonstrate best value.

- 7.4 Wherever practicable, invitations to quote shall be in writing. They shall include a deadline for receipt of quotations and statement that the Council will not be bound to accept the lowest or any quotation.
- 7.5 Selection of the “Best Quotation” should be made using a “Most Economically Advantageous Tender” (MEAT) evaluation model. This takes into account both price and quality and with their relative values. (See CPR 13).

8 TENDERS (HIGH VALUE AND STRATEGIC PROCUREMENTS)

- 8.1 Suppliers shall be selected to tender for High Value and Strategic Procurements in accordance with this CPR using:-
- (a) the Open Procedure (CPR 9); or
 - (b) the Restricted Procedure (CPR 10); or
 - (c) the Negotiated Procedure (including Competitive Dialogue Procedure) (CPR 11).

Guidance should be sought from the Head of Service responsible for Finance or the Legal Services Manager where officers are uncertain of which tendering procedure to follow.

- 8.2 Before tenders for a Strategic Procurement are invited, the Executive shall have received a report on, and approved, the need for the tender exercise to take place.
- 8.3 Under the Restricted and Negotiated Procedures the selection of tenderers shall be made:-

- (a) on a High Value Procurement by a Director; and
 - (b) on a Strategic Procurement by the Executive.
- 8.4 A minimum of five external Suppliers shall be selected to tender in the Open and Restricted Procedures wherever practicable. Where the minimum number is not being sought for whatever reason, the relevant Delegated Officer must justify the decision in writing in a transparent manner and obtain ratification as necessary. See CPR 14 (Award of Contracts). See table at APPENDIX B.
- 8.5 A minimum of three external Suppliers shall be selected to tender in the Negotiated Procedure wherever practicable. Where the minimum number is not being sought for whatever reason, the relevant Delegated Officer must justify the decision in writing in a transparent manner and obtain ratification as necessary. See CPR 14 (Award of Contracts). See table at APPENDIX B.

It may be necessary to invite more than the minimum number of Suppliers to participate, in order to attract a sufficient number of tenders to secure a competitive exercise and demonstrate best value.

- 8.6 All tenders shall be submitted in a form prescribed by the Head of Service responsible for Finance and shall state that:
- (a) the Council will not be bound to accept the lowest (or in the case of income to the Council, highest) or any tender;
 - (b) invitations to tender shall set out the model which will be used to evaluate tenders in compliance with CPR 13;
 - (c) all invitations to tender shall state the time and date at which tenders will close and the time and date specified shall allow a reasonable period for the return of tenders. (See CPR 12 EU Procurement for longer periods that will apply).

9 OPEN PROCEDURE

Officers should consult the Head of Service responsible for Finance or the Legal Services Managers to the relevant tendering procedure to be used particularly for High Value and Strategic Procurements.

- 9.1 An advertisement requesting expressions of interest from suitable Suppliers shall be placed on the Council's website (or other similar sites), the local press, national press or a trade publication as the Delegated Officer of the procuring Department considers appropriate.
- 9.2 The advertisement shall specify a reasonable date by which potential Suppliers may make a written expression of interest or submission.
- 9.3 The advertisement shall specify any qualification standards to be met in order for a tender to be considered.
- 9.4 After the deadline for expressions of interest stated in the advertisement, tenders shall be invited from all Suppliers who have expressed an interest before the deadline.
- 9.5 Unless an Approved List is used, as part of the evaluation of tenders, appropriate checks should be undertaken to ensure tenderers ability to fulfil the contract. These should include financial standing, technical competence, compliance with insurance and health and safety requirements.

10 **RESTRICTED PROCEDURE**

Officers should consult the Head of Service responsible for Finance or the Legal Services Manager as to the relevant tendering procedure to be used particularly for High Value and Strategic Procurements.

- 10.1 An advertisement requesting applications for selection to tender from suitable Suppliers shall be placed on the Council's website (or other similar sites), the local press, national press or a trade publication as the Delegated Officer of the procuring Department considers appropriate.
- 10.2 The advertisement shall specify a reasonable date by which potential Suppliers may apply for selection, and it shall detail how applications are to be made usually either by requesting the information to be provided or seeking completion of a pre-qualification questionnaire.
- 10.3 Invitations to tender should be sent to a minimum of five tenderers wherever practicable selected by means of pre-determined, selection criteria. The invitation to tender should specify a reasonable period for the return of tenders.

11 **NEGOTIATED PROCEDURE (INCLUDING COMPETITIVE DIALOGUE PROCEDURE)**

Officers should consult the Head of Service responsible for Finance or the Legal Services Manager as to the relevant tendering procedure to be used particularly for High Value and Strategic Procurements.

- 11.1 An advertisement requesting applications for selection to negotiate or enter into competitive dialogue from suitable Suppliers shall be placed on the Council's website (or other similar sites), the local press, national press or a trade publication as the Director of the procuring Department considers appropriate.
- 11.2 The advertisement shall specify a reasonable date, by which potential Suppliers may apply for selection, and it shall detail how applications are to be made.
- 11.3 The advertisement shall state that the Council reserves the right to enter into post-tender negotiations or competitive dialogue on the procurement procedure to the extent permitted by law.
- 11.4 All negotiations or competitive dialogue shall be conducted in a manner which provides equal opportunity for all Suppliers invited to negotiate or engage in competitive dialogue and maintains the highest standards of probity.

- 11.5 All negotiations shall be conducted by at least two managers nominated by the Head of Service for whose service the procurement is being undertaken. In relation to High Value and Strategic Procurements, the nominated officers must seek the views of the Head of Service responsible for Finance and the Legal Services Manager before any negotiations are commenced.
- 11.6 A written record shall be made of all negotiations by a designated minute taker who shall not be one of the officers who conducted the negotiations.
- 11.7 At the conclusion of negotiations or competitive dialogue each tenderer shall be invited to submit a best and final offer, in relation to which CPRs 8.6 and other procedural guidance shall apply in the same way as to the initial tenders.

12 EU PROCUREMENT

12.1 A procurement of which the value, net of VAT, is above:-

- (a) £144,371 in the case of Part A Services (listed in APPENDIX C);
- (b) £144,371 in the case of supplies; or
- (c) £3.611 million in the case of works

is an EU Procurement for the purposes of these CPRs.

- 12.2 Where a proposed procurement is one of a series of contracts, or a renewable contract, for similar services or supplies, an aggregated value must be used to determine whether there is an EU Procurement and the Public Procurement Regulations followed.
- 12.3 An EU Procurement must be tendered in accordance with the Public Procurement Regulations using the Open Procedure (CPR 9), Restricted Procedure (CPR 10) or the Negotiated Procedure (CPR 11), subject to CPRs 12.4 to 12.5 inclusive.
- 12.4 The periods for expressing interest and tendering in an EU Procurement set out in Appendix D must be observed.
- 12.5 Any decision to use the Negotiated Procedure or the Competitive Dialogue Procedure in an EU Procurement must be approved by the Head of Service responsible for Finance in advance of the process being commenced.

13 EVALUATION OF QUOTATIONS AND TENDERS

- 13.1 Quotations and tenders shall be evaluated in accordance with an evaluation model complying with this CPR in order to produce Best Value for the Council.
- 13.2 Unless determined otherwise by the Executive in a Strategic Procurement or by a Head of Service in any other procurement, all evaluations shall be carried out by use of a Most Economically Advantageous Tender (MEAT) evaluation taking into account price and a range of quality or other criteria including depreciation and whole life costs with appropriate weightings given wherever practicable in descending order of importance to inform Suppliers.
- 13.3 A quotation or tender shall be evaluated as the best for the purposes of awarding a contract under CPR 14, as set out below:-
- (a) lowest price is the basis of evaluation, if it is the lowest quotation or tender; or
 - (b) MEAT is the basis of evaluation, if it has the greatest combined price and quality points allocated;

provided that the only quotation or tender received, or one of only two quotations or tenders received, can be "best" for these purposes if the decision-making person or body is exercising an authority under CPR 14 to award the contract regardless of the number quotations or tenders received, and if they are satisfied that best value will be secured by the contract award.

- 13.4 Except in the course of a procurement under the Negotiated Procedure or pursuant to CPR 13.5, no quotation or tender shall be allowed to be amended by the person submitting it.
- 13.5 CPR 13.4 shall not prevent the clarification of a quotation or tender in writing in response to a question raised by the Council in the course of an evaluation.

14 AWARD OF CONTRACTS

- 14.1 Officers must first check for the existence of a Call-off Contract for the requirement in any proposed procurement before placing an order or awarding a contract. Suppliers other than those with whom the Council has a relevant Call-off Contract may only be used with the prior authorisation of a Director.

Checks for the existence of a relevant Call-off Contract can be made with the Procurement Unit.

- 14.2 No order shall be placed or contract awarded unless:-
 - (a) the Supplier's technical competence, financial standing and ability to comply with all relevant legal requirements has been verified by evidence obtained sufficiently recently to be relied on wherever practicable; and
 - (b) the contract payments can be accommodated within approved budgets.
- 14.3 Unless otherwise authorised by the Head of Service, no procurement shall be made from a Supplier who does not provide (in addition to a registered address in the case of a corporate body) an address from which the business operates and a land based telephone number. A PO Box (without specific address details) or a website address does not constitute a valid business address for these purposes.
- 14.4 Evidence must be secured that a Supplier holds all insurance considered by the Procurement Unit to be appropriate to the procurement before placing any order or awarding any contract.

Minimal or Low Value Procurement

- 14.5 A Delegated Officer may accept in writing a quotation on a Minimal or Low Value Procurement which:
 - (a) has been evaluated as the best in accordance with CPR 13; and
 - (b) whether or not it is the lowest quotation received; and
 - (c) regardless of the number of quotations received provided the quotation does not exceed the estimate by more than 15%.

Intermediate Value Procurement

- 14.6 The Head of Service may accept the best quotation received on an Intermediate Value Procurement, provided that:-
 - (a) at least three quotations have been received; and
 - (b) the contract value does not exceed the pre-quotation estimate under CPR 5 by more than 10%; and

- (c) they have evaluated the quotation in accordance with CPR 13.

High Value Procurement

- 14.7 A Head of Service in consultation with the relevant Executive Member and the Executive Member responsible for Finance may accept the best tender received on a High Value Procurement, provided that:-
 - (a) at least three tenders have been received;
 - (b) the contract value does not exceed the estimate under CPR 5 by more than 5%; and
 - (c) they have evaluated the tender in accordance with CPR 13.

Strategic Procurement

- 14.8 The Executive may:
 - (a) accept a tender on a Strategic Procurement, which they have evaluated as the best in accordance with CPR 13, whether or not it is the lowest tender received or exceeds the estimate by more than 10% and regardless of the number of tenders received subject to obtaining full Council approval where deemed appropriate; or
 - (b) require a procurement to be re-tendered with the same or a different contract procedure; or
 - (c) decide that a procurement should be abandoned.
- 14.9 The above authorisations to accept quotations or tenders set out in CPRs 14.5 to 14.7 above can be taken by a more senior officer or the Executive in any instance.
- 14.10 Details of all contracts awarded in Intermediate Value, High Value and Strategic Procurements shall be reported to the Head of Service responsible for Finance for inclusion on the Contracts Register.
- 14.11 Every order or contract awarded must be in writing and wherever practicable, on terms acceptable to the Council, consistent with any Council terms of trading and contain full details of the contract documents and contract terms.

15 GENERAL REQUIREMENTS OF CONTRACTS

- 15.1 Every procurement shall be the subject of an official written order being issued in accordance with the Council's Financial Procedure Rules and may be supplemented by a contract in writing before an invoice relating to it can be authorised for payment.
- 15.2 All contracts shall be governed by English law and subject to the exclusive jurisdiction of the English Courts.
- 15.3 Every order and contract must clearly and carefully specify the requirement, including the required quality. The specification shall require performance in accordance with any relevant standard of the British Standards Institution or equivalent. The written order or contract must also contain a delivery date, programme for completion or contract period, the price, terms of payment and all other terms and conditions including consequences of failure to comply with the same.
- 15.4 Every contract shall provide that the Council is empowered to cancel the contract, and recover from the Supplier the amount of any loss resulting from such cancellation, if the Supplier, or any person acting on their behalf, shall have, in relation to the contract or any other contract between the Council and the same Supplier:-

- (a) offered or given, directly or indirectly, any gift or consideration of any kind to any person as an inducement to do or forbear from doing anything, or as a reward for doing or forbearing from doing anything; or
 - (b) committed any offence under the Prevention of Corruption Acts 1889 to 1916, or given or offered any fee or reward receipt of which is contrary to section 117 of the Local Government Act 1972.
- 15.5 It shall be a condition of any contract to let, supervise or administer another contract on the Council's behalf that the appointee shall comply with the requirements of these CPRs in letting, supervising or administering that other contract.
- 15.6 It shall be a requirement of every contract, in which the Council reserves the right to nominate a sub-contractor, that:-
- (a) unless the Head of Service otherwise determines, quotations or tenders for nomination shall be invited and evaluated in accordance with these CPRs, as if they were for a contract with the Council; and
 - (b) the invitation to quote or tender for nomination approved in advance by the Head of Service responsible for Finance or the Legal Services Manager shall require an undertaking by the person submitting the quotation or tender that, if they are selected, they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main contract in relation to the services, supplies or works included in the sub-contract.
- 15.7 Every contract which requires the Supplier to make payments or collect income on behalf of the Council shall reserve to the Head of Service responsible for Finance the same rights of audit as if the Supplier was an employee of the Council.
- 15.8 All works which fall within the Construction (Design and Management) Regulations 1994 shall have a Planning Supervisor appointed and this shall form a part of the budgetary provision.
- 15.9 Every contract for the execution of works or supply of goods or services having a value of £75,000 or more shall provide a mechanism to ensure so far as possible that the terms of the contract are duly performed whether by e.g. use of liquidated and ascertained damages, parent company guarantee, bond, stage payments or otherwise.
- The use of liquidated and ascertained damages should be considered in all procurements particularly Strategic Procurements. They should, as far as is practicable, be based on a genuine pre-estimate of the loss the Council will incur on a breach of contract by the Supplier, in order to avoid legal challenge on the ground that they are penalties.*
- 15.10 The terms of every procurement with a value over £75,000 shall be approved by Legal Services and formalised in a contract executed wherever practicable as a deed by the Supplier. In respect of a Strategic Procurement or other significant procurement, the Mayor shall be required to witness execution of the contract in addition to the authorised officer of Legal Services.
- 15.11 Every contract in a High Value or Strategic Procurement shall provide that the Supplier shall:-
- (a) comply in its performance of the contract with the provisions of the Human Rights Act 1998 in all respects as if it were a public body within the meaning of that Act; and

- (b) indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, costs, charges and expenses whatsoever in respect of any breach by the Supplier of the obligation in CPR 15.12.

15.12. Every contract in a High Value or Strategic Procurement shall require the Supplier to acknowledge that the Council's legal duties may require the release of information under the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("the 2004 Regulations") or any other applicable legislation or codes governing access to information and that, notwithstanding anything in the contract, in the event of the Council receiving a request for information under the FOIA and/or the 2004 Regulations:-

- (a) the Council shall be entitled to disclose all information and documentation necessary to respond to that request, including any matters relating to, arising out of or under the contract, save that in relation to any such information and documentation which may be exempt information (as defined in the FOIA) the Council shall use its reasonable endeavours to consult the Supplier as soon as reasonably practicable and shall not:-

- (i) confirm or deny that the information in question is held by the Council; or
- (ii) disclose the information requested

to the extent that exemption is applicable in the circumstances;

- (b) the Supplier shall assist the Council to comply with its obligations under the FOIA and/or the 2004 Regulations (including any assistance required in obtaining the information which is the subject of the request) and shall respond to any request for assistance at its own cost promptly and in any event within 10 days of receipt of any request.

16 **MANAGING CONTRACTS**

16.1 Effective contract management is critical to the success of the contract. The relationship between the Council and the Supplier must be closely monitored and is an ongoing part of the procurement process to ensure benefits are actually delivered. Project management methodology must be applied in all procurements and to a degree consistent with the value of the procurement activity.

16.2 For each High Value and Strategic Procurement the Head of the procuring Department shall ensure that a contract manager is identified to the Supplier.

The contract manager may not necessarily be the procurement project manager.

17 **ELECTRONIC PROCUREMENT AND FRAMEWORK AGREEMENTS**

17.1 Electronic procurement systems shall be used in preference to paper-based procurement. The Executive shall approve schemes for electronic procurement systems from time to time.

Schemes approved may provide, for example, for the use of purchasing cards and electronic quotations and tendering.

17.2 In relation to the use of electronic quotations or tenders any procedures laid down by the Leader/Executive and best practice shall be followed.

17.3 Framework Agreements available for use by the public sector should be investigated for all values of procurement.

18 **PROCUREMENT PROTOCOLS**

18.1 The following protocol for the procurement of Vehicles and Equipment shall apply:

- (a) items requiring specialist maintenance should be procured on a "Lease Hire" basis whilst any items that the Council has the existing capacity to maintain

“in house” may be procured by use of Council or Private Capital following an evaluation of the cost of finance including depreciation and whole life costs;

- (b) wherever practical vehicle or equipment purchases should be rationalised to give continuity within the fleet. Furthermore where a particular make and model is considered “best for the job” tenders or quotes be sought for the exact item and exclude alternatives;
- (c) all vehicles are specified to the most up to date environmental emission standards subject to the fuel being readily and economically available; and
- (d) where vehicles or equipment is available through an agreed Consortium, this procurement route should be investigated before a stand-alone tendering or quotation procedure is considered.

18.2 Additional general protocols or systems of procurement may be approved by the Leader/Executive from time to time and when in place must be followed.

EXEMPTIONS

CPRs do not apply in the following situations:-

- (a) a procurement by the Council acting solely as agent of another body in compliance with the contract standing orders of that other body and the Council either does not incur the expenditure, or is to be fully reimbursed the expenditure by another party;
- (b) contracts of employment;
- (c) works orders placed with statutory undertakers (e.g. for redirection or installation of cables or pipework);
- (d) orders placed against a Call-off Contract itself awarded in accordance with these CPRs;
- (e) orders for Low and Intermediate Value Procurements placed against a public sector Framework Agreement or similar types of Agreement;
- (f) the acquisition or disposal of land and/or property or interests in or rights over land and/or property;
- (g) where the Council is part of a Public Sector consortium contracting with a contractor(s) for the provision of goods, services or works, where the Council is not the lead authority and the contract has been let in accordance with the Contract Standing Orders of the lead authority;
- (h) orders for proprietary or branded items that are available from only one source of supply or sold at a single fixed price and no satisfactory alternative is available;
- (i) orders for work to be executed or the materials supplied or services to be performed to items or services referred to in (h) above;
- (j) purchase or sale by auction;
- (k) where only one contractor is able to carry out the works or services or to supply goods for technical or artistic reasons or because of exclusive rights;
- (l) orders required as an addition to an existing or previous contract and it is necessary to use the same contractor for the reasons stated in (k) or otherwise subject to such extension not generally being more than 25% of the value of the original contract or £250,000 (whichever is less);
- (m) orders for goods, services or works required in an emergency. An emergency is where immediate action is necessary to prevent significant loss to the Council or danger, injury, hardship or to comply with public health requirements. In such circumstances, the best practicable means of obtaining value for money should be used. If the contract exceeds £75,000 in value, the Head of Service shall consult the relevant Executive Member and the Executive Member responsible for Finance.
- (n) Any other exemptions specifically authorised by the Leader/Executive or appropriate Committee with budget and service responsibility for the Contract or by the Council.

TABLE APPLICATION OF CPR REQUIREMENTS

CONTRACT VALUES	REQUIREMENT (MINIMUM)	TENDERS OPENED BY OFFICERS	TENDERS OPENED BY EXECUTIVE MEMBER	ACCEPTANCE	AUTHORISED OFFICER/BODY	ORDER SIGNED BY CHIEF EXECUTIVE	CONTENTS APPROVED AND SEALED BY LSM	CONTENTS APPROVED AND SEALED BY LSM AND MAYOR
Minimal Value Up to £2,000	1 verbal quotation	N/A	N/A	Best quotation (to be confirmed in writing) Est. + 15%	Delegated Officer	N/A	Optional	N/A
Low Value £2,001 - £10,000	1 written quotation	N/A	N/A	Best quotation Est. + 15%	Delegated Officer	N/A	Optional	N/A
Intermediate Value £10,001 - £75,000	3 written quotes	N/A	N/A	3 written quotes received Best Quotation Est. +10%	Head of Service	N/A	Optional	N/A
High Value £75,001 - £250,000	5 Tenders wherever practicable	YES	N/A	3 Tenders received Best Tender Est. +5%	Head of Service in consultation with relevant Executive Member and Executive Member with responsibility for Finance	YES	YES	N/A
Strategic Procurement £250,000 plus *	5 Tenders wherever practicable	YES	YES	Best Tender Regardless number received Est. +10% or more	Executive	YES	N/A	YES

* or lower value if designated as such

NB: These are minimum requirements in the absence of other procurement options being available e.g. corporate contract, public sector framework agreement, Approved Lists, etc.

Contracts of value estimated above the threshold of £144,371** must also comply with the requirements of EU Procurement legislation.

** Figure is subject to change every two years

PART A SERVICES: CPR 12.1(a)

1. Maintenance and repair of vehicles and equipment.
2. Transport by land, including armoured car services and courier services, but not including transport of mail and transport by rail.
3. Transport by air but not transport of mail.
4. Transport of mail by land, other than by rail, and by air.
5. Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite services.
6. Financial services
 - (a) Insurance services
 - (b) Banking & investment services

other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.
7. Computer and related services.
8. R&D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority.
9. Accounting, auditing and book-keeping services.
10. Market research and public opinion polling services.
11. Management consultancy services and related services, but not arbitration or conciliation services.
12. Architectural services: engineering services and integrated engineering services: urban planning and landscape architectural services; related scientific and technical consulting services: technical testing and analysis services.
13. Advertising services.
14. Building-cleaning services and property management services.
15. Publishing and printing services on a fee or contract basis.
16. Sewerage and refuse disposal service: sanitation and similar services.

TIMETABLE FOR EU PROCUREMENT: CPR 12.4

	Minimum no. of days:-		
Procedure:	(i) from despatch of Contract Notice to closing date for receipt of registrations of interest	(ii) to closing date for receipt of tenders, where a PIN is <i>not</i> published	(ii) to closing date for receipt of tenders, where a PIN is published
Open	N/A	52 from despatch of Contract Notice	36 from despatch of Contract Notice
Restricted	37	40 from despatch of tender documents	26 from despatch of tender documents
Negotiated	37	N/A	N/A
Competitive Dialogue	37	N/A	N/A

Note : It **may** be possible to abridge the above periods in certain limited circumstances. For further advice, please consult the Procurement ToolKit in the first instance.