

- (a) Have regard to the guidance in the Advice Centre,
- (b) Keep the records required by Rule 19 of these CPRs,
- (c) Take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRs,
- (d) Prior to letting a contract on behalf the Council, check whether:
 - the Council already has an appropriate contract in place in the Corporate Contracts Register, or:
 - an appropriate national, regional or other collaborative contract is already in place.

Where the Council already has an appropriate contract in place, then this **must** be used unless it can be established that the contract does not fully meet the Council's specific requirements in this particular case, and this is agreed following consultation with Corporate Procurement.

Where an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money.

- (e) Ensure that when any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) (TUPE) and Pensions issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise.

3.1.3 Failure to comply with any of the provisions of these CPRs, the Council's Constitution or UK **or EU** legal requirements may be brought to the attention of the Monitoring Officer, Chief Internal Auditor and Corporate Fraud Manager, or relevant Corporate Director as appropriate. Depending on the nature of the non-compliance this may result in disciplinary action being taken.

3.1.4 In cases of non-compliance with these CPRs, the Chief Procurement Officer may, following consultation with the officer's Head of Service, temporarily or permanently suspend any officer's access to the Oracle system, e-tendering system, and use of purchasing cards or other payment mechanisms.

3.1.5 In addition, in cases of serious non-compliance, the Chief Procurement Officer may temporarily suspend any officer's delegated authority to place contracts, and refer the matter to the Council's Chief Internal Auditor and Corporate Fraud Manager for further investigation.

3.2 Chief Officers

3.2.1 Chief Officers will:

- (a) Ensure their Service Grouping complies fully with the requirements of these CPRs,
- (b) Ensure contracts are recorded in the corporate Contracts Register as held and maintained by Corporate Procurement, through the use of the Procurement Acceptance Report as detailed in Rule 19,
- (c) Ensure that their Service Grouping provides the requisite information to allow the Council to maintain the Procurement Work Programme, including the submission of a Procurement Initial Request Form at as early a stage as possible.

Procurement Requests can be made via the Advice Centre along with documentation for ~~Copies of the~~ Procurement Acceptance Report and Delegated Decision Records and Procurement Initial Request Form are available from the Advice Centre.

4. VARIATIONS TO CONTRACT PROCEDURE RULES

4.1 Except where the PCRs (2015) apply, the Executive has the power to waive any requirements within these CPRs for specific projects.

4.2 Additionally, and where proceeding under a Variation does not breach the Public Contracts Regulations (2015), these Rules may be waived or varied where the circumstances are certified by the Corporate Director, Resources (advised as appropriate by the Chief Procurement Officer) as meeting any of the following criteria:

- (a) with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the contract to cover this additional requirement, without exposing the Council to unacceptable risk;
- (b) involving cases of genuine, unforeseen urgency, where it is not possible to comply with the CPRs;
- (c) for the purchase of a work of art or museum specimen, to meet the specific requirements of an artistic, cultural, or performing arts event, or otherwise for the protection of exclusive rights which cannot be procured competitively due to the nature of the requirement;

- (d) 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; or
 - (e) where relevant UK or EU legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed.
- 4.3 The appropriate Officer must complete an Application for Variation, ~~as contained within the Advice Centre~~, which must be authorised by their Head of Service before being submitted to Corporate Procurement. Corporate Procurement will review the Application for Variation before obtaining a decision from the Corporate Director, Resources (or other officer as delegated).
- 4.4 Committing to expenditure with a supplier, without a valid contract or a Variation in place, is a breach of these CPRs. Therefore, where a Variation is being sought retrospectively, for expenditure to which a Service Area has already committed, ~~the retrospective application must be authorised by their Corporate Director~~, must authorise the variation request by exercising their delegated powers in order that Corporate Procurement may publicly record the contract and authorise payments, and to make them aware of the breach, before it is submitted to Corporate Procurement.
- 4.5 Every Variation form will be recorded on a master register to be maintained by Corporate Procurement.
- 4.6 Where a Variation is being applied for by Corporate Procurement, it must also be scrutinised by Internal Audit, to ensure the robustness of the procedure.
- 4.7 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs. The circumstances under which an exemption to the use of e-procurement can be requested are detailed in Rule 12.
- 4.8 Where a service area has requested and been approved a Variation to these rules the service area must undertake due diligence regarding the supply organisation including the agreement of Terms and Conditions to ensure risk to the Council is mitigated.

5. EXEMPTIONS

- 5.1 The following contracts and/or payments are exempt from these CPRs:
- (a) Contracts for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body which can perform the works. Such statutory undertakers include:
 - i. British Telecom – specifically for telecoms infrastructure works.

- ii. Network Rail – specifically for works affecting the railway infrastructure.
 - iii. Northern Gas Networks – specifically for gas supply infrastructure works.
 - iv. Northern PowerGrid – specifically for electricity infrastructure works.
 - v. Northumbria Water – specifically for water and sewerage infrastructure works.
 - vi. Highways England – specifically for works to the core road network under their management.
- (b) Statutory fees payable:
- i. to the Driver & Vehicle Licensing Agency and/or Drive & Vehicle Standards Agency (formerly VOSA).
 - ii. to the Disclosure & Barring Service.
 - iii. to the Care Quality Commission under section 85(1) of the Health and Social Care Act 2008.
 - iv. set by government for education or inter-agency adoption funding.
 - v. to Ofsted for the inspection of a school, children’s home, or other facility,
 - vi. for TV licenses in Council owned or operated premises.
 - vii. for Phonographic Performance Ltd or PRS for Music, for the playing of recorded music in public, or for the use of the musical composition and lyrics in that recording.
 - viii. to NHS Business Services Authority for prescription charges.
 - ix. for fees incurred for Parking Charge Notices issued by the Council.
 - x. Fees payable to Public Health England with respect to the Child Death Notification Service.
 - xi. Payments in relation to external auditors as directed by central government.
- (c) For the creation of imprest account relating to contracts let that have followed a compliant procurement process.
- (d) Contracts for the carrying out of statutory public health funerals under the Part 3 of the Public Health (Control of Disease) Act 1984.
- (e) Contracts for the purchase of newspaper advertising for statutory notices, and contracts for the purchase of broadcasting time, including for the placing of radio and television advertising.
- (f) Contracts to provide sponsorship to events, awards schemes, or other promotional activity being organised by a third party.

- (r) Accreditation and membership, fees payable to an awarding or professional body for the accreditation or certification, or fees for services required to undertake a service being provided by the Council.
- (s) Fees payable for Royal Mail postage, including franking machine credits, and for financial transaction services required by the Council.
- (t) Agreements regarding the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply), or:
- (u) The payment of grants to third parties.

NB: While grants are not covered by these CPRs, there are rules on the awarding of grants which do need to be observed. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process. Officers should follow any guidance contained in the Advice Centre.

- (v) Where the Council is providing a payment processing facility to a non-profit body, and where this does not make the Council the accountable body for the contracts or transactions in question.
- (w) Payments for services with regard to high needs or special education (including maintained schools Communities of Learning and Behaviour Panels), social care, health, safeguarding, or urgent operational needs, if in the opinion of the relevant Corporate Director it is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Corporate Director must be followed up with a Procurement Acceptance Report as detailed in Rule 19.
- (x) Those relating to residential and/or nursing care, or independent living services, to a person or persons to whom the Council has a duty or power to provide under the Care Act 2014, and other relevant legislation relating to, homelessness, social care, health and safeguarding. Use of this exemption by the relevant Corporate Director must be followed up with a Procurement Acceptance Report as detailed in Rule 19.
- (y) Services relating to health care as defined by the Health Care Services (Provider Selection Regime) Regulations 2022 will be applied removing those health care services from regulation under the PCRs. Use of this exemption by the relevant Corporate Director must be followed up with a Procurement Acceptance Report as detailed in Rule 19.

6. RELEVANT CONTRACTS

- (a) for the purchase of goods which are patented or have such special technical characteristics that they may be considered unique, and where these goods are only available from one supplier; including cases where technical compatibility is required with an existing requirement that has been previously competitively procured;

(Note that the presence of a patent alone does not permit the use of this procedure – many patented products are available from more than one supplier);

Or:

- (b) for the execution of works or services involving unique, highly specialist knowledge or skills and where it can be demonstrated that only one organisation possesses the required knowledge or skills:

Or:

- (c) for the execution of works or services, where there is considerable benefit to the Council in negotiating with a particular proposed supplier, and where this does not expose the Council to unacceptable risk.

Or:

- (d) where an open or restricted Tender, or an openly advertised Request for Quotation, has been undertaken, and in which no compliant bids were received.

9.2.3 The use of this process may be invalidated by prior negotiation or discussion (of any kind), between a Service Area and a proposed supplier, without the involvement of Corporate Procurement, where such negotiation may distort or restrict the potential market or otherwise prejudice the Council's position. Corporate Procurement reserves the right to refuse the award of a contract via this process where such unauthorised negotiation has taken place. Where a service area has been notified by Corporate Procurement that they may contract with a proposed supplier the service area must undertake due diligence regarding the supply organisation including the agreement of Terms and Conditions, that may require seeking advice from Legal Services, to ensure risk to the Council is mitigated.

9.2.4 Contracts awarded under the provisions of this Rule may have a duration of no more than three years, unless agreed in writing with the Chief Procurement Officer.

NB Note that when using Rule 9.2 above, no contract may be entered into until the relevant notification has been issued by Corporate Procurement, as set out in Rule 19.3.

10. INVITATION TO TENDER / REQUEST FOR QUOTATION

- 10.1 Invitations to Tender, Requests for Quotation, Further Competitions and Quick Quotes must be issued in accordance with the requirements of these CPRs, with particular attention to Rule 7, Rule 9 and Rule 17. The Procurement Officer must ensure they are familiar with, and adhere to, the minimum current threshold values, as published on the Advice Centre.
- 10.2 Above the single quotation threshold, all Invitations to Tender, Requests for Quotation and Quick Quotes must be issued via the Council's e-tendering system. Procurement documents must be issued via the e-tendering system.
- 10.3 Where Quick Quotes are used the service area must, as first option, identify 2 Durham based organisations to be invited to the Quick Quotes competition issued via the Council's e-tendering system.
- 10.4 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the electronic system, and where the value is below the relevant PCR's financial threshold, permission to conduct a procurement process by alternative means must be obtained from the Chief Procurement Officer using the relevant exemption form. This can be found in the Advice Centre. This exemption must be sought before requesting quotations or tenders.
- 10.5 When advertising a contract, the Procurement Officer will also ensure that a notice is placed on the Contracts Finder website, as required by Regulations 106 and 110 of the PCRs (2015).

11. SHORTLISTING

- 11.1 Any shortlisting (i.e. Selection Questionnaire (SQ)) must have regard to the economic, financial and technical standards relevant to the contract and the Evaluation Criteria. Special rules apply to contracts covered by the PCRs (2015) and must be issued using the Council's version of the Government Standard Selection Questionnaire template. Officers should refer to any further guidance contained in the Advice Centre.
- 11.2 Where the likely value of the procurement is less than the PCRs threshold for *goods and services* (even where the contract is not for goods or services), no shortlisting phase or SQ may be used.
- 11.3 Where applying financial turnover threshold as a shortlisting criteria, the threshold used must be no more than two times the estimated total value of the proposed contract.

- 11.4 When shortlisting as part of a Restricted tender process, a minimum of five bidding organisations should be shortlisted to tender, except in cases where fewer than five compliant SQ responses are received, or minimum threshold advised is not met. In a Competitive Dialogue or Competitive Procedure with Negotiation, the minimum shall be three, except in cases where fewer than three compliant SQ responses are received.

12. SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS

12.1 Tenders

- 12.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the contract requirements. Where Part 2 of the PCRs (2015) applies, Chapter 2 of the Regulations lays down specific minimum time periods for tenders.
- 12.1.2 As in Rule 10 (above) tenders, except those which have been approved as exempt from electronic tendering, must be submitted electronically via the e-tendering system. Tenders submitted by any other means must not be accepted.

12.2 Quotations

- 12.2.1 As in Rule 10 (above), responses to Requests for Quotation and Quick Quotes must be submitted electronically via the e-tendering system, except where specifically exempt under Rule 10.4. Quotations submitted by any other means must not be accepted.

12.3 Electronic Arrangements

- 12.3.1 ~~Quotations, Further Competition bids and Selection Questionnaires Submissions~~ which are received electronically via the e-tendering system will be opened by the Procurement Officer. The system will not allow any submissions to be opened until the allocated return date / time has passed.

12.4 Hard Copy Arrangements

- 12.4.1 In the event that 'hard copy' tenders are to be accepted (see Rule 10 and Rule 12.1.2 of these CPRs for guidance) these must be submitted, sealed, in the envelope provided with the procurement documents and sent by recorded delivery, addressed to the Head of Legal & Democratic Services at the Council's registered business address, without any mark revealing the bidding organisation's identity. Hard copy tenders submitted by any other means will not be accepted.

12.4.2 All hard copy tenders will be held by the Head of Legal & Democratic Services until the tender opening date/time has been reached.

12.4.3 All hard copy tenders for the same contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Legal & Democratic Services. A register of tenders received will be kept by Legal & Democratic Services and will be initialled on each occasion by the officers who are present at the opening of the tenders.

12.4.4 In the event that hard copy quotations are to be accepted (see Rule 10 and Rule 12.2.1 of these CPRs for guidance) these must be submitted in a plain envelope marked 'Quotation for....' followed by a description of the goods, works or services being procured.

12.4.5 Hard copy quotations will be received directly by Legal and Democratic Services. All quotations must be opened together once the official return date / time has been passed.

12.5 Late Submissions

12.5.1 Tenders, Quotations or Selection Questionnaires which are received after the stated deadline shall be automatically rejected, except in the following circumstances:

- (a) Where the delay in submission is the result of a failure of the electronic system, and where this can be verified to be the case, or:
- (b) Where only one submission is received, and where this submission has arrived late, but is compliant in every other respect, and with the approval of Corporate Procurement.

13. EVALUATION CRITERIA AND STANDARDS

13.1 Evaluation Criteria

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

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

In the latter case, the Council will use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost

15.2.1 The written notifications sent to bidders, in accordance with Rule 15.1.1 above, shall include feedback explaining the outcome of the evaluation process, with specific reference to the evaluation criteria, so that bidders can understand why they were, or were not, successful.

15.2.2 The Procurement Officer should follow any additional guidance in the Advice Centre.

15.3 Notification of Awarded Contracts on Contracts Finder

15.3.1 For all contract awards with a value of £25,000 (less VAT) or greater, the Procurement Officer shall issue a notice on the Contracts Finder website, giving details of the contract award, as required by Regulations 108 and 112 of the Public Contracts Regulations (2015). This includes any contracts awarded without prior advertisement, as well as contracts awarded via a Further Competition.

16. CONTRACT DOCUMENTS

16.1 Format of Contract Documents

16.1.1 The Council's harmonised procurement documents or conditions issued by a relevant professional body will be used. Where there is any deviation from these, the documents to be used must be reviewed by Legal Services before being issued. These are available from Corporate Procurement or Service Area procurement staff detailed in the Advice Centre.

16.2 Contract Signature

16.2.1 Contract signature must be undertaken as expressly stated in the contract terms and conditions, this would be:

- (a) Where the contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution, or:
- (b) Where the contract is in the form of an agreement, either:
 - (i) be signed by at least two officers of the Council authorised as required by the Constitution, or:
 - (ii) be formalised by the sending of an award letter **and** the subsequent issuing of a purchase order.

The Procurement Officer should also follow any guidance on the use of deeds and agreements, and / or electronic signature as found in the Advice Centre.

16.3 Legal Services Review of Tenders and Contracts

16.3.1 To ensure the integrity of the procurement process:

- (a) All proposed Invitations to Tender, Requests for Quotation or Quick Quote where they are not in compliance with the County Council's harmonised contract documentation or standard terms and conditions issued by a relevant professional body, will be reviewed by Legal Services.
- (b) Any proposed Invitations to Tender which are the relevant PCRs advertising threshold, and which are deemed by Corporate Procurement to be of medium or high risk, must be reviewed by Legal Services.
- (c) Any proposed contract where there is any deviation from the contract terms included in the invitation to tender must be reviewed by Legal Services.

17. APPROVED LISTS AND FRAMEWORK AGREEMENTS

17.1 Approved Lists

17.1.1 Approved lists must not be used where they are prohibited under the Public Contracts Regulations (2015).

~~17.1.2 Approved lists should only be used in accordance with the guidance contained in the Advice Centre.~~

17.2 Framework Agreements

17.2.1 Framework Agreements are agreements between the Council and one or more suppliers for the provision of goods, works or services on agreed terms for a specific period, for estimated quantities against which orders may be placed if and when required during the contract period.

17.2.2 The term of a Framework Agreement must not exceed four years, except where:

- (a) a longer duration is permitted under the terms of the light-touch rules for social and other specific services set out in Part 2, Chapter 3 of the Public Contracts Regulations (2015), or
- (b) where exceptional circumstances justify a longer duration, as provided for in Regulation 33(3) of the Public Contracts Regulations (2015).

17.2.3 Where Frameworks are established with several organisations, contracts based on Framework Agreements may be awarded in one of two ways, as follows:

- 20.2 Rules and regulations pertaining to the Declaration of Interests are outlined in the Code of Conduct for Employees within the Constitution and must be adhered to.

21. CONTRACT MANAGEMENT / MONITORING

- 21.1 All contracts must have an appointed Contract Manager. The responsible Head of Service must ensure a Contract Manager is designated prior to award. All due diligence and monitoring of contract delivery shall be the responsibility of the designated Contract Manager for the entirety of the contract.
- 21.2 The Contract Manager must ensure they track the extension periods and expiry dates of contracts under their responsibility, to ensure that appropriate arrangements are in place to maintain contract coverage where ongoing requirements exist.
- 21.3 Where an original Procurement Acceptance Report does not include all extension options and contract values (for example where there is no current schedule end date), then the Contract Manager must submit the appropriate procurement extension report to identify contract extension period and the additional budget. This must be authorised via the Service's Principal Accountant and recorded with an appropriate Delegated Decision Record.
- 21.4 Contract management, monitoring, evaluation and review must be conducted in line with guidance detailed in the Advice Centre.

22. INTERNAL PROVIDERS

- 22.1 Where a Service Area intends to procure goods, services, or works which could potentially be delivered by an in-house provider, the commissioning service shall consult with that in-house provider before proceeding to issue any Invitation to Tender, Request for Quotation, or Quick Quote.
- 22.2 If the in-house provider has the capability and capacity to meet the requirement and can deliver this within the appropriately established budget allocated by the commissioning service, then the in-house service shall must be used, and no procurement exercise should take place. A procurement exercise via the e-tendering system should only be undertaken if it can be established that the in-house service cannot meet the requirement (or if it has been previously agreed by the appropriate Head of Service that external contractors may be engaged as part of an out-sourcing study or project).
- 22.3 Where an in-house provider is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the in-house provider and external bidding organisations.