



REPORT OF:	HEAD OF CORPORATE POLICY, PERFORMANCE & LEGAL
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TO:	EXECUTIVE
DATE:	29 MARCH 2018
EXECUTIVE MEMBER:	COUNCILLOR T. SCHOFIELD

KEY DECISION REQUIRED:	NO
WARD (S) AFFECTED:	ALL

SUBJECT:	REVISED CONTRACT PROCEDURE RULES
<p>RECOMMENDATIONS:</p> <p>(i) That the revised Contract Procedure Rules, as attached in Annex 2 to this report, be approved.</p> <p>(ii) That the Monitoring Officer be authorised to amend the Constitution to include the revised Contract Procedure Rules.</p> <p>(iii) That the Monitoring Officer be authorised, in consultation with the Portfolio Holder for Finance and the Chief Finance Officer, to undertake any minor amendments to the Contract Procedure Rules as may be necessary to comply with any future legislative requirements.</p> <p>(iv) That the Monitoring Officer be authorised, in consultation with the Portfolio Holder for Finance and the Chief Finance Officer, to undertake any minor and administrative amendments to the Contract Procedure Rules as may be necessary to achieve internal practical implementation and compliance.</p>	
<p>REASONS FOR RECOMMENDATIONS:</p> <p>To ensure legal and administrative compliance by adopting the revised Contract Procedure Rules as part of the Council's Constitution.</p>	
<p>EXECUTIVE SUMMARY:</p> <p>The Council's Contract Procedure Rules (CPRs) form an important part of the Council's governance framework, help to ensure best value and protect us from allegations of impropriety.</p> <p>Since the previous update in 2016 there has been an internal review of the practical implementation of the CPRs which has highlighted the need to introduce amendments to</p>	

the current CPRs in order to simplify the process for users.

There have also been recent legislative amendments to the financial limits in respect of the UK and European Union (EU) regulations governing procurement.

As a result of the internal review and legislative changes it has been necessary to consider revisions to the existing CPRs forming part of the Constitution.

The above recommendations are subject to approval by Full Council.

STATUTORY POWERS

1. The Council is required to produce Contract Procedure Rules under Section 135 of the Local Government Act 1972.
2. The Council is also required to comply with the Public Contract Regulations 2015 which brought into UK law EU procurement Directives (2014/24/EU). These Regulations govern public sector procurement activity.
3. In December 2017, Central government issued, the *Procurement Policy Note – New Thresholds – 2018 Information Note PPN 04/17 December 2017*, which sets out the new European financial thresholds for public procurement. These changes in the financial thresholds bring the UK levels in line with the figures issued by the EU. The agreed European financial thresholds apply to all public procurement from 1st January 2018. Any procurement exercise meeting the EU financial thresholds must be advertised in Europe (known as an OJEU notice) to ensure competition. Failure to do so can result in legal action being taken against the contracting public body.

BACKGROUND

4. The Council's CPRs form an important part of its governance framework, which helps to ensure best value, efficiency, transparency, accountability and protect the Council from allegations of impropriety.
5. The CPR's are continually monitored to ensure they are effective, comply with the Law and that the procurement process is effective. A number of legal, administrative and process amendments are now required in order to achieve continuing efficiency and compliance.
6. In terms of the operational processes, since the previous update in 2016 there has been an internal review of the practical implementation of the CPRs which has highlighted the need to introduce amendments to the current CPRs in order to simplify the process. Furthermore in view of the rising costs the lower thresholds are impractical to maintain and creates a cumbersome procurement process which is not conducive to the conduct of business efficiency and management.

7. And further on 1 January 2018 in the UK there was a legislative amendment to EU financial thresholds.

SUMMARY OF CHANGES TO CONTRACT PROCEDURE RULES

8. A summary of the proposed changes to the CPRs is set out in Annex 1.
9. Annex 2 provides a complete set of the revised CPRs, incorporating the proposed changes. Table 1 in Annex 2 sets out the required procurement routes for proposals of each type (e.g. goods, services, care and support, and works) and specific financial thresholds. This is where the majority of changes are proposed.
10. The detail below is a brief clarification of changes of the wording and process:
 - a. The number of value levels has reduced from 7 to 6. This streamlines the CPR process.
 - b. The lower limit has increased to allow spend up to £10,000 without the In-tend system (from £5,000). The Procuring officer will need to get 1 quote from their chosen supplier up to this value. This creates more flexibility and efficiency within the CPRs.
 - c. A new level of £10,001 to £25,000 has been added allowing Procuring Officers to get up to 3 quotes for spend or conduct an open competition at their discretion. Previously the only option was to do an open competition. This ensures transparency and value for money.
 - d. A new level of between £25,001 and £181,302 has been added allowing the Procuring Officer to either invite 4 suppliers to submit a bid or conduct an open competition or follow the Framework Contract guide lines. This also creates more flexibility and efficiency within the CPRs.
 - e. A new level £181,302 up to £4,551,413 for works (building and Civil Engineering Projects) Tenders has been added. The Procuring Officer can either invite 4 suppliers to submit a bid or conduct an open competition or follow the Framework Contract guidelines. This creates flexibility but also ensures compliance with legal requirements.
 - f. The processes and financial thresholds of the current CPRs also required a Performance Bond for Contracts to the value of £25,000. Consideration of current economic and business factors has established that it is more realistic to require a Performance Bond for Contracts valued at £75,000. The value of the Performance Bond for contracts valued at £75,000 will be determined by the type of work being carried out and in consultation with Legal Services. This is a positive step to encourage the smaller, medium sized local commercial organisations to participate in the Council's procurement process.
 - g. The process for seeking a 'waiver' from the Council's Procurement Rules is retained and continues to ensure flexibility as well as a high degree of professional challenge and a robust audit trail.

- h. As mentioned above since the last update in 2016 there has been amendments to the financial threshold limits in respect of the UK and EU regulations governing public procurement and these are captured within the revised CPRs.
- i. Other changes are undertaken to facilitate the relevant changes for example, there is clarification wording changes and information about the new Standard Selection Questionnaire document which replaced the Pre-Qualification Questionnaire used for all above EU threshold Tenders. There is also revised wording throughout the CPRs in order to facilitate the revised thresholds and process.

BREXIT IMPLICATIONS

- 11. In theory, from March 2019, the EU financial thresholds will not apply as the UK will no longer be subject to the EU regime. However, at the time of this report, there is expected to be a two year transition period. This may mean that EU financial thresholds will continue to be applied until 2021. If this is the case, then compliance may be required with the EU financial thresholds until the next review in January 2020.
- 12. It should also be noted that, the Government has transposed the EU procurement Directives (2014/24/EU) into UK law in the form of the Public Contracts Regulations 2015. Therefore it is anticipated that the rules will still apply and that only the EU financial thresholds maybe in question.

ONGOING PRACTICAL MONITORING AND IMPLEMENTATION OF PROCUREMENT

- 13. The In-Tend system which is hosted by Surrey County Council and is used by the majority of Surrey districts (including Reigate & Banstead) to support procurement activity is operating well. Its adoption meets the requirements of the *Public Contract Regulations 2015*.
- 14. The use of In-Tend ensures that all except very low value tender processes are run on a fully electronic basis. It is a self-contained electronic system with a detailed "audit-trail" facility. It continues to offer more transparency and security around the tendering and contract letting processes.
- 15. All tender documentation (with the exception of very low value tenders) is now published by the Council on this system and all information received from suppliers comes via it.
- 16. The processes required by the In-Tend system will continue to fully reflect the revised CPRs.

OPTIONS

17. The Executive may approve the new CPRs (the preferred option), reject them or request amendments.

LEGAL IMPLICATIONS

18. The proposed changes to the CPRs will ensure that the Council complies with its legal requirements for procurement and contracts.

FINANCIAL IMPLICATIONS

19. The proposed changes to the CPRs will support the Council to receive value for money from all contracts.

EQUALITIES IMPLICATIONS

20. There are no equalities implications arising from this report.

RISK MANAGEMENT CONSIDERATIONS

21. If the Council fails to maintain and follow up-to-date CPRs there may be legal, financial and reputational consequences. This is mitigated through these procedures and the regular review of the CPRs.

POLICY FRAMEWORK

22. The adoption of these revised CPRs requires the replacement of *Procedure Rule 8, Part 4: Procedure Rules* of the Constitution.

Background Papers: None

ANNEX 1

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
1.	All	As per current CPR's	General wording changes throughout the documents to clarify certain stages of the Procurement process	Ensures CPR procedures are compliant and effective.	Yes	Yes
2.	Table 1 Procedural Steps of Procurement	Up to £5,000	LEVEL REMOVED	-	Yes	Remove this Level
3.	Table 1 Procedural Steps of Procurement	£5,001-£10,001	LEVEL REMOVED	-	Yes	Remove this Level
4.	Table 1 Procedural Steps of Procurement	£10,001 to £24,999	LEVEL REMOVED	-	Yes	Remove this Level
5.	Table 1 Procedural Steps of Procurement	£1 164,176 - £4,104,394 <u>Works only</u>	LEVEL REMOVED	-	Yes	Remove this Level Yes
6.	Table 1 Procedural Steps of Procurement	£164,176 and above <u>Supplies and Services</u>	LEVEL REMOVED	-	Yes	Remove this Level

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
7.	Table 1 Procedural Steps of Procurement	£0 to £10,000	New Level 1- written quote	Yes – good governance requirements: value for money efficiency, transparency, accountability	Yes	New Level
8.	Table 1 Procedural Steps of Procurement	£10,001 to £25,000	NEW LEVEL ITQ Up to 3 invited suppliers to take part in tender or Open competition (at the discretion of the Procuring Officer)	Yes – good governance requirements: value for money: efficiency, transparency, accountability	Yes	New Level

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
9.	Table 1 Procedural Steps of Procurement	£25,001 - £181,302	<p>NEW LEVEL</p> <p>ITT</p> <p>or</p> <p>Further Competition or Direct Award if using a Framework Agreement⁴</p> <p>Minimum of 4 invited suppliers to take part in tender</p> <p>or</p> <p>Open competition in the UK</p> <p>or</p> <p>As per Framework requirements</p>	Yes – good governance requirements: value for money efficiency, transparency accountability	Yes	New Level

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
10.	Table 1 Procedural Steps of Procurement	<p>£181,302 -£4,551,413</p> <p><u>Works only</u>³</p>	<p>NEW LEVEL</p> <p>ITT</p> <p>or</p> <p>Further Competition or Direct Award if using a Framework Agreement</p> <p>Minimum of 4 invited suppliers to take part in tender</p> <p>Open competition in the UK</p> <p>or</p> <p>As per Framework requirements</p>	Yes – new UK agreed European thresholds	YES	New OJEU ¹ Level

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
11.	Table 1 Procedural Steps of Procurement	<p>£181,302 and above</p> <p><u>Supplies and Services²</u> <u>(Consumables goods and Services)</u></p>	<p>New Level</p> <p>NEW OJEU THRESHOLD</p> <p>OJEU Tender</p> <p>Or</p> <p>Further Competition or Direct Award if using a Framework Agreement Open procedure¹ – unlimited</p> <p>Restricted procedure¹ – top 5 from SSQ shortlist (Part 3)</p> <p>Other procedures¹ – appropriate numbers as agreed with Procurement Officer and Legal Services</p> <p>As per Framework requirements</p>	Yes – new UK agreed European thresholds	YES	New Level

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
12.		<p>£4,551,413 and above</p> <p>Works only³ (building and Civil Engineering Projects)</p>	<p>NEW LEVEL</p> <p>NEW OJEU THRESHOLD</p> <p>OJEU tender</p> <p>Further Competition or Direct Award if using a Framework Agreement⁴ Open procedure¹ – unlimited</p> <p>Restricted procedure¹ – top 5 from PAS 91 shortlist</p> <p>Other procedures¹ – appropriate numbers as agreed with Procurement Officer and Legal Services.</p> <p>As per Framework requirements</p>	<p>Yes – new UK agreed European thresholds</p>	<p>Yes</p>	<p>New Level</p>
13.	Section 19 -23 PQQ	<p>Explanations about PQQ</p>	<p>Section replaced with information on the new SSQ , PAS91 and ESPD</p>	<p>Yes</p>		<p>Information about new SSQ</p>

Item No.	Sections	Previous wording	Change requested or proposed new wording	Legal Requirement	Process change	Wording/ Admin change
14.	Section 42	Where a contract is estimated to be £25,000 or over, the relevant Procuring Officer must discuss with the Service Manager before the procurement, whether the Council should require security for its performance. It must be recorded that either no such security is considered necessary, or, specify in the conditions of tender the nature and amount of security to be given	Where a contract is estimated to be £75,000 or over, the relevant Procuring Officer must discuss with the Service Manager before the procurement, whether the Council should require security for its performance. It must be recorded that either no such security is considered necessary, or, specify in the conditions of tender the nature and amount of security to be given.	-	Yes	Yes raise value for requirement of a performance bond from £25K to £75,000.
15.	Appendix A Exemption Process	As per CPR's	Clarification and wording changes. Exemption process tightened	Yes	Yes	Yes

¹ OJEU - For EU procurements different procedures can apply (i.e. open, restricted, competitive dialogue, competitive procedure with negotiation or innovation partnerships).

² Consumable goods and services.

³ Building or civil engineering projects

⁴ Framework Agreements are an agreed and trusted pool of available contractors (suppliers of goods and services or works) usually supported by a Central Government, such as, Crown Commercial Service or a group of public bodies, such as the Surrey Local Authority Framework Agreement.

Abbreviations

OJEU Official Journal of the European Union

ITQ Invitation to Quote

ITT Invitation to Tender

CFO Chief Finance Officer

HoS Head of Service

PAS91 Construction pre qualification questionnaires (Publicly Available Specification (PAS))

Procurement Regulations Public Contract Regulations and the Concession Contracts Regulations

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General

Introduction

1. These Contract Procedure Rules (CPRs) apply to all procurement on behalf of the Council. They apply equally to the supply of goods, materials, services or other work. In procuring such contracts, the overriding objective is to obtain the best value for the Council. The officer of the Council procuring (Procuring Officer) must consult with the Council's Procurement Officer and Legal Services prior to commencing any procurement exercise.

Application

2. Every contract procured by or for the Council must comply with these CPRs except where exemptions are obtained in advance. The circumstances where an exemption would apply are listed in Appendix A.

Preparing for the Contract

Contract/tender information to be recorded on In-Tend

4. All Tenders and Contracts over £10,000.00 must be fully documented on the In-Tend e-procurement system.
5. All contract files should clearly record the identity of the officer undertaking the procurement (the Procuring Officer).

Responsibilities of the Procuring Officer

6. The Procuring Officer is responsible for ensuring and recording that the relevant authority (in accordance with Table 1) has been obtained and there is sufficient budget in place for the procurement before any steps are undertaken.
7. The Procuring Officer is to ensure that the supplier is sufficiently capable and financially sound to undertake the contract by making enquiries, pursuing references and reviewing the quotes, tender proposals/method statements as appropriate, during the procurement process.

Invitation to Quote (ITQ) Invitation to Tender (ITT) documents specification and evaluation criteria (Over £10,000.00.).

8. A ITQ or ITT document, specification and evaluation criteria must be prepared by the Procuring Officer, in advance of tenders or quotations being sought. The evaluation criteria will be set to identify the "most economically advantageous tender" (MEAT), based on price and a range of value considerations. Both the specification and the evaluation criteria must be recorded and used to evaluate tenders/quotations received.
9. If a potential supplier requires information not provided in the ITQ/ITT and specification documents, such additional information must be sent to all other bidders through the clarification link within the project summary on the In-Tend portal. It is important that all potential suppliers are treated equally.

Procedural Steps of the Procurement

Estimated value of contracts

10. An estimated value must be identified and documented for every contract immediately before starting the procurement process to confirm there is adequate budget provision, and to determine the appropriate form of tender or quotation process to follow detailed in Table 1.
11. For contracts which continue over a number of years, the estimated value of the contract shall be taken to be **the annual value multiplied by term of the contract including any extension periods** to assess whether the relevant Public Contracts Regulations apply.
12. For contracts which repeat annually but have no fixed contract term, the annual value should be multiplied by four years.

Division of contracts

13. Large scale works or orders must not be broken down into smaller units for the purpose of creating lower value contracts to avoid Public Contracts Regulations unless, there are sound, operational or management reasons for doing so. Procuring Officers should take into consideration that in some cases splitting the contract into lots may be advantageous to the Council and will make the contract more attractive to suppliers, particularly small and medium sized enterprises (SME's).

It is a legal requirement to consider whether to split a contract into lots. Consideration must be given to this and when lots are not used the Procuring officer must be able to justify why it was not considered appropriate to do so.

Specialist advice

14. All contracts above the relevant thresholds must comply with the relevant Public Contracts Regulations as applicable. Where there is a conflict between these CPRs and any statutory provision, the law must prevail. Advice on the tender process and form of contract should be taken from the Procurement Officer and Legal Services at the start of any procurement project.
15. The procedures outlined by contract value in Table 1 below are the minimum. It is important to remember that procurement rules are designed to achieve best value for the residents of Reigate & Banstead. Consequently, where better value for the Council might be achieved by seeking more tenders or quotations, this should be done. The figures outlined in this document are exclusive of VAT.

Framework agreements

16. Procuring Officers wishing to let a Framework Agreement should follow the steps required in Table 1.
17. Procuring Officers may purchase goods, works or services from existing Framework Agreements if best value can be demonstrated.

Procedural rules for a procurement

18. The Procuring Officer must ensure that all procurement activity complies with the procedures shown in Table 1 below.

Table 1: Procedural steps of a procurement

1. Value over 4 years?	2. Use In-Tend?	3. Procedure?	4. Minimum number of quotes or tenders?	5. Use a SSQ /PAS91?	6. Minimum time for receipt of quotes or tender?	7. Authority to award contract?	8. Contract requirement & signatory?	9. Errors & exemptions agreed by?
Up to £10,000	Optional	Contact Supplier	1 written quote	No	Determined by the Procuring Officer	Service Manager (or delegated officer acting on behalf of Service Manager)	No. Retain quotes and invoices. Notify Procurement Officer of any spend over £5000 for inclusion on the Contracts Register	Service Manager
£10,001 - £25,000	Project Wizard – Quick Quote on In-tend	ITQ	Up to 3 invited suppliers to take part in tender or Open competition (at the discretion of the Procuring Officer)	No	Determined by the Procuring Officer or 14 days for open competition	Service Manager (or delegated officer acting on behalf of Service Manager)	Yes. as agreed by Legal Services To be signed by Service Manager (or delegated officer).	Service Manager
£25,001 - £181,302	Project Wizard - Quick Quote on In-tend Or New Project – Process on In-tend	ITT or Further Competition or Direct Award if using a Framework Agreement	Minimum of 4 invited suppliers to take part in tender or Open competition in the UK or As per Framework requirements	No	21 days or As per Framework requirements	Service Manager	Yes – as agreed by Legal Services. To be signed by Service Manager.	Service Manager in consultation with CFO & Portfolio Holder
£181,302 - £4,551,413 Works only ³	Project Wizard - Quick Quote on In-tend Or Project –New Project on In-tend	ITT or Further Competition or Direct Award if using a Framework Agreement	Minimum of 4 invited suppliers to take part in tender or Open competition in the UK or As per Framework requirements	Use PAS91	21 days or As per Framework requirements	Up to £250,000 – Service Manager in consultation with relevant Portfolio Holder Above £250,000 – Executive	Yes – as agreed by Legal Services. Up to £250,000 to be signed by Service Manager. Above £250,000 to be signed by Chief Executive and Legal Services Officer.	Up to £250,000 - Portfolio Holder, CFO & Service Manager Over £250,000 - Executive Officer
EU Threshold Tenders								
£181,302 and above Supplies and Services ²	Yes New Project	OJEU with ITT Or Further Competition or Direct Award if using a Framework Agreement	Open procedure ¹ – unlimited Restricted procedure ¹ – top 5 from SSQ shortlist (Part 3) Other procedures ¹ – appropriate numbers as agreed with Procurement Officer and Legal Services As per Framework requirements	Yes standard SSQ available online on In-Tend	Open procedure – 35 days (5 day reduction for electronic tender bids) All other procedures: SSQ - 30 days, plus subsequent ITT - 30 days Or As per Framework requirements	Up to £250,000 – Service Manager in consultation with relevant Portfolio Holder Above £250,000 – Executive	Yes – as agreed by Legal Services. Up to £250,000 to be signed by Service Manager. Above £250,000 to be signed by Chief Executive Officer and Legal Services Officer.	Up to £250,000 - Portfolio Holder, CFO & Service Manager Over £250,000 - Executive
£4,551,413 and above Works only ³	Yes New Project	OJEU level ITT Or Further Competition or Direct Award if using a Framework Agreement	Open procedure ¹ – unlimited Restricted procedure ¹ – top 5 from PAS 91 shortlist Other procedures ¹ – appropriate numbers as agreed with Procurement Officer and Legal Services. As per Framework requirements	Yes standard SSQ available online on In-Tend or PAS 91	Open procedure – 35 days (5 day reduction for electronic tender bids) All other procedures: SSQ - 30 days, plus subsequent ITT - 30 days Or As per Framework requirements	Executive	Yes – as agreed by Legal Services. To be signed by Chief Executive Officer and Legal Services Officer.	Executive

¹ OJEU - For EU procurements different procedures can apply (i.e. open, restricted, competitive dialogue, competitive procedure with negotiation or innovation partnerships). Contact the Procurement Officer or Legal Services to agree the most appropriate method.

² Consumable goods and services.

³ Building or civil engineering projects

Abbreviations

OJEU Official Journal of the European Union
CFO Chief Finance Officer
HoS Head of Service

SSQ Standard Selection Questionnaire
ITQ Invitation to Quote
ITT invitation to Tender
PAS91 Construction pre qualification questionnaires (Publicly Available Specification (PAS))
Procurement Regulations Public Contract Regulations and the Concession Contracts Regulations

Tender and quotation handling procedure

Standard Selection Questionnaire (SSQ), Electronic Single Procurement Document (ESPD) or Publicly Available Specification (PAS 91)

19. The SSQ, ESPD and PAS 91 asks potential supplier to self declare their status against the exclusion grounds and selection questions. All self-assessment of compliance must be accepted and evidence is only required of the winning bidder.

The SSQ consists of 3 parts

Part 1

The first part covers basic information about the supplier such as the contact details, trade memberships, details of parent companies, group bidding and so on.

Part 2

The second part covers self declaration regarding whether or not any of the exclusion grounds apply.

(It is mandatory for a bidder to complete Part 1 and Part 2 of the SSQ, or the ESPD template, for all Procurements above EU thresholds)

Part 3

The final part covers a self declaration regarding whether or not the supplier meets the selection criteria in respect of their financial standing and technical capabilities.

(The questions included in Part 3 of the SSQ should be adopted across all relevant procurement procedures over the threshold. You do not have to use all the questions - only those relevant and proportionate to the contract).

Part 1, Part 2 and Part 3 of the SSQ have been created in the form of "questionnaires" on the In-tend system and are available for use on all Tenders above EU threshold.

20. The European Single Procurement Document (ESPD) is a standard form for use by all EU member states, allowing bidders to self-declare that they meet selection and exclusion criteria, without the need to provide evidence unless they are the winning bidder.
21. PAS 91 provides a set of questions to be asked by Procuring Officers of potential suppliers to enable prequalification for construction projects.
22. For works contracts (including the procurement of goods and services in relation to the works) valued between the supplies and services EU threshold and the works EU threshold you may use a two stage tender process and make use of the PAS91 PQQ to shortlist potential bidders.

Tender opening

23. All tenders for contracts must be returned through the In-Tend system and must only be opened via the appropriate tender opening process.
24. The Procuring Officer may wish to invite the Service Manager and Portfolio holder to observe the opening ceremony if the tender is valued at more than the EU threshold.

Clarifications of tenders

25. Tender or bid clarifications may become necessary during the evaluation of tenders e.g. if a bid appears especially low, or especially high on price or where there are aspects of the bids that are unclear or contain minor errors.
26. Clarification may also be sought from tenderers on matters of quality or performance or particular terms and conditions of contracts.
27. The Procuring Officer should give all tenderers who are able to meet the requirements of the tender the same opportunity to engage in tender/bid clarification. All communication with individual suppliers must be via the correspondence link on the In-Tend portal to maintain a proper audit trail.

Post tender negotiations

28. The Procuring Officer should take advice from Legal Services and no negotiations may be entered into with any suppliers submitting tenders or quotations unless the Chief Finance Officer considers it necessary to obtain best value for the Council, to accommodate unforeseen changes in the specification, or for any other reason the Chief Finance Officer considers is appropriate.
29. In this event, details of the negotiations must be recorded in writing and must be conducted either solely with the supplier who has won the tender, or with all suppliers who have submitted tenders. The reasons for entering into post tender negotiations must be recorded.
30. For procurements which fall within the remit of the Public Contracts Regulations, no negotiations shall be allowed unless the procurement adopts one of the procedures under the relevant Public Contracts Regulations which allow for negotiation.

Content of Contracts

Terms and conditions of contracts

31. All must be in writing, in a form approved by Legal Services.
32. On some occasions the Council may be obliged to contract on the standard terms and conditions of another supplier on low value purchases. In these cases:

- (a) Complete the invitation to quote template (ITQ) and produce a specification of the services required and send to the Procurement Officer.
- (b) The Procurement Officer will approach Legal Services to agree on the Terms and Conditions of contract.
- (c) Legal Services will advise if the suppliers Terms and Conditions can be used in this instance.

Public liability insurance and professional indemnity insurance

- 33. The Procuring Officer must consider the Council's need for appropriate indemnities backed by insurance. In the case of a contract for works or services, the contract must require the supplier to carry Public Liability insurance to a minimum of £5m unless otherwise agreed by the Chief Finance Officer.
- 34. In the case of a contract for professional services, the contract must require the supplier to carry Professional Indemnity insurance to a minimum of £5m unless otherwise agreed by the Chief Finance Officer.
- 35. For all contracts there must be a requirement for the supplier to carry Employers Liability insurance to a minimum of £5m.
- 36. These insurance requirements are summarised in the table below:

Table 2: Insurance Requirements Summary

Type of insurance	Minimum Value
Public Liability	£5 million
Professional Indemnity	£5 million
Employers Liability	£5 million

Assignment of contracts

- 37. Assignment or under-letting of contracts is not to be permitted except with the prior consent of the Chief Finance Officer, and then only where the Chief Finance Officer is satisfied that an effective vetting procedure for assignees or subcontractors has been implemented.

Liquidated damages

- 38. The Procuring Officer must consider whether the contract should provide for the supplier to pay liquidated damages on failure to complete the contract by the specified completion date. Where considered appropriate by the Head of Legal Services, the contract must require the supplier to pay damages for any breach of the terms of the contract. Advice on liquidated damages should be taken from Legal Services at an early stage in the procurement project.

Corruption, bankruptcy and cancellation

39. Every contract must state that the Council may cancel the contract and recover any resulting losses if the supplier, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or commits an offence under Bribery Act 2010.
40. Every contract must state that if the supplier enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses.

Performance bonds

41. Where a contract is estimated to be £75,000 or over, the relevant Procuring Officer must discuss with the Service Manager before the procurement, whether the Council should require security for its performance. It must be recorded that either no such security is considered necessary, or, specify in the conditions of tender the nature and amount of security to be given.
42. In the latter case the relevant Service Manager must ensure that the required bond or other security is in place at the time the contract is let.

Nominating subcontractors and suppliers

43. Where it is decided to be in the Council's interest that a subcontractor or supplier should be nominated to a main supplier, at least three tenders for the nomination must be invited in accordance with one of the methods described in Table 1 above.
44. The invitation to tender as subcontractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main supplier, including an obligation to indemnify the main supplier in respect of matters included in the sub contract.

Consultants

45. Any consultant employed by the Council to let or manage contracts must comply with these CPRs. The contract with any consultant must provide that all records maintained by the consultant in relation to a contract must be made available to the Council on request and handed over to the Council on completion of the procurement.

Managing the contract

Contract management

46. For all contracts in excess of £25,000 a Contract Manager should be appointed. Where reasonably practicable, the Contract Manager should be part of the initial procurement process and an officer of Reigate & Banstead Borough Council. The Procuring Officer must notify the name of the Contract Manager to the supplier prior to letting of the contract.

47. The role of the Contract Manager will be to manage the contract throughout its duration, as well as enforce duties owed to the Council under contract and to be responsible on behalf of the Council for those duties owed to the contractor.
48. The responsibilities of the Contract Manager will include:
 - (a) Monitoring performance of the supplier against the agreed level of service
 - (b) Monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate
 - (c) Ensuring the supplier's compliance with all appropriate health and safety obligations
 - (d) Facilitating the resolution of issues between the supplier and users of the service
 - (e) Ensuring prompt payment of invoices and compliance with all financial regulations and CPRs during the lifetime of the contract
 - (f) Ensuring that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.

Variations

49. Where the relevant Contract Manager considers an existing contract needs to be varied (i.e. practical changes which do not alter the essential nature of the original contract as opposed to additional works or supplies not originally envisaged) he or she may approve these subject to the proposed variation being contained within the total budget approved for the contract. The reasons for and details of any such variation must be recorded and stored with the contract.
50. For contracts which fall within the remit of the Public Contracts Regulations, no variations are permitted unless such variation is within the scope of the original contract and in accordance with the provisions of the Public Contracts Regulations.
51. Where the approved budget would be exceeded because of the variation, approval for any such variation must be sought in accordance with column 9 of Table 1.

Contracts register

52. All contracts in excess of £5,000 will be recorded using the Reigate and Banstead contracts template within the In-Tend system and this will effectively be the Council's contract register. Where possible, all records of activity up to the letting of the contract will be maintained in the In-Tend system.
53. The Agresso financial system will show the state of account of each contract between the Council and supplier, together with any other payments and related professional fees.

Retention of records

54. Store copies of all contracts for the duration of the contract and a further 6 years.

55. Contracts signed under Seal are required to be stored for the length of the contract and a further 12 years.
56. We are required to grant access to these contracts, but access to specific documents or items of information may be denied under EU or national rules on access to documents and data protection.

Conflict of interest

57. All purchasing decisions should be free of any conflict of interest. A conflict of interest may arise where someone involved in the purchasing decision has a close financial or relational connection with a potential supplier (or other party involved) and this could influence the outcome of the buying process.
58. The fact that a supplier may be subject to a conflict of interest does not mean that the supplier should not be considered, so long as the conflict is declared, recorded, its potential impact assessed, and the risks appropriately managed.

Appendix A: Applying for Exemptions from Contract Procedure Rules

Please note

- An exemption can only be granted in exceptional circumstances.
- No Exemption can be granted where the request would result in a breach of EU Procurement Law or Public Contract Regulations.
- All Exemptions will only be granted on a temporary basis.
- Lack of sufficient planning and / or internal process delays does not constitute a reason for an Exemption

Application Procedure

Any exemptions from CPRs must be obtained before the procurement process commences. To obtain an exemption:

- contact the Procurement Officer for a copy of the CPR Exemption Form
- complete the Exemption Form and send to the Authorised Officer (as shown in column 9 of Table 1) for approval
- Once approval has been granted the signed document should be returned to the Procurement officer.
- An ITQ document must be completed and loaded on to In-tend and the named supplier on the Exemption must be invited to submit their quotation through the portal

Examples

CPRs may not apply in the following situations:

1. a procurement by the Council acting solely as the agent of another body in compliance with the contract standing orders of that other body and where the Council either does not incur expenditure, or is to be fully reimbursed by another party.
2. Contracts of employment.
3. Orders placed against a Call-off Contract itself awarded in accordance with these CPRs.
4. Where the Council is part of a public sector consortium contracting with a supplier(s) for the provision of supplies, 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.
5. Purchase or sale by auction.
6. Where “spot-purchases” demonstrably provide better value for money than longer term contract arrangements.
7. Where only one supplier is able to carry out the works or services and where no satisfactory alternative is available because of:
 - technical reasons, artistic reasons or because of exclusive rights

- Branded items which are sold at a single fixed price.
8. Orders required as an addition to an existing or previous contract and it is necessary to use the same supplier for the reasons stated in 10.
 9. An extension to an existing contract which is within the terms of the contract provided that the decision is taken at the level (Service Manager/Portfolio Holder/Executive) at which the original decision to award the contracts was required by these CPRs.
 10. An extension for additional work to an existing contract where the goods/services required is outside the scope of the original contract but the circumstances are such that it would be inappropriate to offer the additional work to competition.
 11. An emergency where immediate action is necessary to:
 - prevent significant loss to the Council
 - prevent danger, injury or hardship
 - Comply with public health requirements.

In such circumstances, the best practicable means of obtaining value for money should be used. If the contract exceeds £25,000 in value, the Service Manager should consult the relevant Portfolio Holder and the Chief Finance Officer.
 12. Purchasing services on behalf of the Council from another Local Authority Trading Company.
 13. Any other exemptions specifically authorised by the Executive.