

## **Audit & Governance Committee – 29 September 2015**



### **REVIEW OF CONTRACT PROCEDURE RULES**

Report of the Strategic Manager – Financial Services (s151 Officer)

Ward(s) affected: All

#### **1. Purpose of Report**

- 1.1 To consider amendments to the Council’s Contract Procedure Rules (“the rules”). The rules were last reviewed in 2013 and a number of changes made. Some of the changes have adversely impacted on working practices and changes are therefore proposed. The revised Contract Procedure Rules are at Appendix A to this report.

#### **2. Recommendations**

- 2.1 To approve the changes to section 6 and 7 of the Contract Procedure Rules. The Council’s financial procedure rules will be reviewed to ensure that they are in accordance with the changes which have been made to the Contract Procedure Rules.
- 2.2 To recommend to Council the changes to the Contract Procedure Rules.

#### **3. The Report**

- 3.1 In January 2013 the meeting of Audit and Governance Committee approved amendments to the Contract Procedure Rules. In addition the Committee gave delegated authority to Officers in discussion with the Member Champion for Procurement to make further minor amendments which included a review of the financial limits for seeking quotes.
- 3.2 Paragraph 6.2 within Section 6 Exemptions from Contract Procedure Rules lists the reasons under which an exemption from the laid down procurement procedures can be allowed. Currently exemptions under this paragraph options (a) to (f) require a form to be completed and for it to be authorised by the Chief Finance Officer and Corporate Head – Business Support. A review of the reasons has shown that exemption option (e) is not required as the situation is dealt with in paragraph 7.6. The frameworks that the Council uses contain evidence that enough quotes were sought but just not returned and paragraph 7.6 is adequate. This makes option (e) redundant as evidence and authorisation exists under another part of “the rules”, and the proposal is to

remove it.

- (a) that only one Provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive or proprietary rights;
- (b) that time limits required for tendering cannot be met for reasons of extreme urgency and which (in EU cases) were unforeseen and not attributable to the Council;
- (c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which are either strictly necessary for the completion of the Contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience/additional costs;
- (d) That goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
- (e) That despite seeking the relevant number of quotations, insufficient quotations have been obtained (see 7.6 below)
- (f) That due to the nature of the goods/service a change of supplier would cause disproportionate technical difficulties diseconomy significant disruption to the delivery of Council services.

3.3 In 2013 changes to the financial limits to quotes were introduced, however, since the change it has been found that the reduced limits have adversely affected the working practices of officers making them impractical and a hindrance to procurement rather than an aid.

3.4 The current limits are contained within Section 7 paragraph 7.3 of the rules are as follows:

A Contract/or sub contract made under CPR 7.2 where the estimated value is:

- (a) £1,000 or less may be made without written competitive quotations as long as the contract is not part of a larger contract
- (b) Over £1,000 but not exceeding £5,000 may be made after obtaining two written competitive quotations as long as the Contract is not part of a larger Contract.
- (c) over £5,000 but not exceeding £20,000 may be made after obtaining at least three written quotations;
- (d) over £20,000 but not exceeding £50,000 may be made after obtaining at least four written quotations.

3.5 A review of the limits within the Contract Procedure Rules for the other North Yorkshire Authorities and other small districts has been undertaken. In addition advice has been sought from the North Yorkshire Procurement Partnership (from whom the Council buys in procurement assistance) as to appropriate limits. The proposed changes are as follows:

A Contract/or sub contract made under CPR 7.2 where the estimated value is:

- (a) £5,000 or less may be made without written competitive quotations as long as the contract is not part of a larger contract and the responsible officer maintains a written record of any quote received;

- (b) Over £5,001 but not exceeding £30,000 may be made after obtaining two written competitive quotations as long as the Contract is not part of a larger Contract;
- (c) Over £30,001 but not exceeding £50,000 may be made after obtaining at least three written quotations;
- (d) Over £50,000 must go out to tender.

3.6 The Rules are currently being reviewed to ensure that any changes required as a consequence of the adoption of the 2014 EU Procurement Directives are included. It is proposed to update members with any changes in due course.

#### 4. **Implications**

##### 4.1 **Financial and Value for Money Implications**

These are covered in the report.

##### 4.2 **Legal implications**

Failure to comply with procedures may put the council at risk of challenge and potential claims for damages. Conversely adoption of these procedures and compliance with them should ensure transparency and demonstrate that Council is getting value for money in its delivery of services.

##### 4.3 **Contribution to Council Priorities**

Improving the way in which the Council Governs its business by demonstrating a corporate approach to procurement with common contracting arrangements in place and enabling efficiency in the delivery of services.

##### 4.4 **Risk Management**

There is significant risk to the Council both in legally and financially until managers take responsibility to ensure compliance with procedures in their respective service areas.

##### 4.5 **Equality Impact Assessment**

The Council's Equality Impact Assessment Procedure **has been** followed. An Equality Impact Assessment **has not** been completed on the proposals as completion of **Stage 1- Initial Screening** of the Procedure identified that the proposed policy, strategy, procedure or function **does not have** the potential to cause negative impact or discriminate against different groups in the community based on •age • disability •gender • race/ethnicity • religion or religious belief (faith) •sexual orientation, or • rural isolation.

#### 5. **Consultations with Others**

Finance, Internal Audit, Heads of Service

6. **Access to Information : Background Documents**

None

7. **Author of the Report**

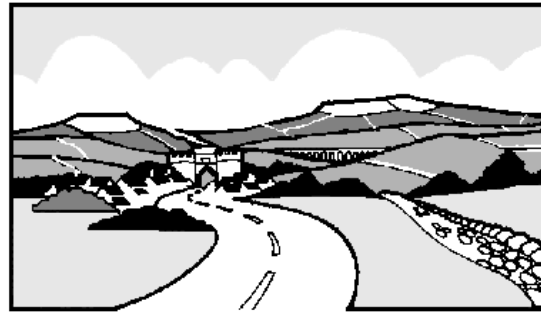
Nicola Chick, Strategic Manager – Financial Services (s151 Officer)

Telephone: 01756 706418

E-mail: nchick@cravendc.gov.uk

8. **Appendices**

Appendix A – Revised Contract Procedure Rules



**CRAVEN**  
IN · THE · YORKSHIRE · DALES  
**D I S T R I C T**

**CRAVEN DISTRICT COUNCIL**

**CONTRACT PROCEDURE RULES**

## CONTENTS

SECTION	TITLE	PAGE
CPR 1	INTERPRETATION & DEFINITIONS	3
CPR 2	SCOPE AND APPLICATIONS	4
CPR 3	COLLABORATION AND USE OF FRAMEWORKS	5
CPR 4	DUTIES OF RESPONSIBLE OFFICER	5
CPR 5	COMPLIANCE WITH CPR & LEGISLATION	6
CPR 6	EXEMPTIONS FROM CPRS	7
CPR 7	REQUIREMENT TO OBTAIN QUOTES OR TENDER	8
CPR 8	AWARD IF CONTRACTS WITHOUT TENDERS	10
CPR 9	ESTIMATES OF CONTRACT VALUE	10
CPR10	PRE-TENDER/QUOTATION ENQUIRIES	10
CPR 11	TENDER INVITATION	11
CPR 12	RECEIPT OF TENDERS	12
CPR 13	OPENING OF TENDERS	12
CPR 14	EVALUATION CRITERIA & EVALUATION OF TENDERS	13
CPR15	ERRORS OR DISCREPANCIES IN TENDERS	13
CPR16	CONTRACT NEGOTIATIONS	14
CPR 17	ACCEPTANCE OF TENDERS	15
CPR 18	WITHDRAWAL OF TENDERS/RE-TENDERING	16
CPR 19	NOMNATED SUB-CONTRACTORS & SUPPLIERS	16
CPR 20	FORM OF CONTRACT	16
CPR 21	CONTRACT VARIATION	17
CPR 22	DECLARATION OF INTERESTS	18
CPR 23	PREVENTION OF CORRUPTION & ANTI- COMPETITIVE BEHAVIOUR	18
CPR 24	CONTRACT MANAGEMENT	19
CPR 25	APPROVED LISTS	20
APPENDIX 1	GUIDE TO EUROPEAN PROCUREMENT RULES	

## CPR 1 INTERPRETATION AND DEFINITIONS

1.1 These Contract Procedure Rules are standing orders of the Council (made pursuant to Section 135 of the Local Government Act 1972) with respect to the making of Contracts and are subject to bi-annual review.

1.2 In these Rules, each of the expressions in the left-hand column below shall have the meaning stated against that expression in the right-hand column.

Responsible Officer any permanent or temporary staff member who is properly authorised to carry out any of the Council's contracts functions.

Chief Officer is the Chief Executive, Director of Services, Strategic Manager – Financial Services (s151 Officer) or a Corporate Head

Manager includes, for the purposes of these Contract Procedures Rules, all Managers (or, in the absence of the Manager, his/her nominated representative).

Committee means a Committee or Sub-Committee of the Council.

Contract is any agreement between the Council and one or more Providers for the supply of goods or materials to the Council, for the execution of works for or on behalf of the Council, or for the provision of services to the Council or to others on its behalf (including but not limited to the provision of services, wholly or partly, in return for a concession).

CPR Contract Procedure Rule.

EU Contract is a Contract covered by the Public Works/Supplies/Services/Utilities Contract Regulations.

Regulations means the Public Contract Regulations 2015 (often referred to as EU procurement rules)

Tender a formal invitation to make an offer to secure a particular contract

Quote the price a person will charge to do a piece of work

Provider is any contractor supplying or offering to supply goods, works, or services (including concessions) to the Council and includes any individual, firm, agent, company, partnership, public authority or other organisation.

Chief Finance Officer is the officer with overall responsibility for the proper administration of the financial affairs of the Council or his / her Deputy.

Diseconomy means lack of economy or a factor responsible for an increase in cost

1.3 References to monetary values in these Contract Procedure Rules **exclude VAT**.

1.4 Where reference is made in these Contract Procedure Rules to the Chief Financial Officer, in the absence of that Officer, the authorised substitute. Likewise, in the absence of the Solicitor to the Council and Monitoring Officer, their authorised substitute.

- 1.5 References in these Rules to Officers shall include successors to those posts whether original or substituted

## **CPR 2 SCOPE AND APPLICATION**

- 2.1 These Procedure Rules shall apply to any Contract, with the exceptions listed in CPR 2.2, and also to the nomination of sub-contracts under any such Contract (whether in each case the Council is contracting or nominating on its own behalf or wholly or partly on behalf of others).
- 2.2 These Procedure Rules do not apply to transactions of the following types save for CPR3 which applies to (d) and (i).
- a) Purchases or sales by auction or at public fairs or markets;
  - b) Contracts for the sale or purchase of land;
  - c) Contracts for the engagement of Counsel, or for the engagement of external Solicitors to represent the Council in specified legal proceedings;
  - d) Orders placed under a corporate contract arranged by a central purchasing unit or department (where applicable);
  - e) Contracts with statutory undertaking(s) for work which only they can carry out;
  - f) Contracts of employment;
  - g) Orders placed with such consortia as may be approved by the Council provided it is satisfied that the purchasing arrangements of the consortia in question comply with EU and UK legislation and provide value for money;
  - h) Contracts formalising the funding of particular voluntary sector bodies where the purpose of the contract is to establish the general conditions whereby the body may be funded by the Council.
  - i) Contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the Lead Authority. However, advice must be obtained from the Solicitor to the Council and Monitoring Officer or the Chief Financial Officer as appropriate.
- 2.3. All employees of the Council and firms/advisors employed to act in any capacity to manage or supervise a Contract must comply with these Procedure Rules and with the Council's Financial Procedure Rules and Chief Officers and the Responsible Officer must ensure such compliance in the contracting area for which he/she is responsible.
- 2.4 Officers must consult the Solicitor to the Council or Chief Financial Officer as appropriate for legal and financial advice.
- 2.5 These rules will apply equally where the supply of works, goods or services is provided by Consultants/Contractors and on completion of the relevant contract the Consultant/Contractor will promptly deliver all appropriate documents and records to the Responsible Officer

## **CPR 3 COLLABORATIVE ARRANGMENTS AND USE OF FRAMEWORK AGREEMENTS**

- 3.1 In order to secure value for money, the Council may enter into collaborative procurement arrangements. Where appropriate before the invitation of tenders and quotations, the Responsible Officer must first consider whether it is possible to use a partnership contract or a framework agreement for purchasing the time and costs of undertaking a competitive



process can be significant. Where the estimated value of the proposed contract is above the relevant EU financial threshold, officers must ensure that the requirements of the EU Procurement Regime have been met by the Lead Authority.

- 3.2 The term of a framework agreement should normally not exceed four years. However, a longer term may be granted in exceptional circumstances. The framework can be a single provider or multi provider. In the case of multi provider there must be an intention to appoint at least three suppliers.
- 3.3 Contracts based on Framework Agreements may be awarded by either:
- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without re-opening competition, or
  - Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
    - Inviting the organisations within the Framework Agreement, that are capable of executing the subject of the contract, to submit written tenders in accordance with these Contract Procedure Rules
    - Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject matter
    - awarding each contract to the tenderer who has submitted the best tenderOn the basis of the award criteria set out in the specifications of the Framework Agreement

#### **CPR 4 DUTIES OF THE RESPONSIBLE OFFICER**

- 4.1 The Responsible Officer for each Contract will be appointed by the appropriate Manager of the Service in default of which that Manager will be the Responsible Officer

The Responsible Officer will always:

- (a) seek value for money;
- (b) show no favour or disfavour to any Provider nor discriminate against Providers from other EU states;
- (c) conduct tendering and price testing in accordance with proper practices and the highest standards of propriety;
- (d) do nothing that contravenes EU or domestic law;
- (e) ensure that all procurement is undertaken in a non-discriminatory way and promotes equality of opportunity, and
- (f) Ensure that adequate Contract files are kept for all Contracts upon which the Council is engaged and that the name of the Responsible Officer is entered in a prominent place in each Contract file.
- (g) Ensure that the appropriate approval and budgetary provision is in place and evidenced on the Contract file.
- (h) That any proposed contractor has the technical capability to the deliver the project
- (i) Any proposed contractor has the financial and resource capacity (taking into account the contract value and risk) to perform the contract
- (j) These rules, the Financial Procedure Rules and any Codes of Practice are complied with
- (k) Any agents, consultants, and contractual partner acting on behalf on the Council's behalf follow a process which provides for equivalent competition to these rules

That he takes all necessary legal, financial and professional advice.

## 4.2 Steps Prior to Procurement

Prior to procuring goods or services officers must:

- (l) take into account the requirements arising from any Best Value review
- (m) ascertain whether a contractual arrangement is already in place or central purchasing arrangements exist or are being contemplated
- (n) appraise the need for the expenditure and its purpose
- (o) define the objectives of the purchase
- (p) assess the risks associated with the procurement and determine how to manage them
- (q) ascertain whether the service can be undertaken in-house from within the Councils own resources
- (r) consider what procurement method is most likely to achieve the purchasing objectives, including using a framework agreement, consortium, collaboration with other purchases, partnering and long term relationships
- (s) prepare a specification and consider any European or British Standards that may need to be applied
- (t) identify any approvals that may be required
- (u) estimate the value and record how that estimate was arrived at
- (v) determine how many tenders or quotations will be evaluated
- (w) identify whether a standard form of contract which has been approved by Legal Services for the proposed procurement exists, and should be specified when inviting quotations or tenders

## CPR 5 COMPLIANCE WITH CONTRACT PROCEDURE RULES AND LEGISLATION

5.1 Every Contract made by the Council or on its behalf shall comply with the European Community Treaty and all relevant European Union and domestic legislation, these Contract Procedure Rules and Codes of Practice and the Council's Financial Procedure Rules subject to the following provision.

Arrangements made to meet the requirements of any present or future domestic legislation or EU Directive shall take precedence over any provision of these Contract Procedure Rules. For specific rules relating to EU tendering the EU Procurement Guidance for Employees at Appendix1 must be followed.

5.2 The Responsible Officer will inform the Chief Financial Officer of any deviation in or non-compliance with any of the Contract Procedural Rules or EU legislation as soon as possible after having been made aware of them and any other Officer of the Council must immediately inform the Responsible Officer of any such deviation or non-compliance of which he/she is aware

## CPR 6 EXEMPTIONS FROM CONTRACT PROCEDURE RULES

6.1 Exemptions from the requirements of these Contract Procedure Rules are to be the exception and not the rule. They must not be granted as a matter of administrative convenience and must be supported by documented and evidenced reasons as to the legitimate need for the exemption to be granted.

6.2 When an exemption is sought from tendering or the requirement to obtain written quotations, the Responsible Officer will need to justify the use of an alternative method of selection so that propriety, value for money and compliance with EU and domestic legislation can be demonstrated. It will also include reasons such as:

- (a) that only one Provider is able to carry out the work or service or to supply the goods for technical or artistic reasons or because of exclusive or proprietary rights;
- (b) that time limits required for tendering cannot be met for reasons of extreme urgency and which (in EU cases) were unforeseen and not attributable to the Council;
- (c) that additional goods, works or services are required which, through unforeseen circumstances, were not included in the original contract and which are either strictly necessary for the completion of the Contract or, for technical or economic reasons, cannot be carried out separately without great inconvenience/additional costs;
- (d) That goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Provider would result in incompatibility or disproportionate technical difficulties in operation or maintenance.
- (e) That where the technical characteristics of the goods are only compatible with an existing supply or installation, such that procurement of another product other than one available from the original contractor would result in
  - disproportionate technical difficulties
  - diseconomy
  - significant disruption to the delivery of Council services.
  - incompatibility

6.3 The Responsible Officer must keep a written record justifying any exemption(s) under paragraph (a) to (e) above The Responsible Officer must complete the appropriate exemption form and seek the prior approval of the Chief Financial Officer and the Corporate Head – Business Support. Once the exemption has been approved and signed off, the Responsible Officer must submit a copy to the Procurement, Payments and Risk Manager who will keep a central record of all exemptions granted.

6.4 Exemption (on grounds other than 6.3 (a) to (e) from any of the following provisions of these Procedure Rules may be made only by the direction of the Audit & Governance Committee where such Committee is satisfied that the exemption is justified in special circumstances.

6.5 No exemption may be granted:

- (a) which would result in a breach of European or UK law;
- (b) from CPR 17 (Acceptance of Tenders) unless on grounds of extreme urgency (e.g. during civil emergency); from CPR 20 (Form of Contract); or from CPR 7.9 and CPR 7.19 (Execution of Contracts).

6.6 The use of eProcurement technology does not negate the requirement to comply with these Contract Procurement Rules

6.7 Exemptions granted under section 6.3 will be reported to Audit & Governance Committee on a 6 monthly basis by the Chief Financial Officer.

## **CPR 7 REQUIREMENT TO OBTAIN QUOTATIONS OR TENDERS**

### **General Rules applying to Contracts valued at £50,000 or less**

7.1 Contracts or sub-contracts valued at £50,000 or less need not be tendered (unless required by EU law) PROVIDED that such contracts are effected in compliance with the Council's Financial Procedure Rules and all appropriate internal controls.

- 7.2 An official order shall be placed under a Corporate or Departmental Contract using the Council's approved Order Form and will be issued by authorised officers. A list of authorised officers will be submitted by each Head of Service to the Responsible Officer on an annual basis.
- 7.3 A Contract/or sub contract made under CPR 7.2 where the estimated value is:
- (a) £5,000 or less may be made without written competitive quotations as long as the contract is not part of a larger contract and the responsible officer maintains a written record of any quote received;
  - (c) Over £5,000 but not exceeding £30,000 may be made after obtaining two written competitive quotations as long as the Contract is not part of a larger Contract;
  - (d) Over £30,000 but not exceeding £50,000 may be made after obtaining at least three written quotations;
  - (e) Over £50,000 must go out to tender
- 7.4 Under no circumstances should Contracts be broken down in size so as to have the effect of lowering the Contract value or to avoid the requirements for tendering or the need for written quotations.

#### **Who Can Award the Contract?**

- 7.5 Contracts and/or extensions of contracts (**provided they are not materially different in character from the original contract**) with a quoted value of £50,000 or less may be awarded on behalf of the Council by the Responsible Officer to the Provider who offers the lowest price or whose offer is considered by the Responsible Officer to be the most economically advantageous to the Council. (for avoidance of doubt extensions of existing contracts can only awarded if the extension period was included within the original tender documentation as an option to extend).
- 7.6 Where the relevant number of quotations has been sought, but fewer quotations have been obtained, the Responsible Officer may award the contract provided they are reasonably satisfied that they have achieved best value for the Council. The responsible officer should seek agreement to award from immediate Line Manager for further assurance.
- 7.7 In all cases, except where it is impracticable for reasons of extreme urgency, confirmation of the Provider's terms of business (usually a written quotation) shall be obtained before an order is placed. No order will be placed for work, goods or services unless it is first ascertained that the cost is covered by an approved budget or by special financial provision.
- 7.8 Contracts with a value of less than £50,000 may be signed by the relevant Chief Officer or the Responsible Officer.
- 7.9 The Responsible Officer shall record the Providers approached, their responses, and details of any quotations provided, the subject matter of the quotation, the name of the Provider, the time and date of the quotation and details of the price offered and any other trading terms.

#### **General Rules applying to Contracts valued at more than £50,000**

- 7.10 All contracts or sub contracts with an estimated value over £50,000 must be put out to tender unless exempted in accordance with CPR 6 or awarded by way of extension to an initial Contract for works in accordance with CPR 7.12

7.11 At least 21 days' public notice must be given in one or more of the local newspapers and in such trade journals as the Responsible Officer shall consider desirable, stating the nature and purpose of the Contract, inviting tenders and stating the last date when tenders will be received; In the case of an EU tender, the Responsible Officer will have the discretion to decide whether to advertise locally in addition to placing a contract notice in the OJEU. Any local advert must not contain any more information than the information in the OJEU notice.

### **Who Can Award the Contract?**

7.12 Contracts and/or extensions of contracts (**provided they are not materially different from the original contract**) with a quoted value in excess of £50,000 may be awarded on behalf of the Council by the Responsible Officer, in consultation with the Council Leadership Team ,to the Provider who offers the lowest price or whose offer is considered by the Responsible Officer to be the most economically advantageous to the Council, provided, in both cases, the price quoted is within the budgetary limits approved by the Council or Committee appointed for that purpose.

7.13 No contract or extension of contract with a quoted value in excess of £50,000 shall be awarded until the Chief Financial Officer has checked the Provider's financial standing and provided written confirmation that this is satisfactory for the Contract to be undertaken.

7.14 The Responsible Officer will ensure that details of all Contract awards exceeding £50,000 are notified to the Chief Financial Officer and entered in the Council's Contracts Register. Such notification must also include evidence of budget approval.

7.15 Details of all contract awards exceeding £100,000. Must be reported to the appropriate committee as soon as practicable.

7.16 Every Contract which exceeds £50,000 in value shall either be signed for and on behalf of the Council by the Solicitor to the Council and Monitoring Officer or be executed as a deed.

### **CPR 8 AWARD OF CONTRACTS WITHOUT TENDERING**

8.1 A contract may only be awarded without tendering in the following circumstances

- Where a relevant exemption from the Contract Procedure Rules applies under section 6.
- Where a Contract for the execution of work, forms part of a serial programme the terms having been settled with the Contractor on the basis of the application of a stated addition or deduction to the rates and prices contained in an initial Contract awarded competitively following an invitation to tender in accordance with contract procedure rules subject to a maximum extension under this Rule not exceeding 100% of the original Contract value or £90,000 whichever is the lower.
- Where the supply of goods, services, purchase of goods or provision of information technology or execution of work is such that an existing in-house contract could be reasonably extended to include it then the in-house contractor can be awarded the work. The Responsible Officer shall ascertain whether the relevant department wishes to submit a quotation in addition to those invited under the preceding provisions.

## **CPR 9 ESTIMATES OF CONTRACT VALUE**

- 9.1 Before inviting tenders for the execution of any work or for the provision of any goods or services the relevant Responsible Officer shall record an estimate in writing of the likely expense of executing the work, or the provision of goods or services in a suitable manner.

## **CPR 10 PRE-TENDER/QUOTATION ENQUIRIES**

- 10.1 Enquiries of Providers may be made before tenders or quotations are invited in order to:

- (a) establish whether the goods, works or services the Council wishes to purchase are available and within what price range;
- (b) prepare tender documents, price estimates and contract documents;
- (c) establish whether particular Providers wish to be invited to tender or quote.

- 10.2 In making enquiries:

- (a) no information will be disclosed to one Provider which is not then disclosed to all those of which enquiries are made or which are subsequently invited to tender or quote;
- (b) no Provider will be led to believe that the information they offer will necessarily lead to them being invited to tender or quote or be awarded the Contract.

## **CPR 11 TENDER INVITATION**

- 11.1 When tenders are invited following public advertisement Contract documents will be sent within five working days of request provided any specified fee has been paid. The Responsible Officer will ensure that copies of all Invitations to Tender documents are retained on the relevant Project file.

- 11.2 When tenders are invited for an EU Contract, Providers will be given at least 40 days to return tenders unless:

- (a) a Prior Information Notice has been published in the Official Journal of the European Union in which case only 26 days need be given; or
- (b) by reasons of urgency the time limit cannot be complied with when at least 10 days must be given and justification for the reduction recorded.

*Note: The Appendix provides a guide to EU procedural requirements – the position can change and officers are advised to consult with either Legal Services or Financial Services*

- 11.3 Reasonable requests for further information relating to the Contract documents will be granted provided the request enables the Council to supply the information not less than six days (or four days in cases of emergency) before the date specified for receipt of tenders. Information supplied to one Provider will be shared with all Providers unless in the opinion of the Responsible Officer and following consultation with the Solicitor to the Council and Monitoring Officer there are appropriate grounds for not doing so.

- 11.4 Every invitation to tender submitted in hard copy will state that a tender will only be considered if it is:

- (a) addressed to the Solicitor to the Council & Monitoring Officer in a plain sealed envelope or package which shall bear the word "Tender" followed by the subject to which it relates, but shall not bear any name or mark indicating the sender;

- (b) accompanied by an undertaking which shall become a condition of the Contract that the amount of the tender has not been calculated by agreement or arrangement with any person other than the Council and that the amount of the tender has not been communicated to any person other than the Council and will not be communicated to any person until after the closing date for the submission of tenders (except for the purposes of obtaining any bond/surety where this is a requirement of the proposed Contract).

11.5 Where an electronic tendering system is available an Invitation to Tender may be submitted by electronic means provided prior written approval of the Responsible Officer has been given. Specific instructions/procedures relating to electronic tendering will apply and should be followed. You should consult with the Procurement Manager.

## **CPR 12 RECEIPT OF TENDERS**

12.1 All Tender envelopes and packages must be delivered to the Solicitor to the Council & Monitoring Officer or his duly authorised representative at the Council's Main Office and immediately on receipt will be consecutively numbered. And marked with the date and time of receipt. The envelope and/or package will then be retained in the custody of the Solicitor to the Council & Monitoring Officer or his duly authorised representative until the time appointed for the opening.

12.2 Any tender received after the date and time indicated for the receipt of tenders shall not be considered unless in the opinion of the Solicitor to the Council and Monitoring Officer there is clear evidence that the tender was posted or hand delivered or, if previously approved as above, despatched by electronic means before the date and time for receipt of tenders has passed in which case the Solicitor to the Council and Monitoring Officer will have discretion to admit the tender to opening and consideration. Subject to this exception, tenders which are received late shall be retained unopened by the Solicitor to the Council and Monitoring Officer until after the result of the tendering process has been published to tenderers.

## **CPR 13 OPENING OF TENDERS**

13.1 All tenders with an estimated value in excess of £50,000 will be opened by the Responsible Officer or his/her nominated representative in the presence of a Chief Officer, or his/her nominated representative, and the Solicitor to the Council & Monitoring Officer or his/her nominated representative.

13.2 All tenders will be opened at the same time and place and shall be immediately signed and dated by the Officers required to be present in accordance with CPR 13.1 above.

13.3 The Solicitor to the Council & Monitoring Officer, or his/her nominated representative, will, at the time the tenders are opened, record in the Schedule of Tenders provided for that purpose:-

- (a) the nature of the goods or materials to be supplied or the work to be executed;
- (b) the name of each Provider by or on whose behalf a tender was submitted, together with the consecutive number endorsed on the tender envelope;
- (c) the amount of each tender;
- (d) A note where price alterations have been made on the tender
- (e) the date and time of the opening of the tender;
- (f) the names of the persons present at the opening of the tenders.
- (g) the name of the officer taking custody of the tender documents after opening

The Schedule of Tenders must be signed by everyone present at the tender opening session and passed to the Responsible Officer with the tender documents.

- 13.4 The Responsible Officer will keep securely all tenders with the envelopes received for a period of at least 6 years after the award of the Contract or such longer period as may be required by domestic or EU legislation.
- 13.5 Where any activity is or may be carried out by the Council in-house no Officer or Member shall communicate to any external Provider or potential external Provider any information regarding the in-house operation that may be commercially damaging to it save as may be required by law.

#### **CPR 14 EVALUATION CRITERIA AND EVALUATION OF TENDERS**

- 14.1 In determining the evaluation criteria on which tenders are to be assessed the Responsible Officer in consultation with the Head of Service as appropriate must consider all the factors relevant to their requirement, including environmental and social considerations, so far as is lawful.
- 14.2 The evaluation process will clearly demonstrate that the Council is seeking to identify the Best Value tender and in cases of tenders over £50k take into account the EU rules and regulations for pre-set evaluation criteria.
- 14.3 The Responsible Officer must ensure that the appropriate directorate or other Council technical and financial officers evaluate all tenders in accordance with the pre-set evaluation criteria and weightings specified in the invitation to tender.
- 14.4 The Responsible Officer must compare submitted tender prices with any project appraisal or pre-tender estimates. Where the differential is more than:
  - 14.4.1 20% above or below the project appraisal or pre-tender estimates, this must be reported to the Responsible Officer's Line Manager.
  - 14.4.2 50% above or below the project appraisal or pre-tender estimate, this must be reported to the Director or the Chief Financial Officer.
- 14.5 In cases as set out in CPR 15 a tender must not be accepted unless this has been authorised by the Solicitor to the Council & Monitoring Officer alone or with the Chief Financial Officer as the case may be.

#### **CPR 15 ERRORS OR DISCREPANCIES IN TENDERS ETC.**

- 15.1 Where examination of tenders reveals arithmetical or copying errors present in the documents submitted at the time of tender these shall be corrected by the Responsible Officer and details shall be recorded and maintained on the appropriate Contract file. If the correction has the effect that the tender is no longer the most competitive tender then the next tender in competitive order is to be examined and dealt with in the same way.
- 15.2 Where examination of tenders or checking of a priced bill or specification submitted at the Council's request after tenders have been opened reveals errors or discrepancies (other than arithmetical errors in documents submitted at the time of tender as in CPR 15.1 above) which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be



given details of such errors and discrepancies, but no other information, and afforded an opportunity of confirming or withdrawing his tender in writing. If the tenderer confirms his tender all the rates and prices on which it was based shall be adjusted (upwards or downwards) by the same percentage so as to correspond with the tender figure (corrected in accordance with CPR 15.1 above if there was also an error or discrepancy requiring to be dealt with under that CPR).

- 15.3 If the tenderer withdraws, the next tender in competitive order is to be examined and dealt with in the same way. Any exception to the procedure outlined above may be authorised only by the appropriate Committee after consideration of a report from the Responsible Officer concerned.

## **CPR 16 CONTRACT NEGOTIATIONS – Below EU Threshold Tenders**

- 16.1 In respect of below EU threshold tenders, the Responsible Officer may negotiate the contract in the manner set out in CPR 16.2 below provided the terms of the contract remain substantially unaltered;
- (a) where tendering produced no tenders or inappropriate tenders, for example where the tender figure in an otherwise successful tender exceeds approved or budgeted expenditure, or where the sum has changed since tenders were invited, or
  - (b) where tendering was discontinued because of irregular tenders, for example because tenders fail to meet the requirements specified in the Contract documents or offer variations on them or the works, supplies or goods fail to meet the tender specification.
  - (c) there is only one Provider or only one tender has been received
  - (d) when tenders cannot readily be evaluated and compared without discussion with the tenderers
  - (e) if matters such as availability of spares or the quality of the after-sales service are important considerations where tenderers differ significantly in their offers concerning these areas
- 16.2 The Responsible Officer shall invite all tenderers to amend their tenders, in writing, in such matters (e.g. unit price, delivery, discounts or by removing elements of the specification or bill of quantities) as the Responsible Officer specifies. All negotiations shall be conducted by at least two officers, one of whom should not otherwise be involved in the contract award. The Responsible Officer shall keep a written record of all negotiations, including notes of all meetings and the names of those people present.
- 16.3 Where such negotiations are carried out with tenderers the following rules will apply:
- (a) the Responsible Officer will ensure that negotiations are carried out by Officers with the relevant technical and professional expertise;
  - (b) negotiations will be attended by at least one Officer from the supervising department and one other as above. The Responsible Officer may also attend for the purposes of 16(e) below;
  - (c) prices and negotiated conditions will be regarded as strictly confidential;
  - (d) negotiations will take place at pre-determined times and places on Council premises unless there is good reason for holding the negotiations elsewhere;
  - (e) a comprehensive written record of all negotiations, signed by all Officers of the Council present, will be made and retained by the Responsible Officer;
  - (f) all documentation relating to negotiations will be placed in a sealed envelope when transferred from one department to another in order to maintain confidentiality;
  - (g) where meetings are to be held with more than one tenderer this will be indicated to tenderers and meetings will be held separately and in confidence
  - (h) details of the outcome of all negotiations will be submitted to the Responsible Officer for approval as soon as concluded.

**16.4 Post tender negotiations are not allowable in EU contracts; section 16 applies only to tenders below European thresholds.**

**CPR 17 ACCEPTANCE OF TENDERS**

- 17.1 A tender other than the lowest tender if payment is to be made by the Council or the highest tender if payment is to be received by the Council, or the tender which in the opinion of the Responsible Officer is the most economically advantageous to the Council (having regard to price, quality and technical considerations) shall be accepted at the discretion of the Responsible Officer after consultation with Council Leadership Team, Chief Financial Officer and/or Solicitor to the Council and Monitoring Officer, Line Manager as appropriate.
- 17.2 Acceptance must be subject to:
- satisfactory financial and other enquiries being concluded by the Chief Financial Officer
  - checking of the tender or quotation and related documents
  - provision and execution of a bond, parent company guarantee and/or other security where required
  - appropriate and sufficient insurance cover being obtained where required which must be verified before works commence by production of the original policy or policies to the Responsible Officer
  - completion of a formal contract document where required
  - fulfilment of any other requirement of the Council's Financial Procedure Rules.
- 17.3 No Contract may be awarded unless the expenditure involved has been included in approved estimates or in capital or revenue accounts or has been otherwise approved by or on behalf of the Council.
- 17.4 The only exception permitted under this Procedure Rule is where works/supplies/services are ordered on grounds of extreme urgency (e.g. responding to a civil emergency). The Responsible Officer should consult with the Chief Financial Officer and appraise him/her of the position so that as soon as practicable arrangements can be made to report the matter to Council or the relevant Committee.
- 17.5 The Responsible Officer shall ensure compliance with OJEU requirements for the publication of Contract Award Notices and ensure copies are held on the Contract File.
- 17.6 Following acceptance of a tender the Responsible Officer will carry out the following tasks:
- (a) within 14 days of deciding which tender to accept, provide a written explanation to each of the unsuccessful tenderers as to why their tenders were not accepted by the Council; and
  - (b) within 5 days of deciding which tender to accept, to inform the successful tenderer that the tender has been accepted by the Council subject to CPR 17.2 above
  - (c) Ensure full compliance with the EU requirements if appropriate, in respect of the stand still process for award of contracts
- 17.7 The Responsible Officer must ensure that copies of Appraisals of all submitted Tenders (whether accepted or not) are retained in the relevant Project file

## **CPR 18 WITHDRAWAL OF TENDERS/RE-TENDERING**

- 18.1 A tenderer may withdraw a tender at any time prior to formal contract being signed or sealed by the Council and the successful tenderer. When a tender has been accepted by the Council and the successful tenderer then withdraws the tender the Council the appropriate committee or sub-committee or the Responsible Officer as the case may be may reconsider the tenders received and accept the next most economically advantageous offer or the next lowest tender as if the withdrawn tender had not been received.
- 18.2 Where the two most economically advantageous offers or the two lowest tenders have been withdrawn no further tender shall be accepted. In those circumstances the Responsible Officer will consult with Legal and Financial Services to reach a decision on whether to accept any further tender received or whether the proposed contract will be re-tendered

## **CPR 19 NOMINATED SUB-CONTRACTORS AND SUPPLIERS**

- 19.1 Contract Procedure Rules apply to the nomination of a sub-contractor or supplier for carrying out works or services or supplying goods or materials.
- 19.2 Any exemption from these Procedure Rule requirements must comply with CPR 5.

## **CPR 20 FORM OF CONTRACT**

- 20.1 Every Contract exceeding £50,000 in value and in any other case where the Responsible Officer or the Chief Financial Officer so decides, shall either be documented using an approved Standard Form of Contract or be in writing in a form approved by the Legal Services Manager and shall specify:
- (a) the works or services to be performed and/or the goods or materials to be supplied;
  - (b) the parties to the Contract including any guarantor;
  - (c) the price to be paid with a statement of discounts or other appropriate adjustments;
  - (d) the time within which the Contract is to be performed or carried out;
  - (e) that the Provider will not assign the Contract without the written consent of the Council;
  - (f) any appropriate restriction on sub-contracting by the Provider;
  - (g) where appropriate that the Provider will pay liquidated damages or other damages to the Council should the terms of the Contract not be properly carried out, including the method by which such damages will be calculated and the circumstances in which they will be payable;
  - (h) any performance bond or parent company guarantee required and the Responsible Officer will consult with the Services Manager and the Chief Financial Officer before including or excluding such a requirement in the tender documents ; any such waiver must be documented
  - (i) that the Provider will adopt safe methods of work and comply with all other requirements of the Health and Safety at Work Act 1974;
  - (j) that the Provider will permit authorised representatives of the Council to enter upon the construction site/site of operation of the work the subject of the contract at any reasonable time and have free and unfettered access to each and every part of the area covered by the contract work or affected by it
  - (k) that the right of Internal Audit is secured to enable the proper discharge of its duties generally and as may be prescribed in the Council's Financial Procedure Rules

- (l) that the Council may cancel the Contract and recover any loss if the Provider, its employees, agents and sub-providers offer any reward relating to the Contract or commit any offence under the Bribery Act 2010 or have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;
- (m) that the Provider shall comply with UK Data Protection legislation and indemnify the Council in respect of the use, disclosure or transfer of personal data by the Provider, its employees, agents and sub-Providers.
- (n) that the Provider shall abide by the provisions of the Equalities Act 2010 and any relevant codes of conduct. The provider so far as is practicable, will operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice.
- (o) On some procurement the Public Procurement Regulations may apply and must always be followed.
- (p) All procurement with an expected lifetime cost in excess of £1m or involving a substantial organisational change must be conducted in accordance with PRINCE 11

## **CPR 21 CONTRACT VARIATION**

21.1 Where by reason of any extra or variation (other than a Contract extension under CPR 8 it is apparent that:

- (a) the tender sum is to be exceeded by 10 per cent; or
- (b) the variation would extend the Contract period by more than three months or 50 per cent of the original Contract period; or
- (c) if the works, services or goods to be added or deleted from the Contract are substantially different in scope;

the Responsible Officer shall report the same to the Chief Financial Officer and Solicitor to the Council and Monitoring Officer.

21.3 Should further variations as set out in CPR 21.1 above arise after the Responsible Officer's report, these further variations shall also be reported as set out in CPR 21.1 above.

21.4 Details of all variations shall be reported to the appropriate Committee on a regular basis as part of the regular monitoring / budgetary control process ensuring compliance with Financial Procedure Rules.

## **CPR 22 DECLARATION OF INTERESTS**

22.1 If it comes to the knowledge of a Member or an employee of the authority that a contract in which he or she has a disclosable pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Monitoring Officer or Financial Services as appropriate.

22.2 The Officer must comply with the Officers Code of Conduct

22.3 All Members must comply with the Members Code of Conduct and register all contracts for goods, services or works made between the Council and

- The councillor
- A firm in which s/he or their partner or spouse is a partner
- A company in which s/he is a remunerated director

- A member of the Councillor's family or a person with whom they have a close association, or a partnership or company employing or operated by such a person
- Any person or body who has a place of business in the Craven District Council area and which the Councillor has a beneficial interest in the class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredths of the total issued share capital) whichever is the lower.

22.4 Financial Services will refer to the Register of Officers' Interests. It is the duty of the Responsible Officer to provide the required information to the holder of the register (Human Resources) without delay.

(NB: At the time of adoption of these Rules, the Current provisions are:

- Section 117(1) of the Local Government Act 1972;
- The Council's Code of Conduct for Employees, adopted in 2015.)

## **CPR 23 PREVENTION OF CORRUPTION AND ANTI COMPETITIVE BEHAVIOUR**

### **Prevention of Corruption**

23.1 The Responsible Officer needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent bribery, as well as the Council's Anti-Fraud, Corruption and Bribery Policy.

23.2 The Responsible Officer must comply with the Officers Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Responsible Officer to prove that anything received was not received corruptly. High standard of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to below.

23.3 The following clause must be put in every written Council contract: "The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things

23.4 Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or  
 Commit an offence under the Bribery Act 2010  
 Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

### **Anti Competitive Behaviour**

23.5 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti – competitive behaviour, and this should be followed where it is practical to do so:

- Use non-collusion clauses ,certificates of independent bids and requests
- Ensure sufficient credible bidders
- Look for suspicious bidding patterns
- Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns eg. Geographical prevalence of certain suppliers' areas.

23.6 If there is any doubt during a procurement exercise, or for further guidance, the responsible officer should contact the Procurement Manager.

## **CPR 24 CONTRACT MANAGEMENT**

- 24.1 To comply with the Transparency Agenda, details of all contracts awarded over £5,000 must be reported to the Procurement, Payments & Risk Manager to be entered on the Council's Contract Register.
- 24.2 Where relevant and appropriate, contracts must be managed according to the Council's Project Management Code of Practice. In particular, during the life of the contract, the Responsible Officer must monitor in respect of:
- performance
  - compliance with the specification and contract
  - cost
  - value for money
  - user satisfaction
  - risk management
  - any breaches of the contract conditions
- 24.3 For all contracts whose estimated value exceeds £100,000. the Responsible Officer will ensure:
- that the contract is recorded on the Risk Profile for that particular service and review during the contract period;
  - that an appropriate risk assessment is undertaken if deemed appropriate; and
  - for identified risks, ensure mitigating action and/or contingency measures are in place
- 24.4 Where considered appropriate and proportionate the actions listed above may be followed for contracts of less than £100,000.

## **CPR 25 APPROVED CONTRACTORS**

- 25.1 The Council should seek to ensure that all firms/ suppliers who the Council enters into a contract with are technically and financially competent to undertake to fulfil the supply of goods and services. Making use of the public sector government procurement solutions approved contractors were applicable