

CITY OF YORK COUNCIL

CONTRACT PROCEDURE RULES

Version 3 – January 2015



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Contract Procedure Rules

These Contract Procedure Rules (CPRs) set out the key responsibilities and actions that Officers and Directors must follow when undertaking procurements.

All procurements and contracting arrangements made by or on behalf of the Council must follow these CPRs. Rule 28 sets out the only circumstances in which the other Rules are specifically excluded or may be waived. Appendix A contains a series of definitions. Any term which is defined is shown in the CPRs beginning with a capital letter.

1. Basic Principles and Compliance

All procurement procedures and every contract entered into by the Council must:

- 1.1 realise value for money by achieving the optimum combination of whole life costs, and quality of outcome;
- 1.2 be consistent with the highest standards of integrity;
- 1.3 operate in a transparent manner;
- 1.4 ensure fairness in allocating public contracts;
- 1.5 comply with all legal requirements including the Public Contracts Regulations and the European Union (EU) treaty principles of proportionality, mutual recognition, transparency, non-discrimination and equal treatment;
- 1.6 comply with the Council's Constitution, these CPRs and the Council's Financial Procedure Rules;
- 1.7 comply with the Council's strategic objectives and policies, including the Council's Procurement Strategy and the Council's Employee and Member Codes of Conduct; and
- 1.8 comply with the guidance set out in the Procurement Toolkit which should be read in conjunction with these CPRs;

These CPRs shall be applied to the contracting activities of any partnership for which the Council is the accountable body unless the Council expressly agrees otherwise.

2. Officer Responsibilities

2.1. Authorised Officers

2.1.1 Authorised Officers shall comply with these CPRs, the Council's Constitution and with all UK and EU legal requirements. Authorised Officers must ensure that any agents, consultants and contractual partners acting on their behalf also comply with these requirements.

2.1.2 Authorised Officers shall:

- (i) ensure, in relation to any proposed procurement, that the proposed procurement expenditure is contained in a Forward Procurement Plan and contained within a approved budget secured prior to commencement of the procurement in accordance with the Financial Procedure Rules;

- (ii) keep the records required by Rule 4 of these CPRs;
- (iii) take all necessary procurement, legal, financial and professional advice, taking into account the requirements of these CPRs;
- (iv) prior to letting a Contract on behalf of the Council, check whether:
 - (A) the Council already has an appropriate Contract in place in the Contracts Register; or
 - (B) an appropriate national, regional or other collaborative contract is already in place.
- (v) ensure that if the Council already has an appropriate Contract in place, that it is used, (unless it can be established that the Contract does not fully meet the Council's specific requirements (to be determined on a case by case basis)), following consultation with Commercial Procurement and Legal Services;
- (vi) ensure that if an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers Best Value. Authorised Officers should consult with Commercial Procurement to discuss;
- (vii) ensure that when any employee, either of the Council or of a Provider, may be affected by any transfer arrangement, then any TUPE issues are considered and legal and HR advice from within the Council is obtained prior to proceeding with the procurement exercise;
- (viii) consult with all relevant stakeholders including Members, trade unions and service users where TUPE may apply to identify and assess all options to ensure the Council's required outcomes are achieved;
- (ix) in consultation with Commercial Procurement establish a written specification and evaluation criteria (where competition is involved) and procurement methodology which must be formally approved by the relevant Chief Officer;
- (x) consult and seek advice from Commercial Procurement prior to beginning a procurement where:
 - (A) TUPE applies; and/or
 - (B) the procurement exceeds £100,000 in aggregate for the whole contract period (including any extensions).
- (xi) register all completed procurements with a value of £5,000 or more on YORtender;

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

2.2 Chief Officers

Chief Officers shall:

- 2.2.1 ensure their service area complies fully with the requirements of these CPRs;
- 2.2.2 ensure contracts are recorded in the Contracts Register as held and maintained by Commercial Procurement;
- 2.2.3 work with Commercial Procurement to identify the total expenditure relating to a particular category of spend by developing a Category Plan;
- 2.2.4 ensure that their service area provides the requisite information to allow Commercial Procurement to maintain and update the Forward Procurement Plan;
- 2.2.5 ensure all procurement activity is undertaken by suitably skilled and experienced staff;
- 2.2.6 report any breaches of these CPRs to the Monitoring Officer and Chief Finance Officer.

3. Relevant Contracts

- 3.1 All Relevant Contracts must comply with these CPRs. A Relevant Contract is any arrangement made by, or on behalf of, the Council for the carrying out of works, supplies or services. These include arrangements for:
 - 3.1.1 the supply or disposal of goods;
 - 3.1.2 the hire, rental or lease of goods or equipment;
 - 3.1.3 the delivery of services, including (but not limited to) those related to:
 - (i) the recruitment of staff;
 - (ii) land and property transactions;
 - (iii) financial and consultancy services.
- 3.2 The following will not be classed as Relevant Contracts:
 - 3.2.1 contracts of employment which make an individual a direct employee of the authority;
 - 3.2.2 subject to Rule 3.3, agreements relating solely to the acquisition, disposal, or transfer of land (to which the Financial Procedure Rules apply);

- 3.2.3 the payment of grants to third parties; or
- 3.2.4 those contracts/arrangements which are specifically excluded in accordance with Rule 28.8 below.
- 3.3 The acquisition, disposal, or transfer of land which involve elements requiring the supply of works, goods and/or services to or on behalf of the Council will be treated as Relevant Contract and these CPRs shall apply to all aspects of the procurement of those works, goods and/or services. Officers shall ensure that they consult with Legal Services as appropriate to ensure compliance with this Rule 3.3.
- 3.4 While grants are not covered by these CPRs, the rules on the awarding of grants are set out in Part E of the Councils financial regulations and must be observed. The Council cannot simply choose to treat a procurement as a grant in order to avoid conducting a competitive process.

4. Records

- 4.1 The Public Contracts Regulations require contracting authorities to maintain the following comprehensive records of procurement activities:
 - 4.1.1 contract details including value;
 - 4.1.2 selection decision;
 - 4.1.3 justification for use of the selected procedure;
 - 4.1.4 names of bidding organisations, both successful and unsuccessful;
 - 4.1.5 reasons for selection;
 - 4.1.6 reasons for abandoning a procedure.
- 4.2 The outcome of any competitive procurement process must be recorded in electronic format on YORtender. Information from YORtender will also be used for the tracking of procurement savings, sustainability benefits, and other data.
- 4.3 Commercial Procurement will also maintain the Contract Register which will record key details of all Contracts (including contract reference numbers) with an aggregate value of £5,000 or more or such other value as the Chief Finance Officer may agree from time to time.
- 4.4 Where a Contract has not been awarded using YORtender, Officers must ensure full details of that Contract are passed to the Chief Procurement Officer for inclusion in the Contract Register where the aggregate value of the Contract is £5,000 or more or such other value as the Chief Finance Officer may agree from time to time. Decisions as to why YORtender was not used must be recorded in writing and sent to Commercial Procurement.
- 4.5 Full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a Contract must be kept by Commercial Procurement for the duration of the Contract and a minimum of six years after the Contract has been concluded or twelve years after the Contract has been concluded where it is executed under common seal as a deed.

- 4.6 It is the responsibility of Chief Officers to ensure that all Contracts are properly entered into, administered and controlled to safeguard the Council's interests, secure Best Value and minimise the risk of theft, fraud and corruption.

5. Risk Assessment

- 5.1 All procurements which require an Invitation to Tender and/or Requests for Quotation (see Rule 9 below), must be supported by a risk assessment (where appropriate). This risk assessment must be carried out at the start of the procurement process and, where appropriate, shall include a Financial Appraisal in accordance with Rule 17.2.
- 5.2 The risk assessment process will identify where further specialist advice should be sought.
- 5.3 The approved risk log and matrix are available from Commercial Procurement.

6. Advertising

- 6.1 Officers must liaise with Commercial Procurement to ensure that the minimum advertising requirements, in line with EU treaty principles are met when conducting any procurement process (including Framework Agreements). Officers should refer to the further guidance in the Procurement Toolkit.

7. Powers and Key Decisions

- 7.1 In consultation with the Monitoring Officer, Directors shall ensure that the Council has the legal power to enter into any Contract..
- 7.2 Directors shall ensure that they have delegated powers to enter into any Contract or to grant another Officer authority to do so. No Contract may be entered unless an adequate budget is in place.
- 7.3 Where a decision has already been made by Cabinet or a Cabinet Member and the budget is in place to permit a course of action then further approval is not required to award contracts necessary to implement that decision. However a copy of the relevant report must be sent to Commercial Procurement for audit purposes. It is recommended that the approval sought includes a specific delegation to the Authorised Officer to award the Contract at the conclusion of the procurement. In other circumstances the procedure set out in one of the clauses 7.4 to 7.7 below must be followed.
- 7.4 Where the aggregate contract value (including any extension) is £250,000 or less Directors may agree or authorise another Officer to enter a Contract under their delegated powers.
- 7.5 Where the aggregate contract value is between £250,000 and £500,000 then the decision to enter the contract requires the approval of a Cabinet Member or the Cabinet unless the procurement is treated as Routine as defined in clause 7.7..
- 7.6 Where the aggregate contract value (including any extension) is £500,000 or more the decision will be regarded as a Key Decision unless the Chief Finance Officer acting in consultation with the Monitoring Officer has approved the procurement as Routine.

- 7.7 A Routine procurement is any arrangement that represents a low commercial and legal risk to the Council and relates to re-procurement of goods, services or works with a clearly defined specification that have been procured in a compliant manner previously. Where Officers consider a procurement process may be Routine, they are required to liaise with Commercial Procurement who will advise on the relevant paperwork to be submitted to the Chief Finance Officer. Authorisation to treat a procurement as Routine should be sought before the procurement process commences. A Director may enter a Contract where the procurement has been treated as Routine.
- 7.8 In relation to all Key Decisions, Authorised Officers must ensure that all authorisations are in place before the procurement process begins.
- 7.9 Notice of every Key Decision must be published on the Council's Forward Plan.
- 7.10 The Cabinet scheme of delegation requires that all Key Decisions (are reserved to the Cabinet unless specifically delegated to a Cabinet Member or an Officer or where the Leader and Chief Executive are acting in case of urgency).
- 7.11 This Rule 7 applies to all Relevant Contracts and all Framework Agreements (including call-offs).

8. Framework Agreements

- 8.1 Framework Agreements are agreements between the Council (or other public sector bodies where applicable) and either:
- 8.1.1 one provider (**Single Provider Framework(s)**); or
 - 8.1.2 three or more providers (**Multiple Provider Framework(s)**)
- for the provision of goods, works or services on agreed terms for a specific period, for estimated quantities against which orders may be placed if and when required during the contract period.
- 8.2 A list of approved Framework Agreements (including those established by other public sector bodies which the Council has access to) can be obtained from Commercial Procurement along with guidance on how certain approved Framework Agreements should be used. Call-offs contracts/orders under Approved Frameworks shall be tendered in accordance with these CPRs and/or the requirements of the approved Framework Agreement itself where applicable (to be determined on a case by case basis). **Further advice should be sought from Commercial Procurement or Legal Services as required.** If an Authorised Officer wishes to use a Framework Agreement that is not an approved Framework Agreement they must seek approval from the Chief Procurement Officer.
- 8.3 Authorised Officers (in conjunction with Commercial Procurement) may consider it appropriate to establish a new Framework Agreement in relation to a particular procurement. In such circumstances, these CPRs shall apply to all aspects of the procurement and to the subsequent operation of the Framework Agreement including, but not limited to:
- 8.3.1 the procurement methodology;

- 8.3.2 the placement of orders under the Framework Agreement;
- 8.3.3 further competition between Providers appointed to the Framework Agreement.
- 8.4 The term of a Framework Agreement must not exceed four years and, while Single Provider Frameworks are permitted, where a Multiple Party Framework is established, there must be a minimum of three Providers.
- 8.5 In relation to Multiple Party Frameworks, contracts/orders may be awarded in one of two ways, as follows:
 - 8.5.1 where the terms of the Framework Agreement are sufficiently precise to cover the particular call-off, by applying the terms laid down in the Framework Agreement without re-opening competition; or
 - 8.5.2 where the terms laid down in the Framework Agreement are not precise or complete enough for the particular call-off and cannot meet the Council's exact requirements, by holding a further competition in accordance with the following procedure:
 - (i) inviting the organisations within the Framework Agreement, that are capable of executing the subject of the Contract, to submit bids electronically via the further competition step on YORtender with an appropriate time limit for responses, taking into account factors such as the complexity of the subject of the Contract;
 - (ii) awarding each Contract to the bidding organisation who has submitted the best bid on the basis of the relevant award criteria set out in the Framework Agreement.
- 8.6 It is the responsibility of the Authorised Officer in consultation with Commercial Procurement to identify and retain written justification and evidence as to why using a Framework Agreement delivers against the Council's required outcomes and ensures the Council receives Best Value.

9. Procurement Competition Requirements

9.1 Competition Requirements

- 9.1.1 The Authorised Officer must establish the total value of any procurement and/or contract, including whole life costs, annual cost and incorporating any potential extension periods which may be awarded. The Authorised Officer should have particular regard to the rules relating to aggregation contained within the Public Contract Regulations (further details on which can be found in the Procurement Toolkit).
- 9.1.2 Authorised Officers shall ensure that values are not split in an attempt to avoid the applicability of these CPRs or the Public Contracts Regulations.

- 9.1.3 Based on the value of the procurement, quotations or tenders must then be invited in line with the following financial thresholds:
- (i) Up to and including £5,000 – Best Value
 - (ii) Between £5,000 and up to and including £100,000 – at least **three** written quotations
 - (iii) Over £100,000 – Invitation to Tender
- 9.1.4 **Where the Public Contracts Regulations apply (see Rule 9.5), the Authorised Officer shall consult Commercial Procurement at the outset to determine the correct procedure for conducting the procurement exercise.**

9.2 Procurement up to and including £5,000

- 9.2.1 All purchasing up to and including £5,000 must be procured using an Internal Service Provider or through an existing Contract arrangement or via an existing approved Framework Agreement where they exist.
- 9.2.2 It is the responsibility of the relevant Authorised Officer to check whether a suitable Contract exists or not. Where no appropriate Internal Service Provider, existing Contract, or approved Framework Agreement exists in relation to Contracts with an estimated value is £5,000 or less the invitation of quotations is not mandatory but should be invited where appropriate. If the Authorised Officer believes that it represents Best Value for the Council to make a direct appointment without the need for competition, they may do so providing a written record of the decision (including reasons) is kept.

9.3 Procurement over £5,000 and under £100,000

- 9.3.1 In relation to all procurements with a value over £5,000 and under £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract or approved Framework Agreement which can be used.
- 9.3.2 Where no appropriate Internal Service Provider, existing Contract or approved Framework Agreement exists, if the estimated value of a Contract exceeds £5,000 but is less than £100,000 a minimum of three written quotations must be invited from suitable potential providers.
- 9.3.3 The written quotes must be obtained and documented in accordance with proper record keeping set out in Rule 4 and in accordance with the requirements of Rule 12.
- 9.3.4 All potential providers invited to submit quotations shall be provided in all instances with identical information and instructions.
- 9.3.5 The evaluation of the quotations shall be carried out by Authorised Officers.

- 9.3.6 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will generally be an Authorised Officer decision unless the decision maker considers that it will have significant impact. This is just general guidance and Authorised Officers should have regard to the Council's Constitution when deciding what kind of Delegated Decision applies.

9.4 Procurement over £100,000

- 9.4.1 In relation to all procurements with a value in excess of £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract or approved Framework Agreement which can be used.
- 9.4.2 Where no appropriate Internal Service Provider, existing Contract or approved Framework Agreement exists, competition is required for procurements over £100,000.
- 9.4.3 Where there are sufficient numbers of potential Providers, at least four written tenders shall be invited.
- 9.4.4 The tendering process shall be conducted in accordance with the Council's detailed procedure rules set out in the Procurement Toolkit. Authorised Officers should consult with Commercial Procurement to establish the most appropriate tendering process/procurement route which will be determined on a case by case basis (depending on a number of factors including but not limited to the scope, value and technical requirements of the procurement).
- 9.4.5 All tenders and awards must be documented in accordance with Rule 4.
- 9.4.6 Where the estimated contract value reaches the relevant EU Threshold, Rule 9.6 will also apply.
- 9.4.7 Where the estimated contract value reaches £500,000 or more, Rule 7 will also apply.

9.5 Waiver

If it is not possible to comply in full with the competition procedures outlined in Rule 9.3 or Rule 9.4 a waiver must be sought in accordance with Rule 28.3 as soon as possible and in any event in advance of contract award.

9.6 Contracts that are subject to the Public Contracts Regulations

- 9.6.1 Where the estimated contract value reaches the relevant EU Threshold set out in the Public Contracts Regulations, Officers are required to procure the Contract in accordance with the Public Contracts Regulations and these CPRs. In all such circumstances appropriate advice must be sought from Commercial Procurement.
- 9.6.2 The current EU Thresholds are:
- (i) Services - £172,514

(ii) Goods/Supplies - £172,514

(iii) Works - £4,332,012

9.7 Assets for Disposal

Assets for disposal must be dealt with in accordance with the Financial Procedure Rules.

10. Pre-Tender Market Testing and Consultation

10.1 The Council may consult potential providers, prior to the issue of the Invitation to Tender or Request for Quotation, in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any other potential organisation.

10.2 When engaging with potential providers, the Council must not seek or accept technical advice on the preparation of an Invitation to Tender or Request for Quotation where this may prejudice the equal treatment of all potential bidding organisations or distort competition.

10.3 In undertaking any market testing activities or consultation with providers, the Authorised Officer responsible should refer to any guidance contained in the Procurement Toolkit.

11. Evaluation Criteria and Standards

11.1 Evaluation Criteria

11.1.1 In any procurement exercise (regardless of overall contract value) the successful bid should be the one which either:

(i) offers the most economically advantageous tender based on “price or cost” using a cost effectiveness approach, such as, life cycle costing; or

(ii) offers the most economically advantageous balance between quality and price.

In the latter case, the Council will use criteria linked to the subject matter of the Contract to determine that an offer is the most economically advantageous, for example: price, quality, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service, technical assistance, delivery date, delivery period and period of completion. The price element of the evaluation will always be 40% or greater unless a waiver has been given for alternative weightings (in accordance with Rule 28.3).

11.1.2 Issues that are important to the Council in terms of meeting its corporate objectives can be used to evaluate bids provided that such criteria relates to the subject matter of the Contract and is objectively quantifiable and non-discriminatory. The criteria can include, for example, sustainability considerations, support for the local economy or the use of sub-contractors. The bidding organisations’ approaches to

continuous improvement and setting targets for service improvement or future savings could also be included.

- 11.1.3 The procurement documentation should clearly explain the basis of the decision to bidding organisations, making it clear how the evaluation criteria specified in the process will be applied, the overall weightings to be attached to each of the high-level criteria, how the high-level criteria are divided into any sub-criteria and the weightings attached to each of those sub-criteria.

11.2 Standards

Relevant British, EU and International standards which apply to the subject matter of the Contract and which are necessary to properly describe the required quality must be included within the procurement documentation and the Contract. Officers should refer to further guidance set out in the Procurement Toolkit.

12. Invitation to Tender / Request for Quotation

- 12.1 Invitations to Tender/Requests for Quotation must be issued in accordance with the requirements of these CPRs, with particular attention to Rule 6 and Rule 9.

- 12.1.1 Above the single quotation threshold outlined in Rule 9.1.3 (i), all procurement documents including Invitations to Tender and Requests for Quotation must be issued via YORtender.

- 12.1.2 In exceptional cases, where specific circumstances mean that a procurement process cannot be carried out electronically or, for example, where there is a failure of the electronic system, permission to conduct a procurement process by alternative means must be obtained from the Chief Procurement Officer.

13. Shortlisting

Any shortlisting (i.e. provider selection or pre-qualification) must have regard to the economic, financial and technical standards relevant to the Contract and the evaluation criteria. Special rules apply to contracts covered by the Public Contracts Regulations. Authorised Officers should refer to further guidance contained in the Procurement Toolkit.

14. Submission, Receipt and Opening of Tenders / Quotations

14.1 Tenders

- 14.1.1 Bidding organisations must be given an adequate period in which to prepare and submit a proper quotation or tender, consistent with the complexity of the Contract requirements. Where the Public Contracts Regulations apply, Part 3 of the Public Contracts Regulations lays down specific minimum time periods for tenders.

- 14.1.2 Tenders, except those which have been approved as exempt from electronic tendering, must be submitted electronically via YORtender. Tenders submitted by any other means must not be accepted.

- 14.1.3 Detailed procedure notes on tendering requirements and protocols are set out in the Procurement Toolkit.

14.2 Quotations

Competitive quotations must be submitted electronically via YORtender, except where specifically exempt under Rule 12.1.2. Quotations submitted by any other means must not be accepted.

14.3 Electronic Arrangements

14.3.1 Quotations, further competition bids under Framework Agreements and pre-qualification questionnaires which are received electronically via YORtender will be opened by a representative of Commercial Procurement. The system will not allow any quotations to be opened until the allocated return date/time has passed.

14.3.2 Tenders which are received electronically via YORtender will be opened by a representative from Commercial Procurement.

14.4 Hard Copy Arrangements

14.4.1 In the event that “hard copy” tenders are to be accepted (see Rule 12.1.2 and Rule 14.1.2 for guidance) these must be submitted, sealed, in the envelope provided with the procurement documents and addressed to the Chief Procurement Officer without any mark revealing the bidding organisation’s identity.

14.4.2 All hard copy tenders will be held by the Chief Procurement Officer until the tender opening date/time has been reached.

14.4.3 All hard copy tenders for the same Contract will be opened at the same time by a representative of the Chief Officer who invited the tenders and a representative from Commercial Procurement. A register of tenders received will be kept by Commercial Procurement and will be initialled on each occasion by the Authorised Officers who are present at the opening of the tenders.

14.4.4 In the event that hard copy quotations are to be accepted (see Rule 12.1.2 and Rule 14.1.2 for guidance) these must be submitted in a plain envelope marked “Quotation for ...” followed by a description of the goods, works or services being procured.

14.4.5 All hard copy quotations must be opened together once the official return date/time has been passed.

15. E-auctions

15.1 Where a tender is to be carried out by way of a collaborative e-auction process the following procedures will apply:

15.1.1 approval for this approach must be sought in advance of the auction from the relevant Chief Officer and Chief Procurement Officer;

- 15.1.2 the auction must be provided through a recognised managed service provider approved by the Chief Procurement Officer;
 - 15.1.3 the process for selecting bidders must be agreed in advance with the Chief Procurement Officer;
 - 15.1.4 the tender evaluation process must be agreed in advance with the Chief Procurement Officer;
 - 15.1.5 the time limit for the auction must be set in advance, clearly notified and be appropriate to the nature of the auction;
 - 15.1.6 a minimum of two Authorised Officers must be in attendance at the managed service providers viewing room to ensure the process is conducted fairly and in accordance with the Public Contracts Regulations. One of the Authorised Officers must be an independent observer and have had no involvement with the exercise. They should not leave the room during the auction.
 - 15.1.7 prior to start of the auction, Officers attending must satisfy themselves that the correct quality weightings (if applicable) have been loaded into the software and that the software is working correctly;
 - 15.1.8 the final scoring of all the bidders needs to be documented and counter signed by each Officer immediately after the close of the auction;
 - 15.1.9 the e-auction summary report which is normally produced by the e-auction provider (within a week of the auction) must be cross referenced to the Officers own records and both must be kept on file;
 - 15.1.10 a signed copy of both these records must be passed to Chief Procurement Officer and copied to the Monitoring Officer;
 - 15.1.11 if the lowest price bidder is not successful approval for the award of a Contract must be sought in line with these CPRs.
- 15.2 The application of these e-auction procedures exempts the tender from the opening rules set out at Rule 14. It does not exclude compliance with any other financial and EU regulations as set out elsewhere in these CPRs.
- 15.3 The Council will arrange for award notices to be sent to the successful bidder (following a 10 day Standstill Period) and brief the losing providers. A copy of the award notice must be kept on file.
- 15.4 The Council must ensure that a discrete Contract complying with the Council's standard terms and conditions is put in place with each successful bidder.

16. Clarification Procedures

- 16.1 The Council can ask bidding organisations for clarification of any details submitted as part of their bid. However, any such clarification must not involve changes to the basic features of the bidding organisation's submission.
- 16.2 When requesting clarification, the Authorised Officer must follow any guidance contained in the Procurement Toolkit. It may not be used to negotiate or re-

negotiate Contract terms. Authorised Officers are required to take all necessary legal and/or other relevant professional advice if they are in any way unsure of what may or may not constitute a 'clarification' under the Public Contracts Regulations.

17. Evaluation, Financial Appraisal, Award of Contract and Debriefing of Organisations

17.1 Evaluation

The evaluation of bids must be conducted in accordance with the evaluation criteria set out in the relevant procurement documents (see Rule 11 above) provided to bidding organisations, and in line with any guidance detailed in the Procurement Toolkit.

17.2 Financial Appraisals

Financial Appraisals must be completed in respect of all third parties submitting bids for Contracts in excess of £100,000. It is the responsibility of the Authorised Officer in consultation with the relevant Finance Manager to take all steps reasonably necessary (having regard to the subject matter, value and duration of the contract and any other relevant factors) to complete a risk assessment of the potential provider's financial stability and to ensure this is done to a standard required by the Finance Manager.

17.3 Award of Contract

17.3.1 The Council is required to notify successful and unsuccessful bidders of the outcome of a procurement process, in writing, in as timely a fashion as possible.

17.3.2 Where procurement has been subject to the Public Contracts Regulations (see Rule 9.5 above), an Standstill Period will need to be included in the procurement timetable and observed before the Contract can be awarded. Authorised Officers should refer to the guidance in the Procurement Toolkit and consult with Commercial Procurement in relation to the Standstill Period requirements and associated documentation to be issued to bidders.

17.3.3 Provided the winning bid:

- (i) is the most economically advantageous;
- (ii) is within the financial budget made for it;
- (iii) complies with the Council's proposed terms and conditions; and
- (iv) meets the Contract specification,

it may be accepted by the relevant Authorised Officer.

17.3.4 Where a tender is not:

- (i) the most economically advantageous (if payment is to be made by the Council); or

- (ii) the highest tender (if payment is to be received by the Council),
the award of the Contract must be passed to the Chief Finance Officer for decision clearly setting out the reasons why this is required.

17.3.5 Once approved, all proposed contract awards over £100,000 must be recorded in the Officer decision log on the mod.gov system.

17.3.6 The approval of the relevant Cabinet Member and Chief Finance Officer must be given if a tender received as part of a capital scheme results in the scheme or project exceeding the approved financial budget by 10% or £50,000 (whichever is the lower) and this can not be accommodated within the original financial budget.

17.4 Debriefing

The Authorised Officer shall as part of good practice offer feedback to all tenderers who submitted a bid about the characteristics and relative advantages of the successful bid. This shall usually include:

- 17.4.1 how the award criteria were applied;
- 17.4.2 the prices or ranges of prices submitted, but not in either case correlated to the tenderers; and
- 17.4.3 the names of their competitors and whether there were three or more competitors taking part in the tendering exercise.

Authorised Officers should refer to the guidance set out in the Procurement Toolkit and consult with Commercial Procurement prior to offering any such feedback to bidders.

18. Post Tender Negotiation

18.1 Post tender negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold.

18.2 Post tender negotiations with selected tenderers may be carried out where:

- 18.2.1 permitted by law;
- 18.2.2 the Director in consultation with Commercial Procurement and Legal Services considers that added value may be obtained;
- 18.2.3 the post tender negotiations are conducted by a team of suitably experienced officers approved by the Director and who have been trained in post tender negotiations. Commercial Procurement should be invited to attend any negotiation;
- 18.2.4 a comprehensive, written record of the negotiations is kept by the Council; and
- 18.2.5 a clear record of the added value to be obtained as a result of the post tender negotiations is incorporated into the Contract with the successful participant.

19. Ordering and Paying

- 19.1 The general arrangements relating to ordering and paying for goods, services and the execution of works are detailed in Part D of the Financial Procedure Rules. In addition to the procedures set out there, the following rules must be observed:
- 19.1.1 payments to Providers in respect of all works must be authorised by a certificate signed by a duly authorised Officer. The certificate must show the total amount of the Contract, the value of the work executed to the certificate date, the amounts already paid and the amount now certified;
 - 19.1.2 Authorised Officers authorising payments must supply Commercial Procurement with all necessary information for the maintenance of the Contract Register;
 - 19.1.3 VAT authenticated receipts must be obtained by the Authorising Officer in support of the payment of VAT on the certificate. Receipts should be retained with the Authorised Officer's copy of the payment certificate and retained for a period of six years and must be made available for inspection by HM Revenue and Customs on request;
 - 19.1.4 If it becomes necessary to vary the value of a Contract by more than 2% and this results in additional costs of more than £50,000 on the original value of the Contract this must be reported to the Chief Finance Officer and relevant Cabinet Member.

20. Contract Documents

20.1 Form of Procurement Documents

The Council's standard procurement documents will be used wherever possible and appropriate. Where there is any deviation from these, the documents to be used must be reviewed by Legal Services before being issued. These documents are available from Commercial Procurement.

20.2 Form of Contract

- 20.2.1 Contractual commitments can only be made by individuals who are formally authorised to do so in the relevant directorate scheme of devolved powers.
- 20.2.2 All contracts made on behalf of the Council must be evidenced in writing in an appropriate format approved by Legal Services.
- 20.2.3 Every Contract shall be made by:
 - (i) the issue of a purchase order and accompanying standard terms and conditions for the purchase or supply of goods, services and works up to a total value of £100,000.
 - (ii) the preparation of formal written contracts for the purchase or supply of goods, services and works over a total value of £100,000 unless the Monitoring Officer certifies that, owing to the

nature of the proposed Contract, the interest of the Council will be adequately protected by the issue of a purchasing order and accompanying standard terms and conditions.

20.3 Deeds

All Contracts in excess of £150,000 must be executed as a deed under common seal by Legal Services.

20.4 Contract Signature/Sealing

Contracts must:

20.4.1 where the Contract is in the form of a deed, be made under the Council's seal and attested as required by the Constitution; or

20.4.2 where the Contract is in the form of an agreement it shall be signed by a Chief Officer authorised as required by the Constitution.

20.5 Legal Services Review of Tenders and Contracts

To ensure the integrity of the procurement process:

20.5.1 all proposed Invitations to Tender, where they are not in compliance with the Council's standard documentation, shall be reviewed by Legal Services;

20.5.2 any proposed Invitations to Tender which are subject to the Public Contracts Regulations, or which are deemed to be of high risk, must be reviewed by Legal Services;

20.5.3 any proposed Contract where there is any deviation from the contract terms included in the Invitation to Tender must be reviewed by Legal Services.

Officers shall ensure that they consult with Legal Services as appropriate to ensure compliance with this Rule 20.5.

20.6 Bonds and Liquidated and Asset Damages

20.6.1 Chief Officers (in consultation with Commercial Procurement and Legal Services) shall consider whether to include provision for payment of liquidated damages by a Provider for breach of contract in all Contracts which exceed £100,000 in value. Such consideration shall be recorded in writing.

20.6.2 When considered appropriate by a Chief Officer the Provider will be required to provide a performance bond to secure the performance of the Contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the Contract or such other sum as the Authorised Officer (in consultation with a Finance Manager) considers appropriate.

21. Contract Extension and Variation

21.1 Extensions

- 21.1.1 Contract extensions are only permitted if they are put in place before the Contract expiry date and where the proposed extension is in accordance with the contract terms. Prior to seeking approval from the relevant Chief Officer to take up a contract extension the Authorised Officer must establish whether the extension will deliver Best Value. This process must be recorded in writing.
- 21.1.2 All contract extensions must be approved by and dealt with by the relevant Chief Officer. **The Chief Procurement Officer and Legal Services should be consulted in relation to any proposed extension.**
- 21.1.3 Where an extension is not in accordance with the original contract terms it will be a new decision that is not a consequence of the initial decision to procure and it may be a Key Decision depending on its value (see Rule 7).
- 21.1.4 An extension not in accordance with the original contract terms may be a material change under the Public Contract Regulations (see Rule 21.2.5). Further guidance should be sought from Legal Services.
- 21.1.5 All extensions to any Council contracts must be in writing and reported to the Chief Procurement Officer in order that YORtender can be updated. Extensions of a Contract that are categorised as “variations” in the Contract terms and conditions will be governed by Rules 21.2.1, 21.2.5 and Rules 21.1.1 and 21.1.2 will not apply.
- 21.1.6 Once a Contract has expired it cannot then be extended.

21.2 Variations

- 21.2.1 Variations will be dealt with in accordance with these CPRs and where applicable the EU Treaty principles and Public Contract Regulations. Further guidance should be sought from Legal Services.
- 21.2.2 All Contract variations must be carried out:
- (i) within the scope of the original Contract. Contract variations that materially effect or change the scope of the original Contract are not allowed; and
 - (ii) following consideration as part of the Category planning process.
- 21.2.3 All Contract variations must be in writing (in the form specified by the contract where applicable) and signed by both the Council and the Provider. The value of each variation must be assessed by the Authorised Officer and a Delegated Decision taken by the relevant

Chief Officer. **The Chief Procurement Officer and Legal Services should be consulted in relation to any proposed variation.**

- 21.2.4 Where appropriate (taking into account any change in contract value, contract term, range of services provided etc), contract variations must be reported to the Chief Procurement Officer in order that YORtender can be updated.
- 21.2.5 A new procurement may be required in case of material change where one or more of the following conditions are met:
- (i) the variation introduces conditions which, had they been part of the initial procurement exercise, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of an offer other than that originally accepted or would have attracted additional participants in the procurement procedure;
 - (ii) the variation increases the value of the Contract or the Framework Agreement substantially in favour of the Provider in a manner which was not provided for in the initial Contract or Framework Agreement;
 - (iii) the modification extends the scope of the Contract or Framework Agreement considerably.

Further guidance should be sought from Legal Services where the Chief Officer considers there is any possibility that the proposed variation might fall under this Rule 21.2.5.

22. Termination of Contract

Prior to terminating any contract Officers should consult Legal Services. It will only be possible for Contracts to be terminated early, where provided for within the Contract, if this action is authorised by the relevant Chief Officer through a Delegated Decision. A copy of the report and decision for termination of any Contract exceeding £100,000 in value must be sent to the Chief Procurement Officer for monitoring purposes. All termination letters under this rule will be drafted and issued via Legal Services in conjunction with the Authorised Officer.

23. Prevention of Corruption

Rules and regulations pertaining to the prevention of corruption are outlined in the Financial Procedure Rules and must be adhered to at all times.

24. Declaration of Interests

Any Officer who has a direct or indirect pecuniary interest in any Contract or proposed Contract (in accordance with the Local Government Act 1972 section 117) shall declare their interest in writing to their Director and will not be allowed any involvement in relation to the procurement or management of the relevant Contract.

25. Contract Management / Monitoring

- 25.1 All Contracts must have an appointed contract manager for the entirety of the Contract. The responsible Chief Officer must ensure a contract manager is designated prior to contract award.
- 25.2 Contract management, monitoring, evaluation and review must be conducted in line with guidance detailed in the Procurement Toolkit.

26. Internal Providers

- 26.1 Where an Internal Service Provider is bidding in competition for the provision of goods, works or services, care must be taken to ensure a fair process between the Internal Service Provider and external bidding organisations.
- 26.2 Where an Internal Service Provider is successful the appropriate Director shall enter into a service level agreement with the recipient department in a form approved by the Chief Finance Officer and Monitoring Officer.
- 26.3 Where an Internal Service Provider proposes to sub-let all or part of the services to an external provider, the sub-letting process shall be subject to the tendering procedures as laid down in these CPRs.

27. External Body Grant Funding

- 27.1 Where a procurement process is funded, in whole or part, by grant funding which has been awarded to the Council by an external funding body, the Authorised Officer must ensure that any rules or conditions imposed by the funding body are adhered to, in addition to the requirements of these CPRs. The Authorised Officer should consult with Commercial Procurement and/or Legal Services as necessary.
- 27.2 Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, the stricter requirement should be followed.

28. Waiver and Exemptions**Waivers**

- 28.1 Except where the Public Contracts Regulations apply, the Cabinet has the power to waive any requirements within these CPRs for specific projects upon request.
- 28.2 Additionally, these CPRs may be waived or varied where the circumstances are certified by the Chief Finance Officer advised as appropriate by the Monitoring Officer and Chief Procurement Officer as meeting any of the following criteria:
 - 28.2.1 for works, supplies or services which are of such special character that it is not possible to obtain competitive prices;
 - 28.2.2 for supplies purchased or sold in a public market or auction;
 - 28.2.3 for the execution of works or services or the purchase of supplies involving specialist or unique knowledge or skills;

- 28.2.4 with an organisation which has won a Contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme and has previously been identified as such;
 - 28.2.5 with an organisation already engaged by the Council for a similar and related procurement and where there is significant benefit to extending the Contract to cover this additional requirement, without exposing the Council to unacceptable risk;
 - 28.2.6 for works, supplies or services which are only available from one organisation (due to their specialised nature);
 - 28.2.7 involving such urgency that it is not possible to comply with the CPRs;
 - 28.2.8 for the purchase of a work of art or museum specimen, or to meet the specific requirements of an arts or cultural event which cannot be procured competitively due to the nature of the requirement;
 - 28.2.9 in relation to time limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this; or
 - 28.2.10 where relevant UK or EU legislation not otherwise referred to in these CPRs prevents the usual procurement process from being followed.
- 28.3 If a request to waive these CPRs is required, the appropriate Officer will complete and submit a waiver form, using a template document obtained from Commercial Procurement. The waiver form must set out the financial, legal, risk and equality implications of the waiver sought.
- 28.4 The process to be followed is:
- 28.4.1 completed waiver document sent to relevant Chief Officer (and copy to Commercial Procurement) who is accountable for the decision. If approved;
 - 28.4.2 completed waiver form sent by the Chief Officer to Chief Finance Officer or nominated officer to ensure compliance with these CPRs. If approved;
 - 28.4.3 completed waiver form sent to Monitoring Officer or nominated officer to ensure legal compliance;
- Once all three stages have been completed if the waiver has been approved the Authorised Officer can then proceed with the variation to these CPRs. The outcome of the waiver process shall be logged in the waiver register maintained by Commercial Procurement.
- 28.5 Every waiver form will be recorded on a master register to be maintained by Commercial Procurement.
- 28.6 Authorised Officers are required to seek waivers at the outset of any procurement process or, where relevant, at such time during a procurement process that it becomes apparent that it is not possible to comply in full with the competition

procedures outlined in Rules 9.3 and 9.4. No Contract shall be entered into without a waiver authorisation being in place.

- 28.7 Authorised Officers are not required to seek waivers in the case of an Emergency or as a result of an Emergency where there is danger to the safety of persons or serious risk of loss or damage to the Council's assets or interests, or the interests of another party, the Authorised Officer may place such Contracts as necessary by means that are reasonable under the circumstances.

Exemptions

- 28.8 These CPRs do not apply to contracts:

28.8.1 for the execution of mandatory works by statutory undertakers;

28.8.2 with Ofsted for the inspection of a school;

28.8.3 which have been procured on the Council's behalf:

- (i) through collaboration with other local authorities or other public bodies, where a competitive process which complies with the CPRs of the leading organisation has been carried out; or
- (ii) by a national or regional contracting authority where the process followed is in line with the Public Contracts Regulations.

28.8.4 to cover urgent special educational needs, urgent social care contracts or urgent operational needs, if in the opinion of the relevant Director (in consultation with the Chief Procurement Officer) the exemption is considered to be in the Council's interests or necessary to meet the authority's obligations under relevant legislation. Use of this exemption by the relevant Director must be preceded by a written report under Rule 28.3 using the waiver form, setting out the reason for such urgency, how it complies with relevant legislation and represents Best Value.

- 28.9 The use of e-procurement does not negate the requirement to comply with all elements of these CPRs.

29. Breaches of CPRs

Breaches of the CPRs are extremely serious matters and will be fully investigated and reported on following referral or discovery. All Directors are responsible for reporting all known or discovered breaches of these CPRs to the Chief Finance Officer and Monitoring Officer as soon as they become aware of it in practice. Any Director can be called to Audit & Governance Committee to explain any breach.

APPENDIX A – DEFINITIONS

“Authorised Officer”	means a person authorised by the relevant Chief Officer to act on the Council’s behalf;
“Best Value”	means the optimum combination of whole life costs, quality and benefits to meet the customer’s requirement;
“Category Plan”	means strategic planning of the category, at a category or sub-category level, including review of the current position, constraints and opportunities, desired outcomes, options and actions. The template plan should be used in all cases except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;
“Category”	means each category identified in the category overview table which is set out in the Council’s Procurement Strategy;
“Chief Finance Officer”	means the Council’s section 151 Officer currently the Director of Customer & Business Support Services;
“Chief Officer”	means the head of the procuring directorate and includes the Chief Executive, Deputy Chief Executive, Directors, Assistant Directors and chief officers with appropriate delegations and sub-delegations;
“Chief Procurement Officer”	means the Chief Officer of Commercial Procurement who is responsible for the procurement function on behalf of the Council;
“Constitution”	the Council’s constitution which is available on the internet and sets out the rules that the Council and all Council employees and Members must follow;
“Contract(s)”	means an agreement between the Council and a Provider made by formal agreement or by issue of a letter of acceptance or official order for goods, services and/or works;
“Contract Register”	means the register of all Contracts maintained by Commercial Procurement;

“Commercial Procurement”	means the Council’s central commercial procurement team;
“(The) Council”	means City of York Council;
“CPRs”	means these Contract Procedure Rules;
“Delegated Decision”	means a formal decision taken in accordance with the Council’s Constitution and sub-delegation schemes. It is for the Officer seeking the Delegated Decision to decide which type of decision is required in accordance with the Constitution;
“Director”	means all the Council’s directors including; the director of customer business and support services, director of health and well being, director of communities and neighbourhoods, director of adult, children and education services and director of city and environmental services;
“Emergency”	means an urgent situation or crisis created as a result of a natural disaster (such as flooding or an earthquake) or tragedy (such as an explosion or plane crash);
“EU Threshold(s)”	means the current threshold above which the Public Contracts Regulations apply, currently: <ul style="list-style-type: none"> 1. services - £172,514 2. goods/supplies - £172,514 3. works - £4,332,012
“Financial Appraisals”	means checking the financial status including the credit rating of a Provider;
“Finance Manager”	means a manager from the Council’s internal finance team;
“Financial Procedure Rules”	means the governance rules and regulations relating to the management of the Council’s financial affairs, set out in Part 4G of the Constitution;
“Framework Agreement”	means a framework agreement that has been set up either by the Council or an organisation other than the Council and has been authorised by Commercial Procurement for use in Council

	procurements;
“Forward Procurement Plan”	means practical planning of the procurement, or group of similar procurements, including approach, resourcing and timetable. This involves identifying major projects within each category of spend to be maintained by the relevant Chief Officer. It also provides a basis for information for Commercial Procurement to meet the Council’s reporting obligations. The Forward Procurement Plan will be in such format as prescribed by the Chief Procurement Officer except where an alternative approach (having the same effect) forms part of external funding or joint procurement requirements;
“Internal Service Provider”	means any internal service area for example Building Services, Commercial Procurement, or Legal Services etc;
“Invitation to Tender”	means an invitation by the Council to a potential Provider to tender for the provision of goods, services and/or works;
“Key Decision”	has the meaning set out in Rule 7.6 of the CPRs;
“Leader”	means the Leader of the Council;
“Legal Services”	means the Council’s internal legal team;
“Member(s)”	means elected member(s) of the Council;
“Monitoring Officer”	means the Council’s principal solicitor currently the Assistant Director of Governance & ICT;
“Officer(s)”	means employee(s) of the Council;
“Participants”	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract;
“Procurement Strategy”	means the Council’s published procurement strategy setting out its ambition for procurement and confirming a category management and whole lifecycle approach to procurement;
“Procurement Toolkit”	means the manual that accompanies these CPRs which provides detailed guidance on procurement techniques, considerations and

	the effect of these CPRs;
“Provider(s)”	means the person or entity with whom the Council has a Contract;
“Public Contracts Regulations”	means the Public Contracts Regulations 2006 as amended by the Public Contracts (Amendment) Regulations 2009, the Public Procurement (Miscellaneous Amendments) Regulations 2011 and any successor, amending or enabling legislation;
“Relevant Contract”	has the meaning set out in Rule 3 of these CPRs;
“Request for Quotation”	means a request by the Council to a potential Provider for a quotation for the provision of goods, services and/or works;
“Routine”	has the meaning set out in Rule 7.7;
“Rule(s)”	means any rule contained in these CPRs;
“Standstill Period”	means a 10 day standstill period before a contract can be awarded to the successful bidder to allow an unsuccessful bidding organisation an opportunity to challenge the proposed contract award;
“Strategic Partnership”	means a partnership with an organisation that the Council has a long term arrangement with for the provision of goods, works and / or services;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
“YORtender”	means the Council’s provider and contract management system maintained by Commercial Procurement.