

## **Contract Procedure Rules (CPRs)**

As adopted by:

Broadland District Council on 22 July 2021

South Norfolk Council on 26 July 2021

### **Statement of Intent**

**Subject to the overriding principles in section 2 below, there will be a focus on, wherever appropriate:**

- **enabling social value,**
- **encouraging participation by local businesses to support the local economy, and**
- **protecting the environment using environmental criteria in contracts.**

### **1. COMPLIANCE**

- 1.1 These Contract Procedure Rules (CPR) are the Council's contract standing orders under section 135 of the Local Government Act 1972. They must be followed every time the Council enters into a contract for works, supplies or services.
- 1.2 All public procurement and other applicable laws (including any European Union law directly or indirectly in force in England at the relevant time) must be followed. Such laws override any conflicting provision of the CPR.
- 1.3 These, the CPR must be read in conjunction with the Council's Constitution, including its Financial Procedure Rules, Procurement Quick Step Guide, (QSG) decision making processes and delegated authorities.
- 1.4 These CPR are the minimum standards which must be adhered to. Particular procurements may require a more thorough procedure than one defined by value alone, depending on the identifiable risks to the Council, or it may be beneficial to the Council to secure greater competition. If in any doubt as to the position on any procurement, consult the Procurement Team.
- 1.5 The CPR aim to promote the highest standards of probity, integrity and impartiality using the key procurement principles of transparency, equal treatment, non-discriminatory and proportionate manner. They thereby offer the best justification against allegations of purchases having been made fraudulently or incorrectly.
- 1.6 If it comes to notice of an Officer that there has been non-compliance with these CPR s/he shall without delay notify the Director of Resources who shall take such action as deemed necessary.

### **2. PROCUREMENT PRINCIPLES**

- 2.1 The aim of every procurement process should be to achieve Value for Money, compliance with all legal requirements, and support the Council's policies and objectives.
- 2.2 These CPR apply to the appointment of Consultants, sub-contractors and any other legal entity (when acting on behalf of the Council).

- 2.3 Approval for any advance payments to the supplier before receiving the relevant works, supplies or services, must be sought in writing from the Director of Resources before proceeding to ensure protection of the Council's interests.
- 2.4 Tenders and Quotations received by fax or email must be rejected if above £20,001 as detailed in 2.6.
- 2.5 Tenders and Quotations over the value of £20,001 must be returned electronically via the Council's e-tendering system and opened by the procurement team and/or nominated officer.
- 2.6 All contracts except where lowest price was predetermined to be the appropriate contract award criterion shall be awarded based on the offer that represents the Most Economically Advantageous offer to the Council.

### **3. EXCLUDED CONTRACTS**

The following contracts are not subject to these CPRs:

- 3.1 Contracts of employment;
- 3.2 Agreements regarding the acquisition, disposal or transfer of land only (i.e. without any connected development);
- 3.3 Contracts where the price of the goods or materials is wholly controlled by government order or otherwise and no reasonably satisfactory alternative is available;
- 3.4 For other reasons where there would be no genuine competition, or where the requirements of the competition have already been met e.g. frameworks;
- 3.5 The disposal of obsolete assets.

### **4. COMPLEX PROCUREMENTS**

Where the procurement involves any of the following criteria the Procurement Team and the Director must be consulted:

- 4.1 Where the Total Value exceeds the relevant Public Procurement Thresholds (see QSG).
- 4.2 Where the opportunity is likely, in view of its characteristics, to be of cross-border interest and therefore attract potential suppliers from outside the UK.
- 4.3 Where any staff of the Council or an existing supplier spend the majority of their time providing the services which are to be procured (investigation would be needed to identify any potential TUPE implications in advance and obtain/provide employee liability information).
- 4.4 The procurement involves leasing agreements.
- 4.5 Where it is proposed to use a supplier's own terms or any other form of contract which is not one of those normally used by the Council for other matters.
- 4.6 Procurement of application software with a Total Value above £75,000.

- 4.7 Agreements involving the development of land for public benefit.
- 4.8 Where it is proposed to extend or vary an existing contract.
- 4.9 Any collaborative procurements where the Council is working with other authorities to procure.
- 4.10 Where it is proposed to enter into a new contract with an existing supplier without competition (such as a new contract for a line of business software system).
- 4.11 Where the procurement is complex in any other way or involves unusual risks.

## 5. PRE-PROCUREMENT PROCEDURE

Before commencing a procurement process, it is essential that the Officer leading the procurement is fully aware of the QSG. Consideration shall be given to the Council's Procurement Strategy.

## 6. PRELIMINARY MARKET CONSULTATION

Before commencing a procurement process the Officer may conduct market consultations with a view to preparing the procurement and informing potential suppliers of the Council procurement plans and requirements. This should be proportionate to the value of the contract.

- 6.1 Before commencing preliminary market consultation advice must be sought from the Procurement Team ensuring that the market consultation, would not have the effect of distorting competition and would not result in a violation of the principles of non-discrimination and transparency.

## 7. CONTRACTS PROCEDURES

The following table outlines the minimum selection procedure to be used where the procurement is within these CPR and is not complex (see Rule 4 above) and a suitable existing corporate contract or appropriate framework is not being used.

Estimating the Contract Value

The Estimated Total Value is the total estimated contract value, over the total contract period, and must include any potential usage by all procurement partners.

Minimum Contracts Procedures for Works, Supplies or Services:

Estimated Total Value (Inc all partners)	Selection procedure	Selection recommendations
Less than £20,000	Single quotation in writing including demonstration of value for money	Assistant Director or delegated to Officer
£20,001 to £75,000	At least three quotations in writing	Officer or Procurement Team

Estimated Total Value (Inc all partners)	Selection procedure	Selection recommendations
Above £75,001 but below the Public Contract Regulations 2015 Financial Threshold see QSG	Invitation to Tender issued to a minimum of three suppliers or an open tender.	Officer or Procurement Team
At or above the Public Contract Regulations 2015 Financial Threshold	Advice must be sought from the Procurement Team and/or Director	Consult with the Procurement Team and the Director

The Council should make the best use of its procurement power by aggregating purchases wherever possible. It is not acceptable to split Works, Services or Supplies in attempt to avoid these CPR or the Public Contract Regulations.

## **8. SINGLE QUOTATION PROCEDURE (Value less than £20,000)**

Single quotes can be obtained in a variety of ways which may include phone, internet, letter, face to face, however the information needs to be recorded. Where quotations are obtained via phone or face to face interaction, these should be confirmed in writing (e.g. send e-mail or through third party providing written quote).

All quotes are subject to the following processes;

- 8.1 Although a formal procurement process does not need to be followed, value for money needs to be demonstrated.
- 8.2 Officers should select a supplier by any reasonable means.
- 8.3 Request a final written quote from the supplier.
- 8.4 Reasons for the selection are to be recorded centrally.
- 8.5 Raise an appropriate Purchase Order to the supplier using the Council's financial software, prior to placing the order ensuring this refers to or incorporates the relevant contract document(s).

## **9. MULTIPLE QUOTATION PROCEDURE (Value £20,001 to £75,000)**

Having followed QSG:

- 9.1 Identify the appropriate contract to be used or contact the Procurement Team.
- 9.2 Develop and include in the relevant sections of the Council's invitation to bid documents, so that prospective suppliers (including at least one local supplier where practicable without improperly excluding other suppliers) can provide their quotations based on:

The evaluation criteria and

Specification of services/supplies/works required by the Council); and

Performance indicators (if appropriate).

The Procurement Team can assist with developing the relevant criteria/specification/performance indicators.

Open quotation opportunities should use the Council's e-sourcing system if appropriate and publishing the opportunity nationally using Contracts Finder with or without any other advertisement. Best practice would be to publish the opportunity for contracts over £20,000.

- 9.3 The period allowed for responses should be adequate, considering the complexity of the Council's requirements, to provide a reasonable opportunity for suppliers to prepare and submit a quotation. This will normally be at least 10 working days.
- 9.4 Invitation to bid documents should be sent or made available to the suppliers via the Council's e-sourcing system either to the selected suppliers or in an open opportunity. Access to the Council's e-sourcing system will be arranged by the Procurement Team on request.
- 9.5 Any bids received after the appointed date/time will not be considered and advice must be obtained from the Procurement Team as to next steps.
- 9.6 Bids will remain electronically sealed until the appointed time and date and will be opened by the Procurement Team and nominated officer.
- 9.7 Bids must be evaluated against the specified evaluation criteria, liaising with the Procurement Team and the Finance Team to check the information provided by the suppliers and when appropriate investigate the financial status of the supplier(s).
- 9.8 If less than two bids are received, consult with the Procurement Team and follow their recommendations as to whether to arrange a new invitation to bid or obtain other evidence demonstrating that (because of the nature of the opportunity, an absence of suitable competitor suppliers or otherwise) the bid(s) received represent Value for Money.
- 9.9 Record centrally the details of the procurement, including reasons for the selection of the winning bid and/or bids received.

## **10. TENDER PROCEDURE (Value more than £75,001 but below the Public Contract Regulations 2015 Financial Threshold):**

Having followed the QSG

Identify the appropriate contract to be entered by using the QSG.

- 10.1 Officers should engage the assistance of the Procurement Team as soon as it is anticipated that a tender may be required.
- 10.2 The Procurement Team will assist Officers with the following steps, including design of scope, evaluation criteria, performance indicators (if appropriate) and mitigation of risks/costs.
- 10.3 Officers should then either:
  - Select three or more specific potential suppliers to invite to tender (including at least one local supplier, where practicable without improperly excluding other suppliers), or

Open tender opportunities should use the Council's e-sourcing system if appropriate and publishing the opportunity nationally using Contracts Finder with or without any other advertisement. Best practice would be to publish the opportunity for contracts over £20,000.

- 10.4 Justification for inviting only selected potential suppliers must be approved by the Procurement Team and recorded with procurement documentation.
- 10.5 The period allowed for responses should be adequate, considering the complexity of the Council's requirements; to provide a reasonable opportunity for suppliers to prepare and submit a tender. This will normally be at least 20 working days.
- 10.6 Invitation to tender documents should be sent or made available to the suppliers via the Council's e-sourcing system either to the selected suppliers or in an open opportunity. Access to the Council's e-sourcing system will be arranged by the Procurement Team on request.
- 10.7 Any bids received after the appointed date and time will not be considered and advice must be obtained from the Procurement team as to next steps.
- 10.8 Bids will remain electronically sealed until the appointed time and date and will be opened by the Procurement Team and nominated officer.
- 10.9 The Procurement Team will manage evaluation of tenders against the specified evaluation criteria and liaise with the Finance Team to check the information provided by the suppliers and if appropriate investigate the financial status of the supplier(s).
- 10.10 The Procurement Team will assist in seeking approval, awarding the contract and completion of the procurement process.
- 10.11 Record centrally the details of the procurement, including reasons for the selection of the winning bid and/or bids received.

## **11. TENDER PROCEDURE FOR ABOVE PUBLIC CONTRACT REGULATIONS 2015**

Advice must be sought from the Council's Procurement Team where the estimated value is likely to exceed the PCR 2015 Financial Thresholds.

The Procurement Team will manage the procurement process to ensure compliance of the PCR 2015.

The evaluation criteria and weightings must be prepared to enable the Most Economically Advantageous Tender or bid (MEAT), to be identified, ensuring that all such criteria are appropriate for and proportionate to the relevant contract.

A report for Corporate Management Team Leadership Team must be prepared for all procurements over the PCR before the contract award to include and not limited to:

- Nominated contract manager.
- Risk assessments and risk register.
- Contingency measures (including early termination and exit strategy).
- Annual review of insurance policy.
- Contractual performance.

- Innovations.
- Social Value delivery.
- Complaints and compliments.
- Data Protection issues (if appropriate).

## **12. TENDER EVALUATION**

Tenders must be evaluated in accordance with the evaluation criteria as set out in the invitation to tender documents.

The arithmetic in tenders must be checked by the appropriate officer as defined in the procurement documentation. If arithmetical errors are found they should be notified to the supplier, who should be requested to confirm or withdraw their tender.

When evaluating tenders including Frameworks, appropriate due diligence must be undertaken to assure the Council of the financial stability of contractors and sub-contractors.

## **13. DECLARATION OF INTEREST**

If it comes to the knowledge of a Member or Officer (or other appropriate person) of the Council that a contract in which they have a pecuniary interest has been, or is to be, entered by the Council then they must immediately give written notice to the Monitoring Officer. This needs to be recorded on the annual return.

The Monitoring Officer shall maintain records of all declaration of interests notified by Members and Officers (or other appropriate person).

## **14. POST TENDER NEGOTIATION**

Post tender negotiation is to be the exception and such negotiations shall be conducted strictly in accordance with the following:

- They shall take place at predetermined times and places.
- The Procurement team, Monitoring Officer and the Section 151 Officer or their Deputies, must be notified of the time and venue of all negotiations.
- More than one officer of the Council shall always be present, including either the Monitoring Officer or the Section 151 Officer or their Deputies, or their senior representative.
- The signed record of all meetings shall be kept on file.
- In the event of a contract being awarded, the relevant signed records of meetings shall be bound into the contract.

## **15. CONTRACT AWARD**

15.1 The approval level for accepting tenders and quotations is shown in the table below.

Note: The process to follow for contract award is based on the cost to the individual council (not the total cost for all partners, therefore the contract award process may be different for each council).

<b>Cost to Council</b>	<b>BDC Approval</b>	<b>SNC Approval</b>
Up to £20,000	Assistant Director	Assistant Director
£20,001 to £50,000	Director	Assistant Director
£50,001 to £100,000	CMLT	Director
Above £100,001	Cabinet	Cabinet

- 15.3 Officers in conjunction with the Procurement Team must notify all suppliers simultaneously and as soon as possible of the intention to award the contract to the successful supplier and stipulating the standstill period (if any) applied in the notification. If an unsuccessful supplier challenges the decision, the Officer shall not award the contract and shall immediately seek the advice of the Procurement Team.
- 15.4 Where a contract has been tendered below the PCR 2015 and above £20,000 the Council shall publish a contract award notice on Contract Finder.
- 15.5 Where a contract has been tendered pursuant to the PCR 2015 the Council shall publish a contract award notice as detailed by the PCR 2015.

## **16. CONTRACT TERMS**

Contractual arrangements should be made on:

- the Council's standard general terms, or
- standard form contracts, or
- industry standard model contract terms, or
- if using a Framework, the Framework Terms.

Contracting on the supplier's terms should be avoided.

Exceptions to this rule must be approved in advance by the Director of Resources.

- 16.1 Every formal contract in writing within the meaning of CPR shall specify or contain (as a minimum) wherever possible:
- (a) the services, supplies or works to be provided.
  - (b) the price to be paid, with a statement of discounts or other deductions.
  - (c) the time or times within which the contract is to be performed.
  - (d) that all relevant health and safety legislation and codes of practice must be complied with and that any specific health and safety requirements set out in the invitation to tender prior to contract award have been satisfied.
  - (e) in appropriate cases (to be determined by the Director of Resources) provide for the payment of liquidated damages by the supplier where they fail to complete the contract within the time specified in the contract or any amendment thereto made in accordance with the terms of the contract.
  - (f) a clause empowering the Council to cancel the contract and recover from the supplier the amount of any loss resulting from such cancellation, if the Supplier or any person acting on their behalf shall, in relation to the obtaining or execution of the



contract or any other contract with the Council, have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972, Bribery Act 2010, Data Protection Act 2018 and Modern Slavery Act 2015.

(g) a clause requiring the supplier to provide information to the Council for the Council to fulfil its obligations under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

(h) appropriate Employers Liability Insurance minimum of £10,000,000 or lower figure based on Officer's risk assessment in consultation with Finance (but not less than £5,000,000).

(i) appropriate Public Liability Insurance minimum of £10,000,000 or lower figure based on Officer's risk assessment in consultation with Finance (but not less than £5,000,000).

(j) appropriate Professional Indemnity Insurance minimum of £1,000,000 or lower or higher depending on the risks and based on Officer's risk assessment in consultation with Finance.

## **17. EXECUTION OF CONTRACTS**

Any contracts valued at above £100,000 shall be formal, made in writing and executed as a deed by the affixing of the Council's common seal or signed by the Director of Resources or other person duly authorised in this regard (as considered appropriate).

All other contracts i.e. less than £100,000) may be signed by the relevant Director or other person duly authorised in this regard (as considered appropriate).

## **18. CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS**

Assistant Directors shall be responsible for the Contracts Register and Forward Procurement Plans and all prospective contracts entered into by the Council in excess of £5,000 unless the contract is less than three months duration.

Information required for maintaining the Contracts Register and Forward Procurement Plans will be provided in a timely manner to meet quarterly publication requirements.

## **19. FRAMEWORK AGREEMENTS AND DYNAMIC PURCHASING SYSTEMS**

Framework Agreements and Dynamic Purchasing Systems (DPS) will contain instructions for use within its terms, and potentially include a requirement for a further competitive process between those suppliers who are parties to the Framework Agreements and DPS.

In these cases, a Framework Agreement and DPS shall be tendered in accordance with these CPR and the Public Contract Regulations.

Where the Council has entered into a Framework Agreement and/or through procurement or is able to place orders from existing Framework Agreements and/or procured by central government agencies, other local authorities or other third parties, then the Council may benefit from using those contracts without entering into a separate procurement.

Procurement Team advice should be sought in advance before awarding a contract to a supplier using a Framework Agreement or DPS not procured directly by the Council.

## **20. COLLABORATIVE PROCUREMENT**

These CPR shall apply to any procurement where tenders are invited by the Council on behalf of any partnership, consortium, association or similar body of which the Council is a member, unless such tenders are invited in accordance with the method prescribed by such consortium, association or body and where necessary with the requirements of the PCR 2015.

## **21. CONTRACT EXTENSIONS**

No contract may be extended except in accordance with its terms (subject to financial resources and satisfactory value for money assessment) and comply with the PCR 2015.

Prior to any contract extensions advice should sought from the Procurement Team as required.

## **22. WAIVERS OF CONTRACT PROCEDURE RULES**

Waivers of any of these CPR shall only be given in exceptional circumstances provided the value does not exceed the PCR financial thresholds. Waivers may not be made retrospectively.

- 22.1 An Officer empowered to let a contract may seek a waiver from a Director and Section 151 Officer or their deputies and if above £100,000 Cabinet. All waivers shall be recorded on the Waiver Form and saved centrally.

## **23. BONDS, GUARANTEES AND INSURANCE**

The Officer shall consider in all contracts the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract. The Officer shall consult with Finance when determining the appropriate levels of insurance.

- 23.1 For all contracts over £100,000 (and any other circumstances deemed appropriate by the Officer and the Director of Resources), some form of security may be required from the potential supplier as part of the pre-procurement process.

## **24. OPERATIONAL EMERGENCY**

In the event of circumstances rendering emergency measures necessary which cannot expediently be approved through normal Council procedures, the appropriate Officer(s) in consultation with the Managing Director (or a nominated officer), or not less than two Cabinet Members may, notwithstanding anything contained in the Council's CPR or Financial Procedure Rules, authorise the Officer to enter into a contract on behalf of the Council.

In a continuing emergency any action taken, or contract entered into shall be reported to a special Cabinet meeting as soon as possible which shall take such action as necessary to deal with the situation.

Prior to reference to Cabinet, such process of emergency measures shall be subject to a total limit of expenditure up to PCR 2015 Financial Thresholds.

Any adoption of these powers must be reported to the next Cabinet.

## **25. DISPOSAL OF ASSETS**

Disposal and/or reallocation of assets needs to be managed with the same diligence as the acquisition process. Before any disposal and/or reallocation of assets reference must be made to the Council's Disposal Strategy and/or Constitution. The Council has a duty of care regarding the disposal of equipment where environmental issues are appropriate.

- 25.1 Records must be retained for the disposal of assets in a similar way as for procurement decisions.
- 25.2 Any items of stock (other than land) deemed obsolete or surplus to requirements must, where the expected loss on disposal is no more than £20,000, be sold or disposed of only on the authorisation of the Director. Where the expected loss on disposal exceeds £20,000 the approval of the appropriate Director (s) must be obtained.
- 25.3 The method of disposing of surplus or obsolete stocks / stores or assets other than land must be determined as follows:

Total Value	Method
Up to £20,000	By whatever means the relevant Director shall decide consistent with the asset disposal rules
£20,000 and above	Tender sought by public advertisement, by public auction or such other means as the Section 151 Officer shall approve after consultation with the Monitoring Officer

- 25.4 Before an item is disposed of, consideration should be given as to whether there is a use for the item elsewhere within the Council. All options must be explored, and a record kept of the decisions made. It is the responsibility of each Director to establish that legal title rests with the Council prior to the disposal of any item. Disposal of land will in all cases require advice and guidance from the appropriate body as set out in the Council's Financial Regulations.

## **26. CONTRACT MANAGEMENT**

Efficiencies secured under competitive processes will only be realised with effective contractual management.

- 26.1 Named Officer(s) will be responsible for the day to day operational management of all contracts.
- 26.2 Requirements for contract management are to include and not limited to: (as a minimum);

- 26.3 An annual review (in consultation with the Finance Team) of the financial status of any key suppliers in contract with the Council.
- 26.4 Annual check for validity of any required certifications and evidence of current insurance cover.
- 26.5 Regular review meetings at agreed intervals to discuss:
- 1) Contractual performance (key performance measures).
  - 2) Social value delivery.
  - 3) Innovations or other potential savings in areas relating to the contract or opportunities to improve the range of services provided.
  - 4) Risk identification, evaluation and management on subjects relating to the contract.
  - 5) Customer complaints and compliments.
  - 6) Any data protection issues.

Intervals for these review meetings will vary depending on the complexity of the contract/commodity and the total value. Generally, the review meetings for any contract with a high-risk element or above the Public Contract Regulations financial threshold should be held at least six monthly and can be more frequent where performance or risk management are identified as an issue.

- 26.7 For key strategic contracts a report must go annually to the relevant Cabinet Member regarding:

Achievement of contractual objectives within the period

Current contractual direction (continue, review, exit, retender).

## **27. RETENTION OF DOCUMENTS**

It is a legal requirement for commercial records to be retained for inspection by various Government authorities including HMRC.

- 27.1 The retention period commences once the Tender, Purchase Order or Contract is closed: all "open" documents are retained indefinitely.
- 27.2 The records to be retained, the retention period and which section retains them are detailed below:

Document	Retained by	Retention Period
Tenders/Quotations	e-procurement system/centrally	7 Years
Purchase Orders	Finance System/Section	7 Years
Contracts	Officer/Deed Room	7 Years
Suppliers Invoices	Finance System/Section	7 Years

The records should be kept in a format that facilitates accessibility for future use.

## **28. REVIEW AND AMENDMENT OF THE CONTRACT PROCEDURE RULES**

These CPRs shall be reviewed and updated at least every 2 years.