

West Suffolk Council

West Suffolk Contract Procedure Rules

1. Introduction

- 1.1 These Contract Procedure Rules (CPRs) have been issued in accordance with Section 135 of the 1972 Local Government Act and the Public Contract Regulations 2015 (PCR2015) and adopted by West Suffolk Council to give consistency to procurement across the organisation.
- 1.2 Procurement is the process by which the Council manages the acquisition of all goods, services and works. It includes the identification of need, consideration of options and the actual procurement process.
- 1.3 Officers responsible for purchasing on behalf of the Council must comply with these CPRs. They provide the minimum requirements although a more thorough procedure may be appropriate for specific contracts.
- 1.4 These CPRs provide a corporate framework for the procurement of all goods, services and works for the Council. They are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, these CPRs are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts that are entered into.
- 1.5 These CPRs must be read in conjunction with the Constitution, any agreed procurement policy and guidance issued to Officers by, or on behalf of the Section 151 Officer.
- 1.6 The disposal of assets and the acquisition, use and disposal of Land and Buildings are not covered by these CPRs and are to be considered alongside the Financial Procedure Rules.
- 1.7 For the purposes of these CPRs there is a requirement for all communication to be in writing except where otherwise specified. This shall be deemed to include electronic communication, use of e-procurement and fax transmissions or hard copy.

2. Basic principles

2.1 Good procurement aims to achieve:

- Transparency - contract procedures must be transparent and contract opportunities must generally be publicised.
- Equal treatment and non-discrimination - potential suppliers must be treated equally and fairly.
- Proportionality - procurement procedures and decisions must be proportionate.
- Mutual recognition – validity should be given to equivalent qualifications and standards.

2.2 In addition to the above all procurement must:

- Comply with the Procurement Policy, support the Councils' corporate and departmental aims, strategies, policies and procedure
- Achieve Best Value for public money spent
- Be consistent with the highest standards of integrity
- Comply with relevant legal requirements
- Be undertaken in a timely fashion
- Ensure that Non-commercial Considerations do not influence any Contracting Decision
- Be conducted in a sustainable manner, taking environmental and social value into account.

3. Exclusions

3.1 These contract procedure rules apply to all contracts commissioned by the Council, except for:

- The making of grant payments which are covered by the Financial Procedure Rules, or
- Contracts of employment which make an individual a direct employee of the council, or
- The engagement of Counsel/Advocates or other experts by the Service Manager (Shared Legal) where such engagement falls outside an existing framework for the provision of legal services, or
- Contracts where delay will adversely impact on the service delivery of the Council and there is a prior specialised Knowledge of a particular building or asset, or
- Agreements regarding the acquisition, disposal, or transfer of land. Further guidance must be sought from the Service Manager (Shared Legal) or the Procurement Manager; or
- The lending and borrowing of money, or
- The purchase or sale by auction or at public fairs and markets, or

- The purchase of works of art or museum specimens, or
- Agreements in relation to festivals and arts programming, or
- Agreements under s.106 of the Town and Country Planning Act 1990 (as amended).

4. Exemptions

4.1 Exemptions to the procurement process cannot be awarded where the proposed value exceeds the limits placed in regulation 5 of the PCR2015.

4.2 Below this threshold, exemptions must only be sought in exceptional circumstances and all exemptions, must be recorded.

4.3 Between £50,001 and the regulation 5 limits, any exemption must be approved by the relevant service Director in consultation with the Section 151 Officer. The Section 151 Officer shall keep records of all exemptions granted along with reasons and supporting evidence for such exemptions.

4.4 Below £50,000 any exemption must be approved by the Director or an officer delegated to make such decisions by the Director. The Director, or delegated officer, must send a record of the exemption to the Section 151 Officer alongside supporting evidence and reasons.

4.5 Exemptions are likely only to be granted in the following circumstances:

- An unforeseeable emergency involving immediate risk to persons or property, or serious disruption to council services.
- The goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations and the relevant Director is satisfied that no satisfactory alternative is available.
- The works to be executed consist of repair or supply of parts of existing propriety machinery or plant.
- The items to be supplied consist of goods or services which are currently in use and are required for the purposes of standardisation.
- Best value is anticipated to be delivered from sourcing goods on the second-hand market where no competing quotations can be obtained.
- The anticipated disruption/cost of changing supplier will significantly outweigh the savings generated from re-tendering.
- The specialised nature of the goods, services to be supplied or the works to be executed means that only one suitable supplier has been identified or is available.

- Emergency action is required and/or immediate repairs are required to buildings, structures and other assets damaged by fire, flood or vandalism.
- Unforeseen works where delay will adversely impact on the service delivery for the Council(s).
- For a 'pilot' scheme where goods and services are procured on an experimental basis and considered to be the most appropriate approach for a particular scenario and where 'pilot' scheme is for a clearly defined period not exceeding 24 months and where agreed by relevant Service Manager and the Procurement Manager.

4.6 If an exemption is sought which is not for any of the above reasons, advice must first be obtained from the Monitoring Officer and Section 151 Officer in order to determine whether such an exemption can be applied. Exemptions for reasons not listed above will be acceptable only in exceptional circumstances.

5. Procurement thresholds and key requirements

5.1 Where the *Total Value* for procurement is within the values in the first column below, the *Award Procedure* in the second column and the key requirements in the third column must be followed:

<i>Total Value (excluding VAT)</i>	<i>Award Procedure</i>	Key Requirements
Up to £10,000	Procure as required	<ul style="list-style-type: none"> • If assured of value for money; just purchase through the most efficient route.
£10,001-£50,000	Formal Quotation Procedure (8.3)	<ul style="list-style-type: none"> • Use of e-procurement expected • Invite minimum three quotations from three suppliers • Use Formal Quotation Template • Open Procedure recommended.
£50001-Regulation 5 Limits	Formal Tender Procedure (8.4)	<ul style="list-style-type: none"> • Use of e-procurement expected • Must always consult the Procurement Manager • Use Formal Tender Template • Open Procedure recommended.

<i>Total Value (excluding VAT)</i>	<i>Award Procedure</i>	Key Requirements
Above Regulation 5 Limits	EU Tender Procedure (8.5)	<ul style="list-style-type: none"> • Must always consult the Procurement Manager and <i>the</i> Service Manager (Shared Legal) • Use of e-procurement expected

6. Officer responsibilities

- 6.1 Officers responsible for procurement must comply with these CPRs, Financial Procedure Rules, the Officers' Code of Conduct, and with all UK binding legal requirements. Officers must ensure that any Agent, Consultants and contractual partners acting on the Councils' behalf also comply.
- 6.2 Before requesting Quotations or inviting Tenders the Officer must:
- Explore whether there is an alternative to buying the goods, services or works.
 - Check with the Procurement Manager whether a relevant contract exists before seeking to enter into a further contract; if such a relevant contract exists, this must be used unless there is an auditable reason not to.
 - Check with the Procurement Manager whether a suitable Framework Agreement is available from any Contracting Authority or Professional Buying Organizations (e.g. ESPO, GPS, YPO, CBC etc.) before starting a new procurement; where a suitable Framework Agreement exists, consideration must be given to procure from it unless there is an auditable reason not to.
 - Confirm that there is member or delegated approval for the expenditure and the procurement complies with the approved policy and scheme of delegation as set out in the Constitution.
 - If a Tender relates to a contract award which is a Key Decision, confirm that all appropriate steps have been taken.
 - Seek timely procurement, legal, financial, and other professional advice.
 - Confirm that they are authorised to use the e-procurement portal or obtain authorisation from the Procurement Manager.
 - Have regard to the guidance in the Procurement Webpage and the Procurement Policy.
 - Give consideration to Contract Management and prepare a business case if the project is high risk, high profile or of significant financial value
 - Keep records of all Contracting Decisions taken.

6.4 The Officer must ensure that timely advice is sought from the Director (HR, Governance and Regulatory) when any employee either of the Councils or of a service provider may be affected by the Transfer of Undertaking (Protection of Employment) Regulations 2006 (TUPE) issues before proceeding with inviting Tenders or Quotations.

7. Contract formalities

7.1 All contracts to which these Procedure Rules apply shall be in writing.

7.2 Advice from the Service Manager (Shared Legal) and the Procurement Manager must be sought for the following contract types:

- Where the Total Value exceeds the regulation 5 limits
- Those involving leasing arrangements
- Where it is proposed to use a supplier's own terms and conditions
- Agreements involving the development of land for public benefit
- Those that are complex in any other way.

7.3 All contracts shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
- The provisions for payment (i.e. the price to be paid and when)
- Whether the price stated is inclusive or exclusive of Value Added Tax
- The time, or times, within which the contract is to be performed
- The provisions for the council to terminate the contract

7.4 Guidance must be sought from the Service Manager (Shared Legal) for the terms and conditions that will apply to any contract with a value in excess of £50,000.

7.5 Where a contract does not contain a defined extension period but supply of goods/services is desired to continue past the contract end date, then either:

- a re-tender for that contract must be performed in line with the Procurement thresholds in paragraph 5.1.
- or
- an exemption must be granted for a contract extension under the circumstance listed in paragraph 4.5

8. Procedure

8.1 Specification and Award Criteria

8.1.1 The Officer must prepare a specification document that describes the Council's requirements in sufficient detail to enable the submission of competitive offers before starting a procurement process. The specification document must include performance targets and/or the criteria for acceptance and must be outcome or output based.

8.1.2 Consideration must also be given by the Officer to economic, environmental and social value benefits of any proposed procurement to include consulting stakeholders where appropriate. Further information is within the Procurement Webpage or advice can be obtained from the Procurement Manager.

8.1.3 The Officer must define Award Criteria and any sub criteria that are appropriate to the procurement and designed to secure an outcome giving Value for Money for the council. The basic criteria shall be:

- 'Lowest price'
- 'Most economically advantageous', where considerations other than price also apply.

8.1.4 Award Criteria must not include:

- Non-commercial Considerations
- Matters which unfairly discriminate against suppliers

8.1.5 Good practice requires that quoted prices or tendered prices must not be altered without justification. However where there is a risk that a priced document maybe subject to computational errors then the Officer must decide, at the time that the specification is agreed, how such errors will be treated and this should be detailed within the Specification. Further information is within the Procurement Webpage or advice can be obtained from either the Procurement Manager or the Service Manager (Shared Legal).

8.2 Advertisement of quotation or tender opportunities

8.2.1 Officers shall ensure that a sufficiently accessible advertisement is published to generate the appropriate level of interest in the contract. Examples of where such advertisements may be placed include:

- Suffolk Sourcing and Contracts Finder.
- Constructionline or similar specialist portal websites created for contract advertisements
- the Council’s website
- the Council’s social media accounts
- national official journals
- the Official Journal of the European Union (OJEU), Tenders Electronic Daily (TED)
- Any other appropriate mechanism in consultation with the Procurement Manager and Service Manager (Shared Legal).

8.2.2 The Officer must ensure to give Bidders an adequate period in which to prepare and submit a Quotation or Tender consistent with the complexity of the contract requirement. Advice must be sought from the Procurement Manager but the following are recommended:

Quick Quotation	10 Calendar Days
Formal Quotation	28 Calendar Days
Formal Tender	28 Calendar Days
EU Tender	The timescales are prescribed and vary according to procedure utilised

8.2.3 No Quotation or Tender received after the date and time indicated in the Request for Quotation or Invitation to Tender shall be accepted or considered, other than exceptional circumstances and the Officer must consult with the Monitoring Officer and Procurement Manager.

9. Award procedure and detailed requirements

9.1 Procure as required (Up to £10,000)

9.1.1 Where the estimated value of goods, works or services to be supplied is less than £10,000 the Officer must be satisfied that the arrangements made secure the best available terms for the Council.

9.2 Formal quotation procedure (£10,001- £50,000)

9.2.1 The Request for a Formal Quotation shall be issued through the e-procurement portal utilising the standard template available in the Procurement Webpage and shall specify the supplies, services or works that are required together with the appropriate terms and conditions of contract as agreed with the Service Manager (Shared Legal) and will state that no Formal Quotation will be considered unless it is received by the date, time and method stipulated.

- 9.2.2 All organisations invited to provide a Quotation must be issued with the same information at the same time and subject to the same conditions.
- 9.2.3 A minimum of three Formal Quotations shall be invited where the Officer is satisfied that competitive Quotations will be received from those three. Where the Officer is unsure of the market, consideration may be given to using an open process provided the Officer is satisfied that this will not generate an excessive volume of responses. If less than three quotations are received the process can be continued subject to Officer approval.
- 9.2.4 Providing clarification of a Request for a Quotation to a Bidder is permitted and is provided for within e-procurement.
- 9.2.5 For the receipt and opening of a Formal Quotation there must be strict compliance with the requirements of e-procurement.

9.3 Formal tender procedure (£50,001- Regulation 5 Limit)

- 9.3.1 All procurement above £50,000 shall be conducted in accordance with advice from the Procurement Manager and shall be undertaken as an Open Tender Procedure using e-procurement system.
- 9.3.2 Open tender procedure
 - 9.3.2.1 The Invitation to Tender shall be issued through the e-procurement portal and shall specify the supplies, services or works that are required together with the appropriate terms and conditions of contract as agreed with the Service Manager (Shared Legal). It will also state that no Tender will be considered unless it is submitted via the e-procurement portal.
 - 9.3.2.2 All organisations invited to provide a Tender must be issued with the same information at the same time and subject to the same conditions. All dialogue with Bidders during the process must be dealt with using the e-procurement portal.
 - 9.3.2.3 Utilising the standard template available in the Procurement Webpage, all Invitations to Tender shall include a Form of Tender, and other documentation as advised by the Service Manager (Shared Legal) or the Procurement Manager.

- 9.3.2.4 Providing clarification of an Invitation to Tender to Bidder is permitted and is provided for within e-procurement.
- 9.3.2.5 For the receipt and opening of a Tender there must be strict compliance with the requirements of e-procurement.
- 9.3.2.6 The Officer must ensure that there is approval from the Director before awarding any contract above the tender threshold.

9.4 Regulation 5 Limit procedure

- 9.4.1 All procurement above the Regulation 5 Limit shall be conducted in accordance with advice from the Service Manager (Shared Legal) and the Procurement Manager and shall be undertaken using e-procurement. Provisions, such as those relating to the receipt and opening of Tenders, must be followed exactly in accordance with the legislation.
- 9.4.2 All transactions exceeding the Regulation 5 Limit must be conducted in accordance with the required procedures as set out in the PCR2015. Strict rules govern the process in relation to timescales, descriptions and selection procedures and these are in addition to these Contract Procedure Rules. Advice must be sought from the Procurement Manager and the Service Manager (Shared Legal) in all circumstances where there is a likelihood of the PCR2015 limits being exceeded.

10. Collaborative arrangements

- 10.1 In order to secure Value for Money, the Council may enter into collaborative procurement arrangements. The Officer must consult with the Procurement Manager in these circumstances.
- 10.2 All procurement made via a local authority procurement consortium or a Professional Buying Organisation (PBO) are deemed to comply with these CPRs and no exemption is required. However, procurements above the PCR2015 limits must be let in accordance with those procedures, unless the consortium has satisfied this requirement already
- 10.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the CPRs of the leading organisation, will be deemed to comply with these CPRs and no exemption is required. However, advice must be sought from the Procurement Manager.

10.4 Framework agreements

10.4.1 A Framework Agreement may be entered into with one provider, or, where an agreement is concluded with several organisations, there must be at least three providers. Advice must be sought from the Procurement Manager when a Framework Agreement is being considered. Contracts based on Framework Agreements may be awarded by either:

- Direct Call Off - applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- Mini Competition - 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.

10.5 Dynamic purchasing systems (DPS)

10.5.1 A DPS is a completely electronic process. The DPS is open to any economic operator who meets the selection criteria and submits an indicative Tender that is found compliant. The Contracting Authority invites the Bidders admitted to the system to submit a *Tender* within a reasonable time limit. Advice from the Procurement Manager must be sought prior to use of a DPS.

11. Records and safekeeping

11.1 It is essential that for every Procurement exercise a record is kept by the Officer. Where e-procurement has been used then the system retains the records from after the Request to Quote or Invitation to Tender has been issued up to the Contract Award.

11.2 For every awarded contract over £25,000 the details of the winning tender must be sent to the Procurement Manager in the prescribed format. This includes awards made following a call-off from a Framework Agreement and contracts that may not have been openly advertised or been granted an exemption. This list of awards will be published in accordance with government transparency requirements.

11.3 Where the Total Value does not exceed £50,000, the following records must be kept:

- Request to Quote and Quotations (including name of Bidder and price)
- Any exemption and the reason for them
- Any clarification question and the answer

- Award Criteria if the award is most economically advantageous
- Details of how the Quotations were stored before opening
- When and how the Quotations were opened
- Written records or communications with the successful Bidder or an electronic record if written record of the transaction would normally not be produced.

11.4 Where the Total Value exceeds £50,000 the Officer must record:

- The method for obtaining bids
- Pre-tender market research
- Any Contracting Decision and the reasons for it
- Any exemption together with the reasons for it
- The Award Criteria in descending order of importance and any sub criteria
- The Invitation to Tender sent to and received from the *Bidder*
- *Clarification* and post-tender negotiation (to include minutes of meetings)
- The contract documents
- Post-contract evaluation and monitoring
- Communications with the Bidder and with the successful contractor throughout the period of the contract.

11.5 Records relating to procurement must be retained in accordance with the Council's Retention guidelines.

11.6 Details of all Renewable Contracts (regardless of value) are and shall be entered onto the contract management system with the following details:

- The title of the contract and reference number
- The parties to the contract
- The name of the service and contract manager primarily responsible for the contract
- The estimated total value of the contract or the estimated annual spend or budget
- The start date, end date, review dates and any date to which the contract may be extended
- The procurement method to include details of any Framework Agreement.

11.7 The original executed and completed copy of all contracts over the value of £50,000 shall be passed to the Service Manager (Shared Legal) for safe-keeping.

11.8 Directors shall be responsible for the safekeeping of all other contracts falling within their designated functions.

12. Evaluation, award of contract, and debriefing bidders

- 12.1 Apart from the debriefing required or permitted by these CPRs, the confidentiality of Quotations, Tenders and the identity of Bidders must be preserved at all times and information about one Bidder's response must not be given to another Bidder.
- 12.2 Contracts must be evaluated and awarded in accordance with the Award Criteria. During this process, Officers shall ensure that submitted prices are compared with any pre-process estimates and that any discrepancies are examined and resolved satisfactorily.
- 12.3 The arithmetic in compliant Quotations or Tenders must be checked. If computational errors are found in the lowest or most economically advantageous bid, then advice must be sought from the Service Manager (Shared Legal) before they must be notified to the Bidder. Further the Request to Quote or Invitation to Tender must be reviewed to ascertain the procedure in these circumstances.
- 12.4 Officers may accept Quotations and Tenders received in respect of proposed contracts, provided that they have been sought and evaluated fully in accordance with these CPRs and they do not exceed the budget provision. Only the successful Bidder will be subject to the appropriate Financial Vetting.
- 12.5 Where the Total Value is above the Regulation 5 Limits the Officer must notify all Bidders simultaneously and as soon as possible of the intention to award the contract to the successful Bidder. The Officer must provide unsuccessful Bidders with a period of at least ten days in which to challenge the decision before the Officer awards the contract. If the decision is challenged by an unsuccessful Bidder, then the Officer shall not award the contract and shall immediately seek the advice of the Service Manager (Shared Legal).
- 12.6 The Officer shall debrief in writing all those Bidders who submitted a Tender about the characteristics and relative advantages of the leading Tenderer. No information, other than the following, must be given without taking the advice of the Procurement Manager or the Service Manager (Shared Legal):
 - How the Award Criteria were applied
 - The prices or range of prices submitted, in either case not correlated to Bidders' names.
- 12.7 If a Bidder requests in writing the reasons for any Contracting Decision (to include those deselected in any pre-tender

shortlisting process) the Officer must give the reasons in writing within 15 days of receipt of the request. Guidance must be sought from the Procurement Manager.

13. Post-tender negotiation

- 13.1 Post-tender negotiation means discussions with a Bidder, or a number of Bidders, and can be a useful tool in making improvements to Quotations or Tenders. It can ensure that the Council obtains true value for money by purchasing an acceptable finished product at a competitive but fair market price, within the time stipulated. It can also ensure that potential suppliers have no illusions or misunderstandings as to their exact obligations under the terms of any contract. Further Guidance is available within the Procurement Webpage.
- 13.2 Advice must be obtained from the Service Manager (Shared Legal) prior to entering into any Post-Tender Negotiations. Where post-tender negotiation results in a material change to the specification (or contract terms) the contract must not be awarded and must be re-tendered.
- 13.3 Negotiations must not take place unless the Formal Quotation or Tender specifically reserves the right to do so. Any negotiations will occur following the closing date for receipt of Quotations or Tenders but before award of the contract.