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# CONTRACT PROCEDURE RULES

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## 1. Compliance

- 1.1. Contract Procedure Rules (CPR) are a legal requirement and constitute standing orders for the purpose of s135 of the Local Government Act 1972. S135 of the Local Government Act 1972' (3) states 'Standing orders made by a local authority with respect to contracts for the supply of goods or materials or for the execution of works shall include provision for securing competition for such contracts and for regulating the manner in which tenders are invited'. All tender processes must include a Selection Questionnaire which addresses mandatory requirements to comply with legislation in regard to corruption, fraud, terrorist offences or offences linked to terrorist activities, money laundering or terrorist financing, child labour and other forms of trafficking in human beings and obligations related to the payment of tax or social security contributions'.
- 1.2. The aim of these CPR is to define the procedures for obtaining written quotations and competitive tenders from Suppliers for the provision of goods, services and works.
- 1.3. The Authority's Constitution incorporates Financial Procedure Rules, Scheme of Delegations and Contract Procurement Rules that provide a framework for managing the Authority's financial affairs which apply to every Member and Officer of the Authority and anyone acting on its behalf.
- 1.4. These CPR should be read in conjunction with the Financial Regulations, the Scheme of Delegation and supporting standards, procedures and instructions published on SharePoint.
- 1.5. These CPR set out the key responsibilities and actions that Authorised Officers must follow when undertaking procurements.
- 1.6. CPR do not apply to:
  - a. Contract of employment which make an individual a direct employee of the Authority. (However, these Rules do apply to Contracts for recruitment agency services and the employment of consultants or agency staff);
  - b. Agreements regarding the acquisition, disposal or transfer of land for which provision is made within the Local Government Act 1972 and in relation to which Financial Regulations apply;
  - c. The engagement of external legal services (but which must be commissioned via the Director of Corporate Services);

- d. An arrangement with a statutory body to provide a service that the statutory body can legally provide;
  - e. Financial Services in connection with the issue, sale, purchase or transfer of securities or loans.
- 1.7. The general principles of non-discrimination, equal treatment, proportionality and transparency shall be applied to all procurement processes, above and below Public Contract Regulation thresholds.
- 1.8. Non-compliance with UK legal requirements, CPR and Financial Regulations can have serious consequences for the Authority including financial penalties, legal action and reputational damage.
- 1.9. Following CPR allows the Authority to comply with both procurement and data transparency legislation and staff should be aware that any non-compliance may result in disciplinary action.
- 1.10. Authorised Officers shall take appropriate measures to prevent, identify and remedy any conflicts of interest arising within a procurement process or subsequent management of Contracts to avoid any distortion of competition and to ensure non-discrimination and equal treatment at all times.

## 2. Local Government Transparency Code

- 2.1 As part of the Governments' commitment to greater transparency, the Authority is required to regularly publish procurement information. This means the Authority will publish on its website details of purchases over £500, and a version of the Authority's Contracts Register for Contracts with a value above £5,000 as well as all transactions undertaken using a Government Purchasing Card.

## 3. Responsibilities of the Management Board

- 3.1 Executive Officers of the Management Board are responsible:
- (a) For ensuring compliance with these CPR by their Authorised Officers.
  - (b) For reporting any known breaches of these CPR to the Director of Corporate Services, Chief Finance & Procurement Officer and Finance and Resources Committee.

## 4. Responsibilities of the Chief Finance & Procurement Officer

- 4.1. The Chief Finance & Procurement Officer:
- a) Is responsible for ensuring appropriate publication on behalf of the Authority all tender notices, Contract Award notices and other notices required by the Public Contracts Regulations.
  - b) Will ensure a Contracts Register of all Contracts valued £5,000 and above is maintained and published.

- c) Shall ensure a rolling Procurement Plan of upcoming procurement projects valued £5,000 and above that aligns with the approved Revenue budget and the Capital programme.
- d) Shall ensure countersignature of all Contracts valued £75,000 and above by a Management Board member.
- e) Shall report to the scheduled meetings of the Finance & Resources Committee:
  - i. Any early termination of Contracts with a residual value of £75,000 or more.
  - ii. Any exemption to CPR involving sums of £75,000 or more.
  - iii. Any disposal of Assets that realise a value of £75,000 or more.

## 5. Delegated Authority

- 5.1 Any procurement carried out on behalf of the Authority may only be undertaken by Authorised Officers with the appropriate authority to carry out such tasks. If permitted to do so and only after consultation with the Procurement Team, Officers with delegated authority may only delegate to other members of staff who also have the appropriate skills, knowledge and requisite training appropriate to the task. Further subsequent sub-delegation is not permitted. Officers must make enquiry of and be instructed by their senior managing officer and / or Procurement Manager to the extent of any delegated authority and any applicable financial thresholds for each procurement.
- 5.2 Within approved budgets and in accordance with the WYFRA Financial Scheme of Delegation and Annual Procurement Plan (where applicable), Authorised Officers may instruct members of staff to place orders against agreed Contracts.
- 5.3 For the purpose of managing RfQ (Request for Quotations) up to £29,999 and tender processes valued above £30,000, Authorised Officers shall be those who are registered on the E-procurement system and shall have obtained the necessary procurement skills, knowledge and training.

## 6. Transfer of Undertakings (Protection of Employment) - (TUPE)

- 6.1 Any Contracts awarded which involve the Transfer of Undertakings (Protection of Employment) Regulations 2006 of employees into or out of the Fire Service shall be reported to the Director of Human Resources, Fire and Rescue Authority and any appropriate Committee.

## 7. Pre-Procurement Planning

- 7.1 The Authorised Officer leading a procurement must:
  - (a) Identify the need and fully assess any options for meeting those needs;

- (b) Determine the total value of the Contract (total Contract value is the full cost of goods, services or works across the number of years the Contract is in place) including any options to extend;
- (c) Consider the Authority's Procurement Strategy & Policy;
- (d) At the pre-procurement phase, consider Social Value and Sustainability within any procurement and consider how what is being procured might improve the economic, social and environmental well-being of the communities the Authority serves and how the Authority might secure that improvement in the procurement process itself.
- (e) Consider all other means of satisfying the specific requirement (including recycling, re-use, joint working and shared services) and establish a business case and approved budget for the procurement;
- (f) Consider whether a Community Impact Assessment should be completed dependent upon the nature of the goods, services or works being procured.
- (g) Consult with all relevant stakeholders including Members, service users and trade unions where necessary.
- (h) Take all necessary financial (including insurance) and other professional advice (for example procurement, health and safety and risk management). Officers should have regard to current Authority policies, procedures and standard documentation.
- (i) Seek legal advice when required to mitigate any apparent risks or liabilities.
- (j) Regularly review the Contracts Register to determine whether there are opportunities to aggregate spend for better value or whether any Contract or appropriate Framework Agreement already exists that could be accessed;
- (k) Utilise the E-procurement system electronic tendering system for all procurement requirements with a total contract value above £5,000 unless this system cannot deliver the required procurement objectives.

7.2 The Authorised Officer and Procurement Team where appropriate, can undertake pre-procurement market consultation with potential Suppliers in an open and transparent manner to inform them of the planned procurement and to gain a better understanding of market conditions and use this information in the preparation of tender documents.

## 8. Estimating the Contract Value and Variations

8.1 In cases involving goods, services or works where a Contract fixed term is not defined, the estimated total contract value shall be calculated by multiplying the estimated monthly value by 48 (4 years), using historical spend information where available.

8.2 Where the total estimated cost of the goods, services or works has been determined to exceed FTS thresholds, Officers should consider subdividing the requirements into “Lots” to enable Small Medium Enterprises (SME’s) the opportunity to be involved in the procurement process.

## 9. Framework Agreements

9.1 Framework Agreements (also referred to as Frameworks) can be used to contract for the supply of goods, services or works without conducting a full open procurement exercise.

9.2 Where the Authority is able to procure from an existing Framework procured by Central Government agencies, public sector purchasing consortia or other local authorities or public bodies, then the Authority may benefit from using those agreements without undertaking a separate procurement exercise.

9.3 There are two routes to utilising a Framework:

- (a) Direct Award; where a single Supplier is selected in accordance with the Terms & Conditions of the original criteria used to award the Framework. Under no circumstances can new information be asked of a selected Supplier to support an award decision as this would be viewed as opening a further-competition process without affording the opportunity to all other Suppliers on the Framework. Procurement Team advice should be sought.
- (b) Further-Competition; where a number of different Suppliers are able to provide a particular category of goods, services or works and further competition between those Suppliers is needed in accordance with the Terms & Conditions of the Framework. Procurement Team advice should be sought.

9.4 A signed Access Agreement will be required between the Framework provider and the Authority, when specified within the Framework conditions.

9.5 A legal agreement (e.g. Contract or Letter of Appointment) should be signed between the Authority and the appointed Framework Supplier, upon awarding the procurement.

9.6 All Purchase Orders raised in relation to the Framework Contract must clearly identify which Framework has been utilised.

## 10. Dynamic Purchasing Systems

10.1 A Dynamic Purchasing System (DPS) is an open version of a Framework that allows new Suppliers to join (or leave) at any time over its duration, providing that Suppliers meet minimum entry standards as defined in the DPS.

10.2 A DPS must be operated entirely electronically and implementation of a new DPS or accessing a Framework DPS will be managed with the assistance of the Procurement Team.

10.3 Any intention to use a DPS process along with details of the DPS provider and how Suppliers can apply to join must be stated in any Contract Notice.

## 11. Electronic Auctions

11.1 Electronic Auctions are mainly used for large quantities of standard goods with known specifications and often in collaboration, providing financial savings due to economies of scale.

11.2 An Electronic Auction is a repetitive electronic process resulting in the lowest priced bid being awarded the Contract.

11.3 Electronic Auctions may not be used in circumstances involving intellectual criteria that cannot be ranked (e.g. building design, consultancy services).

11.4 Authorised Officers must take advice from the Procurement Manager before agreeing to take part in any form of Electronic Auction.

## 12. Contract Procedure Rule Thresholds

ESTIMATED VALUE	PROCEDURE	AUTHORISATION
Up to £250	Purchasing Card Purchase Order No need for written quotations	Card holder Budget holder Station personnel
£250 to £9,999	One written quotation via email that must constitute value for money	Group Managers Support Staff Grade 7 and above
£10,000 to £29,999	RfQ (Request for Quote) Process Minimum three (3) invites via the E-procurement system	Central Procurement Team Stores and Deputy Property Managers EO grades Operational Equipment Manager GM Operational Support Area Managers GM Human Resources Organisation Development Manager
£30,000 to £74,999	Open Tender process involving the Procurement Team via the E-procurement system and published to Contracts Finder	Central Procurement Team Stores and Deputy Property Managers EO grades Area Managers GM Human Resources Organisation Development Manager
£75,000 to £213,477 (incl. VAT)	Open Tender process involving the Procurement Team via the E-procurement system and published to Contracts Finder	Management Board Central Procurement Team



> £213,477 (incl. VAT) (Goods and Services)	Open Tender process involving the Procurement Team via the E-procurement system and published to Contracts Finder and FTS	Management Board Central Procurement Team
> £5.3m (incl. VAT) (Works)	Open Tender process involving the Procurement Team via the E-procurement system and published to Contracts Finder and FTS	Management Board Central Procurement Team
Any tender process involving TUPE	Tender process managed by the Procurement Team via the E-procurement system	Management Board Central Procurement Team

### 13. Estimated Value less than £9,999

13.1 Competitive quotations are not required for awarding Contracts with an estimated value below £9,999. However, regard should still be paid to obtaining value for money and to undertake price comparisons or to invite alternative quotations, as appropriate.

13.2 For purchases up to £250 a Government Purchasing Card may be used or a Purchase Order issued without the need for a written quotation.

13.3 For purchases £250 - £9,999 a written quotation must be obtained from the chosen single Supplier via email and retained in accordance with the Authority's Retention of Documents Policy.

13.4 Where provided in the opinion of the Authorised Officer best value can be achieved, this process shall prioritise the placing of orders with local businesses (i.e. within WYFRA boundaries).

13.5 The purchase order shall specify the goods, services or works to be provided and clearly state the agreed quantity and price.

### 14. Estimated Value between £10,000 - £29,999

14.1 This process may be conducted by Authorised Officers in departments for simple, non-complex and low risk procurements.

14.2 Where appropriate, if the intended procurement is complex; involves relatively high risk and would therefore benefit from the added safeguards afforded by a tendering process and more appropriate terms and conditions, then the Authorised Officer should refer the project to the Procurement Team to undertake a tender process.

14.3 For procurements with an estimated Contract value over £10,000 but less than £24,999 at least 3 written quotations should be obtained. If less than 3 quotations

are received at the first attempt, further request for quotations should be issued or an exemption form completed and approved prior to award of a Contract.

14.4 Request-for-Quotation (RfQ's) should be issued utilising the electronic procurement system (once trained to do so by the Procurement Team) and where appropriate, at least 2 of the Suppliers invited to submit quotations should be local businesses (i.e. within WYFRA boundaries).

14.5 The outcome of the Contract award details shall be recorded in the Contracts Register.

## 15. Estimated Value between £30,000 to £74,999 and above £75,000

15.1 Procurements with an estimated value between £30,000 to £74,999 shall be managed by the Procurement Team via an open tender process published to Contracts Finder via the E-procurement system. A PAD (Procurement Approval Document) must be used.

15.2 At least 2 of the suppliers invited where appropriate should be from local businesses within WYFRA boundaries but being mindful to use as wide a pool of Suppliers as possible and to avoid repeatedly inviting the same few Suppliers each time.

15.3 The open tender process shall be managed by the Procurement Team via the E-procurement system with the outcome of the Contract award details recorded on the Contracts Register.

15.4 Where the estimated Contract value is above £75,000, the above process is required, managed by the Procurement Team via a formal tender process and a PAD must be used and countersigned accordingly by the Chief Finance and Procurement Officer.

## 16. Contracts above Regulation Thresholds

16.1 The tender process shall be managed by the Procurement Team.

16.2 The Regulation thresholds as of 1 January 2022 are:

- Goods and Services - £213,477 incl. VAT
- Works - £5,336,937 incl. VAT

16.3 The thresholds change every 2 years and are scheduled to change again on 1 January 2024. Further help and guidance can be obtained by contacting the Procurement Team.

16.4 Where an estimated Contract value exceeds the current Regulations threshold then the requirement shall be tendered in accordance with the Regulations and appropriate procedure.

- 16.5 The Regulations set out the minimum timescales for receipt of expressions of interest and tenders. Where the Authority has published a Prior Information Notice announcing its forthcoming contracts for the year ahead or is using electronic means of tendering, then the Authority may rely on reduced timescales if appropriate and advised by the Procurement Team.
- 16.6 Where possible the use of “Lots” shall be used to sub divide the requirement in order to allow Small Medium Enterprises (SME’s) and local supply chain to bid (in accordance with CPR 8).
- 16.7 The process shall be managed via the E-procurement system with the outcome of the contract award details being recorded on the Contracts Register.

## 17. Open Tender Procedure (1 Stage Process)

- 17.1 An open procedure may be used for any value of procurement.
- 17.2 All compliant submissions from bidders must be evaluated equally and fairly applying the scoring methodology within the tender documents.
- 17.3 All documentation must be published on the E-procurement system at the time of the primary Contract Notice, with all quotations / tenders and correspondence being submitted by bidders via this system.

## 18. Restricted Tender Procedure (2 Stage Process)

- 18.1 A restricted procedure may only be used for Contracts above the Regulation threshold and not for any Contracts below the relevant Regulation threshold.
- 18.2 The requirement to publish an FTS notice is the same as in the open procedure except that the notice shall state that a restricted procedure is being used.
- 18.3 All documentation must be published on the E-procurement system at the time of the FTS notice and all tender responses must be submitted by bidders via the E-procurement system.
- 18.4 Under the restricted procedure, potential Suppliers are invited to apply within the period of advertising by the completion of the Standard Selection Questionnaire (SSQ). Any service-specific questions entered within Section 3 of the Standard Selection Questionnaire must be relevant to the subject matter of the procurement and be proportionate.
- 18.5 Following an assessment of the SSQ at least 5 suppliers (where there are 5 or more who meet the requirements and are also absent of any grounds for exclusion and as per the criteria set out in the tender documents) should be selected to receive an Invitation to Tender (ITT).
- 18.6 If fewer than 5 suppliers have applied who meet the requirements and are absent of any grounds for exclusion, all those who have applied shall receive an Invitation to Tender. Where, in this situation, Authorised Officers are concerned there may

not be adequate competition; they should obtain advice from the Procurement Manager.

## 19. Other Permitted Tender Procedures

The following procedures are also permitted within the Regulations for above threshold values, but may only be applied following consultation with and the prior approval of the Chief Financial & Procurement Officer:

- a) Competitive Procedure with Negotiation (Regulation 29)
- b) Competitive Dialogue Procedure (Regulation 30)
- c) Innovative Partnership Procedure (Regulation 31)
- d) Negotiated Procedure without Prior Publication (Regulation 32)

and managed by the Procurement Team.

## 20. Publicising Quotations and Tenders

20.1 There is no need to advertise quotations valued below £10,000.

20.2 For quotations and tenders above £10,000, the E-procurement system should be used for advertising.

20.3 Where the estimated value of the Contract is £30,000 or above AND an Open procedure is being used, a notice must also be placed on Contracts Finder (automatically via the e-procurement system), advertising the opportunity.

20.4 There is no need to publish a notice on Contracts Finder if the opportunity is being offered to a restricted number of suppliers or is being managed via a Framework Agreement.

20.5 Where the Regulations apply, an FTS Contract Notice must be published in the prescribed format before any other notice is published and no other notice should contain any more information than that published on FTS.

20.6 If an FTS notice is required, then no other means of advertising is permitted until the FTS notice has been acknowledged or as a minimum within 48 hours of the FTS notice being sent for publication.

## 21. Submission and Opening of Quotations/Tenders

21.1 Quotations/Tenders valued £10,000 or above shall be managed via the E-procurement system.

21.2 The opening of quotations and tenders on the E-procurement system will be performed at the stated date/time.

21.3 When the opening of any quotation or tender has taken place, the Authorised Officer shall ensure that a Quotation/Tender Opening Record form and PAD document is updated, fully completed and safely filed for future reference.

## 22. Late Quotations/Tenders

22.1 Late bids may only be accepted with the approval of the Procurement Manager where other bids have not yet been opened and the late bidder has gained no advantage as a result of the late submission for reasons where, for example, there is evidence that technological reasons have prevented the submission on time, through no fault of the bidder.

## 23. Abnormally Low Quotations/Tenders

23.1 Where a submitted price appears abnormally low it may not be rejected without:

- a) giving the bidder an opportunity to explain the tendered price (such explanation to be given in writing),
- b) considering the evidence provided, and
- c) obtaining the written approval of the Chief Finance & Procurement Officer or an Executive Officer.

## 24. Errors or Omissions in Quotations/Tenders

24.1 Errors or omissions in quotations/tenders shall be dealt with in one of the following ways:

- (a) The bidder shall be given details of the error(s) or omissions found during the examination of the quotation/tender and shall be required at the decision of the Procurement Manager to confirm without amendment or withdraw the quotation/tender.
- (b) Amending the quotation/tender to correct genuine error(s) or omissions provided that, in this case, apart from these genuine errors or omissions no other adjustment, revision or qualification is permitted.

24.2 All amendments shall be fully recorded with justification for the action taken. Where necessary legal advice will be sought.

## 25. Tender Evaluation

25.1 All criteria, sub-criteria and weightings must be made available to bidders at the ITT/RfQ stage.

25.2. Criteria, sub-criteria and weightings cannot be used for evaluation purposes which have not previously been brought to all bidders' attention.

- 25.3 Published criteria must be strictly observed at all times throughout the procurement process, selection and Contract Award stages by the Authorised Officer managing the tender evaluation.
- 25.4 Records should be kept of the evaluation process, (e.g. criteria, sub-criteria, weightings, individual and joint scoring and reasons for any adjusted scores), signed and dated by the individuals involved in the process and electronically filed in a secure place with the full document set.

## 26. Post Tender Negotiation

- 26.1 Where the procurement is conducted through either an Open or Restricted procedure, no post tender negotiations are permitted other than to clarify details prior to Contract Award or in accordance with CPR 37. Under no other circumstances must material changes be made to the Authority's requirements or the winning bidders' submission that could be deemed to disadvantage other bidders, distort competition or adversely impact the competitive tendering process.
- 26.2 Where "Competitive Procedure with Negotiation – Regulation 29" or "Negotiated Procedure without Prior Publication – Regulation 32" have been used, the Authorised Officer must fully comply with the Regulations and procedures stated in the tender instructions.
- 26.3 Negotiations must be conducted on behalf of the Authority by at least two appropriately trained or experienced Officers. A full written record shall be kept of the results of the negotiations, signed by the Authorised Officer and the Supplier and retained with the procurement documentation.
- 26.4 At all times during any negotiation the Authorised Officer shall ensure that all bidders are treated equally and in a non-discriminatory and transparent manner.
- 26.5 Prior to undertaking any Post Tender Negotiation advice must be obtained from the Procurement Manager.

## 27. Bonds, Guarantees and Security

- 27.1 For procurements valued above £75,000 the Authorised Officer and Evaluation Team shall consider as part of the criteria whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred Supplier dependent upon the preferred Supplier's status, the product characteristics and a thorough risk analysis.
- 27.2 The Authority will only accept Performance Bonds or Sureties that are UK based or held in UK escrow arrangements.
- 27.3 Authorised Officers must consider any steps necessary to protect the Authority's interests in the event of a Suppliers' default, having regard to advice from the Director of Corporate Services and Chief Finance & Procurement Officer.

27.4 This consideration should be based on risk to the Authority, taking account of the circumstances, including:

- (a) the value of the Contract;
- (b) the type of goods, services or works being procured;
- (c) the payment profile of the Contract;
- (d) the financial strength of the Suppliers in the market;
- (e) affordability and proportionality;

and should assess whether additional security is required in the form of a bond, guarantee, fee retention (where performance is required by a particular date, and where delay would have financial consequences for the Authority) or provision for liquidated damages.

27.5 The Authorised Officer shall ensure minimum levels of appropriate insurance are provided for within each Contract. Minimum levels are:

- a) Employee Insurance - £5m
- b) Public Liability Insurance - £10m
- c) Professional Indemnity Insurance - £2m

## 28. Acceptance of Quotations/Tenders and Award

28.1 The Authority is not bound to accept any quotation or tender and this must be made clear to bidders in writing at the beginning of the procurement process and as appropriate throughout.

28.2 Quotations and tenders may be accepted on behalf of the Authority by the relevant Authorised Officer in accordance with the Contract value and the Financial Scheme of Delegation, provided they have been invited, evaluated and are to be awarded fully in compliance with these rules.

28.3 In relation to all Contracts valued over £10,000, once a decision to award a Contract is made, all bidders must be notified at the same time via the E-procurement system of the intention to award the Contract to the successful bidder.

## 29. Standstill (Alcatel) Period and Debriefing

29.1 For procurements above Regulation thresholds, there must be a mandatory period of at least ten calendar days between the electronic notification of an award decision being sent to all bidders and before a Framework or Contract is concluded with the successful Supplier(s); to allow unsuccessful bidders to consider any challenge to the award decision.

- 29.2 If the expiry of the ten calendar days falls on a weekend or bank holiday, then the expiry shall be extended to the next working weekday.
- 29.3 The Authority shall voluntarily apply the same best practice standstill period and process for all tenders (except in cases of genuine urgency).
- 29.4 The Authorised Officer responsible for each procurement must ensure the award decision notice is fully compliant with Regulations and additionally that any written debriefing requested by unsuccessful tenderers is provided within 15 calendar days of receipt of such a request.
- 29.5 Any complaints from bidders must be recorded in the project file and dealt with in the most appropriate manner taking due consideration of whether to proceed to Contract Award or to defer the award pending resolution of the complaint.

### 30. Contract Award Notice

- 30.1 Where a Contract has been tendered pursuant of the Regulations, the Authorised Officer shall publish a Contract Award notice on FTS and on Contracts Finder no later than 30 days after the date of the Contract Award.
- 30.2 Where a Contract has been awarded that is valued above £30,000 but below Regulation thresholds AND an Open procedure has been used, then a Contract Award notice shall be published on Contracts Finder only, no later than 30 days after the date of Contract Award.
- 30.3 Where the opportunity was initially only sent to a limited number of Suppliers e.g. using an RfQ process or a Framework then there is no requirement to publish Contract Award notices valued above £30,000 on Contracts Finder.

### 31. Letters of Intent

- 31.1 Letters of intent shall only be used in exceptional circumstances ahead of formal Contract signature as follows:
- (a) Where a Supplier is required to provide goods, services or works prior to formal written acceptance by the Authority; and
  - (b) Where the Authority's form of tender does legally bind either Party until such time as a formal Contract is executed.
- 31.2 Letters of Intent shall only be used following consultation with the Chief Finance & Procurement Officer and/or Procurement Manager where a delay would cause a significant interference with the provision of service delivery.
- 31.3 Letters of Intent shall be limited to 10% value of an agreed goods or services Contract and limited to 10% or £20,000 (whichever is the lowest) for works Contracts.



## 32. Contract Terms and Conditions

- 32.1 Contracts shall be entered into on the Authority's Terms and Conditions which shall be included with each invitation to quote / tender and orders sent by electronic means.
- 32.2 The exception to using the Authority's Terms and Conditions arises when using Terms and Conditions provided by:
- Crown Commercial Services (e.g. Consultancy Services)
  - Framework Agreements
  - Utility Company (Gas, Electricity and Water)
  - Telecommunications
  - Construction Industry Terms and Conditions (but limited to NEC, JCT, RIBA and RICS).
- 32.3 Exceptions to CPR 31.1 and 31.2 must be approved beforehand at tender preparation stage by the Procurement Manager.
- 32.4 The Authority may accept equivalent Terms and Conditions of other public sector Authorities when participating in joint working and collaboration, provided they are deemed to be suitable and fit-for-purpose.
- 32.5 Every Contract awarded that is concluded via an RfQ\_process shall:
- a) Specify the goods, services or works to be provided;
  - b) Specify the quantities and price to be paid with a statement of any discounts or other deductions;
  - c) Specify the time or times within which the Contract is to be performed;
  - d) Use an official order form to confirm the Contract using the Authority's standard terms and conditions whenever possible.
- 32.6 Every Contract awarded that is concluded via a tender process shall contain:
- a) A statement of the goods, services or works to be provided;
  - b) Reference to and identification of the winning tender documents;
  - c) A statement of the price, payment terms and any applicable interest;
  - d) Restrictions on the awarded Supplier(s) from re-assigning or sub-contracting any part of the Contract without prior written WYFRA consent;
  - e) Insurance clauses - (see minimum levels in CPR27.5);

- f) Health & Safety clauses and a requirement to comply with all relevant Health and Safety regulations and instructions issued by the Authority;
- g) General Data Protection Regulations clauses;
- h) Equalities and anti-discrimination clauses that relate in particular to the Equalities Act and the Living Wage Act;
- i) An Audit clause that provides a right of access to records pertaining to the Contract and service delivery;
- j) A clause that states the Authority's duty to comply with the Freedom of Information Act and that the awarded Supplier(s) is obliged to assist the Authority in fulfilling these duties where appropriate;
- k) Human Rights clauses;
- l) A clause that requires the awarded Supplier(s) to pay subcontractors within 30 days;
- m) A clause allowing the Recovery of Sums owed to the Authority by the awarded Supplier(s) by off-setting against any sums owed by the Authority to the awarded Supplier(s);
- n) Anti-Corruption and anti-Bribery clauses;
- o) A Dispute Resolution clause;
- p) Clauses for the provision of a performance bond, parent company guarantee or other form of security (but only when considered necessary);
- q) Liquidated Damages clause in the event of the awarded Supplier's failure to deliver the Contract;
- r) A right of Early Contract Termination in specified instances e.g. money laundering, fraud, bankruptcy; tax evasion; etc
- s) A clause for Termination and Damages in the event of the awarded Supplier's default;

### 33. Execution of Contracts

- 33.1 Any Contracts that have potential long-term liabilities as determined through a risk assessment on a case by case basis and would benefit from the added legal protection afforded by the process of "sealing" shall be made by affixing the Common Seal of the Authority. This shall only be attested by the Director of Corporate Services or nominated Deputy.
- 33.2 Contracts with a total value up to £75,000 should be signed by an Authorised Officer in accordance with the Scheme of Delegation and provided this is within approved budget.

33.3 Contracts with a total value of £75,000 or above should be signed by an Authorised Officer in accordance with Financial Procedures (Scheme of Delegation) but must be counter-signed by the Chief Finance & Procurement Officer or another Management Board member and sealed if appropriate. Individual Purchase Orders with a value above £75,000 that are not under an established Contract must be countersigned by the relevant department Director prior to sending to the Supplier.

## 34. Records of Contracts

34.1 A Contracts Register of Contracts awarded with a value above £5,000 shall be managed electronically by the Procurement Team on behalf of the Authority.

34.2 Authorised Officers awarding Contracts must complete all necessary details on the Contracts Register, including the agreed Contract Manager.

34.3 Contract files shall be maintained in accordance with the Authority's retention schedule.

## 35. Contract Management

35.1 Contract Managers listed in the Contracts Register are responsible for effectively monitoring and reporting on Supplier's performance in the delivery of the required goods, services or works.

35.2 Risk assessments and the value of the Contract shall be used, in consultation with the Procurement Manager, to determine the degree of monitoring and reporting necessary.

36.3 Contract management training is available by contacting the Procurement Manager.

## 36. Novation

36.1 Novation occurs where there is an agreement to change a Contract by substituting a third party for the original awarded Supplier. Where the Authority is approached regarding novation the Authorised Officer must seek advice of both the Procurement Manager and Chief Finance and Procurement Officer before novation can be agreed.

## 37. Modification of Contracts During Their Term

37.1 Contracts and Framework Agreements may be modified (including extensions) without a new procurement procedure, in the following cases:

- a) The modification, irrespective of monetary value, was provided for in the initial Contract as clear, precise and unequivocal clauses.

- b) The additional goods, services or works by the original Supplier that have become necessary were not included in the initial procurement and where a change of Supplier;
  - i. Cannot be made for economic or technical reasons such as interchangeability or interoperability with existing equipment, services or installations; or
  - ii. Would cause significant inconvenience or substantial duplication of costs;
  - iii. Provided that any increase in price does not exceed 50% of the value of the original Contract.
- c) Where all of the following conditions apply:
  - i) The need for modification came about by unforeseen circumstances;
  - ii) The modification does not alter the overall nature of the Contract;
  - iii) The increase in price does not exceed 50% of the original Contract

37.2 Any modifications to Contracts as described in CPR37.1 must be agreed beforehand by the Chief Procurement & Finance Officer and signed by all Parties in the form of a Contract Variation Agreement.

37.3 Any modifications described in b) and c) as relating to the original Contract Award value that exceeded Regulation thresholds must be notified to the Procurement Manager who shall in turn publish the necessary Notice.

37.4 Any proposals to modify a Contract or Framework that would be considered substantial are not permitted and would require a new procurement procedure. Advice from the Procurement Manager must be sought.

## 38. Termination of Contract

38.1 Contracts may be terminated early by the Chief Finance & Procurement Officer in accordance with the termination provisions set out in the Contract.

38.2 Any Contracts that are terminated early with a residual value exceeding £75,000 shall be reported to the next Finance and Resources Committee meeting by the Chief Finance & Procurement Officer.

## 39. Exemption to Contract Procedure Rules

39.1 The Authority does not have the power to exempt Public Contract Regulations which take precedence over CPR.

39.2 The Authority does have the power to approve an exemption to CPR for specific projects and circumstances where necessary because of an unforeseeable emergency involving immediate risk to persons and property or serious disruption to services or can otherwise be reasonably justified. An Authorised

Officer (up to £30,000) or an Executive Officer (up to £75,000) may request an exemption to CPR after consulting with the Procurement Manager.

39.3 Exemptions to CPR in excess of £75,000 must be agreed by the Chief Executive Officer or in their absence; the Deputy Chief Fire Officer, Chief Finance and Procurement Officer, Chief Employment Services Officer or Director of Service Support. Any such exemptions must be reported to the next meeting of the Finance & Resources Committee by the Chief Finance & Procurement Officer.

39.4 The Officer seeking the exemption must ensure a copy of the approved request is registered and filed centrally with the Procurement Team for audit purposes.

## 40. Disposal of Assets

40.1 Leased assets must be disposed of in accordance with written lessor's instructions.

40.2 Where assets (other than land & buildings) are to be disposed of because they are surplus to requirements, damaged or obsolete; reasonable endeavours must be undertaken to realise the residual value of the assets.

40.3 Assets having little or no realisable value may be disposed of as waste with the approval of the relevant Executive Officer, provided the disposal favours re-use / recycling wherever possible.

40.4 Assets with a realisable value shall be disposed of in the manner most likely to secure best value including the use of auction houses and on-line auctions involving multiple bidders.

40.5 Disposal of assets that realise a value of £75,000 or more must be reported to the next meeting of the Finance & Resources Committee by the Chief Finance & Procurement Officer.

## 41. Review and Amendment of Contract Procedure Rules

41.1 These Contract Procedure Rules shall be reviewed and updated at least annually by the Chief Finance and Procurement Officer in consultation with the Procurement Manager.

41.2 Any proposed amendments as determined by the Chief Finance and Procurement Officer that would materially change overall governance or introduce significant change shall be presented beforehand to the Fire & Rescue Authority or relevant Committee for approval.

## 42. Definitions

<b>Access Agreement</b>	An agreement between the Framework provider and the Contracting Authority to enable access to the Framework.
<b>Authorised Officer</b>	Persons with appropriate delegated authority to act on the Authority's behalf and which includes budget holders (as identified within the Financial Regulations) and those persons registered on the E-procurement system.
<b>Authority</b>	West Yorkshire Fire and Rescue Authority; or any designated Committee of the Authority that has delegated powers to act on behalf of the Authority.
<b>Constitution</b>	The Authority's Constitution as adopted and amended from time to time and maintained on the Authority's website particularly references to the Articles, Scheme of Delegation, Officer Codes, Procedural Procedure Rules, Rules of Procedure, Access to Information Procedure Rules, these Contract Procedure Rules and Member Codes of Conduct.
<b>Contracts Finder</b>	The web-based government procurement portal provided on behalf of the Cabinet Office for public bodies at <a href="https://www.gov.uk/contracts-finder">https://www.gov.uk/contracts-finder</a>
<b>Contracts Register</b>	A register held and managed by the Procurement Team containing details of contracts entered into by the Authority above a threshold value of £5,000.
<b>Framework Agreement</b>	An agreement which allows an Authority to call-off from a Supplier to provide goods, services or works in accordance with the terms of the agreement. The Framework Agreement itself usually constitutes a nonbinding offer with no obligations on the Authority to call-off from the Supplier. If the Authority calls-off from the Supplier, a binding Contract comes into being.
<b>ITT</b>	Invitation to Tender
<b>FTS</b>	<a href="#">Find a Tender Service</a>
<b>PIN</b>	Prior Information Notice for publication on FTS
<b>Procurement</b>	Any arrangement whereby a new, replacement, amended or extended Contract for the supply of goods, services or works is to be put in place. This includes circumstances where more than one provider is invited to tender and also where goods, services or works are procured through a negotiation with a single provider.
<b>Procurement Plan</b>	A plan identifying procurement projects so that appropriate resources can be allocated and Suppliers notified to give advance notice of bidding opportunities.
<b>Procurement Team</b>	The Officers employed in the WYFRA Procurement Service
<b>Purchasing Consortia</b>	A collaborative arrangement in which two or more organisations join together to combine their individual requirements for goods, works or services to gain better prices, design, supply availability and assurance benefits compared to if each member purchased the goods or services alone.
<b>Retention Schedule</b>	The Authority's Retention Schedule is located on the WYFRA intranet.

<b>Regulations</b>	The Public Contracts Regulations 2015 or any subsequent amendment.
<b>RfQ</b>	Request for Quotation
<b>Social Value Act</b>	A requirement to consider economic, social and environmental well-being of an area, at the pre-tender stage
<b>Supplier</b>	Any person or body of persons providing, or seeking to provide, goods, services or works to an Authority.
<b>TUPE</b>	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
<b>Value for Money</b>	The optimum combination of whole life costs and benefits to meet the customer's requirement. Such term equates to "most economically advantageous offer" (MEAT).