

BARNSELY METROPOLITAN BOROUGH COUNCIL

REVISION OF CONTRACT PROCEDURAL RULES (2019)

1. PURPOSE OF REPORT

- 1.1 To outline the proposed changes to the existing Contract Procedural Rules (CPRs) which were last revised in 2015 to reflect the changes in the Public Contract Regulations (PCRs) (2015). The recommendations in this report reflect the new Council structures, processes and procedures being operated currently that allow for a more commercial approach to procurement activity in the council.
- 1.2 To seek approval of the proposed recommendations and the implementation of the revised CPRs across the Council.

2. INTRODUCTION

- 2.1 The CPRs have been an integral part of the Council's governance arrangements and the Council is required to have rules regarding how it will achieve value for money in compliance with the Local Government Act 1972.
- 2.2 The rules have been revised on a number of occasions to reflect changes in Council policies, priorities and legal updates e.g. OJEU procurement directives that the Council must comply with.
- 2.3 Revisions made in 2015 were to reflect the changes imposed by the PCRs. Revisions in 2013 increased the upper threshold for quotations from £50,000 to £100,000 which brought more procurement within the quotation exercise and the requirement to invite two local suppliers was introduced.
- 2.4 The Council has set in the Corporate Plan 2017- 2020, an aim to make every penny count, removing bureaucracy and running our organisation really well for our customers and residents.
- 2.5 The Council has faced significant cutbacks in funding over recent years and therefore it must maximise its outcomes from resources available and the services it provides.
- 2.6 The Council's Commercial Strategy 2017 - 2020 highlights procurement as a key activity in assisting the Council to maximise its commercial performance.
- 2.7 In respect of 2.3 and 2.4, it was considered the CPRs needed reviewing to ensure a more commercial / innovative approach to procurement with a view to increasing value for money for the Council.
- 2.8 A working group of officers from Strategic Procurement, Legal and Internal Audit was formed to review the existing procedural rules. A copy of the remit of the group is included at Appendix A.

- 2.9 Following engagement with Directorates within the Council, it was concluded that the CPRs could be streamlined, to enable a more efficient way of procuring low value goods, and services.

3.0 RECOMMENDATIONS

The last revision made to CPRs was in 2015 to reflect the changes imposed by the PCR. However, since 2015 there have been the following changes in the procurement environment within the Council that need to be reflected:

- The introduction of a new Strategic Procurement Team
- Change in the structure of the Council
- The implementation of the Commercial Strategy

The working group have identified recommendations in the following key areas summarised below based on the findings detailed in section four.

Key Recommendations:

3.1 Procurement Thresholds

The working group has recommended the following new procurement thresholds:

- £0 to £10,000 – one quotation and value for money - Low Value Procurement
- £10,000 to £70,000 - A minimum of three quotations must be sought via YORTender (including the requirement to include 2 local suppliers where possible) – Medium Value Procurement
- £70,000 to £181,302 (present OJEU threshold for goods and services) must be sought via YORTender – High Value Procurement.

In Section four of the report, there is an analysis of all low and medium value procurement (quotation process) performed in 2016/17 and 2017/18 which demonstrates the effect of the threshold changes.

Increasing the lower threshold for procurement activity will enable more low value orders / contracts to be established with local SME's, boosting the local economy. It will reduce the administrative burden to undertake low value orders / procurement, while still maintaining the need to demonstrate value for money. In addition, promoting leaders at every level and ensuring a simplified route to market for low level spend.

Reducing the high value threshold from £100,000 to £70,000 and bringing more procurement into the scope of the Strategic Procurement Team will further utilise the expertise and skills of the team to deliver better outcomes, and value for money for the Council. In addition, this will allow increased opportunity for innovative procurement, rather than a simple three quotation process.

There are employee and financial implications with regards to this recommendation which are highlighted in Section 6 of the report.

3.2 Format of Contract Procedure Rules (CPRs)

The format of the CPRs has been changed to ensure it follows the sequential steps of the procurement process and in the same style as the guidance on the Strategic Procurement intranet site. This has been completed so that the document is more engaging to users with a view to increasing compliance with the requirements of CPRs and PCRs.

3.3 **Waiver to Competition (new waiver form)**

Appendix B illustrates the proposed new waiver form.

The new form has been designed with a view to simplifying completion by officers. The form requires the completion of mandatory fields before it can be progressed. This will include all the relevant information required to justify the exemption from competition and for authorised signatories to review and evaluate to inform their approval decision.

The new waiver form will request a copy of the specification and the contract Terms and Conditions to be submitted with the waiver.

Details of the waiver process to be followed can be found in the Strategic Procurement Intranet Site detailed in the Waiver Guidance Section.

3.4 **Waiver to Competition (signatures)**

The requirement for signatures has been simplified to two thresholds with clear approval flow / order for both the upper and lower threshold for the waiver process.

The following details the recommended approvals required for a waiver at the set values and the order that the signatures must be obtained:-

£10,000 - £70,000

- The relevant Executive Director

Above £70,000 signatures of;

- The Head of Strategic Procurement
- The relevant Executive Director
- The Section 151 Officer
- The Executive Director – Core Services

3.5 **Waiver to Competition (Changes to Available Reasons)**

The current nine reasons stated within the existing CPRs for a waiver have been revised and condensed to four that are more relevant and clear for the user.

The four new categories are:

1. No available competition
2. Urgent requirement
3. Variation to contract
4. Strategic or tactical

An analysis of existing waivers was undertaken to ensure the above categories were relevant / fit for purpose. This exercise was undertaken by the CPR working group on waivers approved in 2017/18 and all those reviewed could be easily classified to one of the new categories.

3.6 **Contract Management**

The revised rules strengthen the requirements in relation to contract management.

3.7 **The Strategic Procurement Team**

The revised rules now refer to the role of the Strategic Procurement Team.

Since the introduction of the team in 2016, all procurements above £100,000 have been performed by this team. The new proposal is for the Strategic Procurement Team to perform all procurements above £70,000 to further benefit the Council from

utilising the knowledge and skills within the team. This will relieve the need for advice to be sought by non-procurement professionals and for Business Units to focus on their core function. This will delete the need in the present rules for legal approval for non-procurement professionals to perform complex procurement routes for high value contracts.

3.8 Light Touch Services

The CPRs have previously required any procurement of light touch services to be formed in accordance with the open and restricted processes due to the Council having a devolved procurement function without necessary procurement skills in the directorates to undertake innovative procurement. Light touch services are highlighted in Schedule 3 of the PCR and cover such services as social care.

The revised CPRs now reflect the PCR which allow light touch procurements to follow a procurement route providing it complies / ensures the following:

- Transparency
- Fairness
- Equality

Additional Recommendations:

3.9 Tender Opening

The YORtender system has safeguards where returned tenders and/or the names of tenderers who have submitted a tender are not visible until after the deadline. The submissions will only become visible when a verifier opens the tender, which the revised rules will require to be independent to the procurement process.

The system also prevents late tender submissions from suppliers so only on time tenders can be submitted. As a result there is no need for the consideration of whether to accept a late tender.

The system records all the information required by the tender opening form e.g. time tender submitted.

Due to the safeguards in the YORtender system as outlined above, it has been concluded that the need for a tender opening form is not required.

3.10 Dynamic Purchasing System (DPS)

Since the last update, the Council's Strategic Procurement Team has performed innovative procurements which were not covered in the present rules.

Dynamic Purchasing Systems are procurements covering a service where packages of services will be required at various times in a particular period. Additionally, providers can apply at any time during the contract period to be on a list of available providers. When a package of services is required then it can be tendered at that time and all providers on the list can tender along with new providers.

The Council's apprentice programme has been performed on a Dynamic Purchasing in partnership with Berneslai Homes.

The Strategic Procurement Team is proposing to establish more DPS agreements within the Council.

3.11 Estimated Values Exceed Thresholds Limits / Procurements Exceed Budget

The revised regulations will require procurers, where they have an estimated contract value close to the tender / OJEU threshold (£70,000 - £181,302), to adopt the procurement process of the higher value range. This will ensure that estimated values are calculated with regards to the service requirement rather than to a particular procurement process.

The revised rules also place a requirement that no contract award should be made where a tender received is above the budget / Estimated Contract Value (ECV) without the appropriate financial approval for the extra cost and proof that the estimated value did not mislead the market.

3.12 Gateway Approach

A Gateway Approach is where the procurement process is split into key stages and all relevant parties sign their agreement to each part of the procurement process.

The revised CPRs have changed the limit where a Gateway Approach is needed from £250,000 to £70,000 in line with the revised thresholds and present practice where the Procurement Event Approval Document is utilised by the Strategic Procurement Team.

3.13 Restructure of the CPRs in Line With Other Relevant Guidance

The revised CPRs strengthen the connection between the different Governance rules of the Council, which procurement interlinks with.

It is proposed that the CPRs will use electronic links to the Financial Regulations, other policies, and other guidance held elsewhere.

3.14 GDPR Data Protection

Since the last revision, new Data Protection laws have been introduced which place more obligations on the Council to protect data it holds and these responsibilities need to be forwarded on to suppliers.

Reference to the new Data Protection Regulations with regards contracts has therefore being included.

3.15 Record Retention/Retention Policy

The revised CPRs now cross refer to the Council's record retention policies and associated retention schedules with links included for ease of access / reference.

3.16 Grant Funding

Reference to compliance with conditions of any funding arrangements have been strengthened due to the potential pay back of funding for instances of non-compliance.

This is to ensure that procuring officers of the Councils are aware of the risks of potential pay back of funding for non-compliance with procurement stipulations contained within grant agreements.

3.17 Financial Regulations

The revised CPRs have been aligned to the requirements of the Council's Financial Regulations.

3.18 **Review of Structures and Job Titles**

The revised CPRs have been updated with current structures and job titles which have changed since the last CPR revision in 2015.

3.19 **IT Purchases**

The revised rules will stipulate all IT procurement must involve the IT Contracts and Commissioning Team to ensure standardisation and value for money in IT facilities across the Council.

This requirement aligns with the requirement set out in the Financial Regulations.

4.0 **PRESENT POSITION**

This section details the current position in reference to the recommendations being proposed in section three.

4.1 **Thresholds/ Procurement Processes**

The current procurement thresholds are:

- Up to £2500 – value for money.
- £2500 - £100,000 - a minimum of three quotations.
- £100,000 - £181,302 - a tender process without a shortlisting stage.
- Above OJEU thresholds – an OJEU compliant tender must be conducted.

The working group undertook analysis to understand the impact of any proposed changes to the procurement thresholds in the following areas:-

The number of quotations in the range £2500 to £10,000 and the total number between £10,000 and £100,000 for the period 2016/17 and 2017/18:

17/18 Request for Quote (RFQ) - Analysis

352 RFQs completed within the year

Total value of £6,035,158

Value Range	All events	Excluding DFG* and DPSs**
£2,500 - £5,000	138 (£539,625)	17 (£69,125)
£5,001 - £10,000	87 (£772,275)	67 (£610,407)
£10,001 - £50,000	100 (£2,824,825)	80 (£2,332,257)
£50,001 - £99,999	27 (£1,898,434)	27 (£1,898,434)
Total	352 (£6,035,158)	191 (£4,910,222)

***DFG – Disability Funding Grant**

****DPS – Dynamic Purchasing System**

16/17 Request for Quote (RFQ) - Analysis

381 RFQs completed within the year

Total value of £7,263,976

Value Range	All events	Excluding DFG and DPSS
£2,500 - £5,000	177 (£698,302)	22 (£94,302)
£5,001 - £10,000	57 (£496,531)	29 (£250,531)
£10,001 - £50,000	98 (£2,536,468)	88 (£2,236,468)
£50,001 - £99,999	49 (£3,532,674)	49 (£3,532,674)
Total	381 (£7,263,976)	118 (6,113,975)

Analysis from the year 17/18 demonstrates a combined value of low value procurements i.e. between £2,500 to £10,000 of £679,532 in total. This is against an overall annual expenditure with third party suppliers of £313 million per annum from 2018/19 for all spend where the transactional spend is above £500.

The Council would therefore be removing an administrative burden for low value procurements if the threshold was raised to £10,000 with limited financial implications.

4.2 **Format of Contract Procedural Rules (CPRs)**

The existing format of the CPRs makes it difficult to find the specific information they need and what they need to do to comply.

4.3 **Waiver to Competition Process**

The current position / issues relating to waivers are summarised below:

Users from across the Council stated they found the present process confusing and the waiver form difficult to complete. In addition, the circumstances justifying a waiver in the CPRs are not clear.

An analysis of 48 waivers found that vital information had been omitted as follows:

- Details of the supplier or service/goods involved
- Value of the goods /service to which the waiver applies
- Dates to which the waiver is applicable
- Did not justify why no competition is possible

Waiver Analysis

Waiver Value (£)	Count	Percentage
0	2	4
1 to 9,999	15	31
10,000 to 99,999	27	56
100,000+	4	9
Total	48	100

Findings:

- The vast bulk of waivers did contain a value with only 4% not of any stated value. The value wasn't consistently recorded in the same section of the document so was sometimes harder to find than anticipated.
- Nearly a third of waivers wouldn't have needed producing at all if we increased the lower spend threshold from £2.5k to £10k, resulting in a quicker, and less complex process.
- There were only four instances of the waiver being >£100k and therefore relating to work that would otherwise have been undertaken by the Strategic Procurement Team.
- The review has concluded a new waiver template was required to ensure that key data is included, and to increase compliance.
- Accuracy or difficulty in locating information on the waiver can cause problems for the Council in ensuring data is accurate, and increases the risk that information publicised externally via the Council's Contract Register is incorrect.

4.4 Waiver to Competition Signatures

Waivers are currently circulated in the incorrect sequence for approval and the rules presently refer to outdated job roles in the Council. This has meant there has been lack of clarity with the order in which approval should be sought. The consequence of this could have been misinformed decisions and relevant considerations have not been accounted for. The new sequence will allow for appropriate review to the rationale for a waiver from the relevant departments before final sign off ensuring compliance.

4.5 Waiver to Competition (Present Reasons for No Competition)

The existing rules state nine rules to which waivers can be sought and a number are variations of the same situation and some that would rarely be utilised.

The present rules include certain practices that are no longer required due to changes in the Council's structure.

4.6 Contract Management

Existing CPRs do not cover contract management and therefore do not cater for the whole procurement cycle.

4.7 The Strategic Procurement Team and Roles

Procurement activity within the Council at the time of the last revision in 2015 was on a largely devolved basis with a small Corporate Procurement Team. The main priorities of the team was undertaking procurement events and providing advice to the rest of the Council. Directorates undertook a lot of their own procurement and requested advice and guidance from the central team where they felt it was needed. The rules reflected there was no central control unlike the present position.

4.8 Light Touch Services

The present rules were last updated to include the requirements of the PCR's which introduced the concept of Light Touch Services and specific flexible procurement

rules which covered services such as Social Care. Such services had been exempt from the European procurement rules previously.

4.9 Tender Opening

The current requirement is that all tenders and quotations need to be opened and recorded on a tender opening form. All procurements above £2,500 are carried out on the YORtender system where all relevant information is stored for audit purposes. The tender opening form is a handwritten form taking details from the YORtender system, and current rules require tenders above £100K to be opened by NPS Barnsley.

The information detailed on the tender opening form is:

- Tender submission time - to demonstrate it was submitted before the tender deadline
- Whether there were any discrepancies within the tender that should be noted by the evaluation team.

4.10 Dynamic Purchasing Systems

Since the last update, the Council's Strategic Procurement Team have performed innovative procurements which were not covered in the existing rules.

Dynamic Purchasing Systems are procurements where packages of services will be required at various times in a particular contract period, and providers can apply at any time during that period. When a package of services is required then it can be tendered at that time and all providers on the list can bid.

The present rules do not refer to dynamic purchasing systems.

4.11 Estimated Values Close To Thresholds Limits /Tenders Exceeding Budget and/or Estimated Value.

The present rules state strict thresholds for quotations and tenders but does not state what should happen where estimated values are very close to another threshold or state the procedures where tenders exceed the proposed budget.

4.12 Gateway Approach

The present rules recommended a Gateway Approach to procurement should be undertaken for procurements above £250,000.

4.13 Restructure of the CPRs in line with guidance elsewhere

The present rules relate to other Governance Regulations of the Council and cross relate where relevant but it is considered that the links should be strengthened.

4.14 GDPR Data Protection

No reference was included for Data Protection Act 2018 (The General Data Protection Regulations 2018).

4.15 Grant Funding

Reference is made in the present regulations that Procurers should comply with the conditions on which grant funding is given but not the consequences of failing to do so.

4.16 **Job Titles and Structure References**

The present CPRs reflect job titles and structures in place at the time of the last revision in 2015 e.g. the roles of the lead Finance and Legal Officers responsible for signing waivers

5 PROPOSAL AND JUSTIFICATION

5.1 It is proposed that the revisions to the CPRs listed in Section 3 are accepted to enable the following:-

Increase compliance:

- Due to the widened remit of the Strategic Procurement Team.
- More user friendly format of CPRs.
- New and/or enhanced content for areas previously only partially or not covered.
- More user friendly waiver form.
- Simplified reasons for a waiver.

More Commercial Emphasis to Procurement:

- Increase lower threshold to reduce administrative burden for low value procurements and encourage use of local providers for below procurement thresholds.
- Use new procurement or expand use of procurement processes e.g. Dynamic Purchasing System.
- More Council co-ordinated approach to IT procurement.
- Allow more appropriate procurement processes for Light Touch Services such as Social Care.
- Embedding contract management processes into the Council to ensure contracts deliver value for money and the outcomes they were procured for.

6. FINANCIAL IMPLICATIONS

6.1 There are no direct financial implications associated with the recommendations of this report.

7. EMPLOYEE IMPLICATIONS

7.1 The proposal is that the Strategic Procurement Team are to undertake all procurements above £70,000, this would increase the workload of the team which would not be absorbed within the existing resources and would require the recruitment of additional resources as identified in Section 6 – Financial Implications. This change would free up officer time within services allowing more time to deliver the core requirements of their job roles.

7.2 Officers across the Council will need to be aware of the revised CPRs and the new procedures that will arise from them. Training and awareness sessions will be offered to ensure a good understanding and compliance across the Council.

8. COMMUNICATION IMPLICATIONS

- 8.1 The outcome of the review and the improvements made as a result of this will be communicated to staff, partners and stakeholders.

9. EXTERNAL IMPLICATIONS

- 9.1 The review of CPRs has not considered the implications of Brexit on procurement as the position on what will happen is not clear. There will be implications and these will be considered when announced and guidance has been given by Central Government.

10. OTHER OPTIONS CONSIDERED

- 10.1 Do nothing – this has not been considered as the existing rules do not reflect present practices and would limit the scope of the Strategic Procurement Team to be more commercial focused and does not align to the Corporate Plan and Future Council outcomes.

11. APPENDICES

[Appendix A Terms of Reference](#) – CPR Working Group.
[Appendix B New Waiver Form](#)

12. BACKGROUND PAPERS

Commercial Strategy.