



# North Wales Fire & Rescue Authority Contract Procedure Rules

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## Introduction

The purpose of these Contract Procedure Rules is to provide a methodology for the procurement of goods, works and services for North Wales Fire and Rescue Authority (the Authority) and to ensure that the relevant procedures are efficient and transparent and provide a system of openness and accountability. The highest standards of probity are required of all officers and Members involved in the procurement, award and management of the Authority's Contracts.

Any queries in respect of these Contract Procedure Rules shall be referred to the Procurement Team.

## Version Control

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1.1			
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## GENERAL

### 1. Interpretation

1.1 In these Contract Procedure Rules, the following terms have the following meanings:

Approved List	A list drawn up for and maintained by services for use under The Procurement Act 2023
Business Case	The process for weighing up the expected benefits with the cost and risks of a proposed project.
Call Off	A Contract let using a Framework Agreement where the terms allow for a Contract to be awarded without the need for mini competition.
Code of Conduct	The Codes regulating the conduct of Officers and Members as set out in the Authority's constitution
Community Benefits	Social or economic or environmental requirements which benefit the community within the Authority area
Contract	An agreement for the supply of goods or services or concessions or the execution of works
Contract File	A record of all matters relating to the Contract and procurement process
Contractor	A supplier of goods or services or concessions or works for the Authority
Contracts Register	A Register of Contracts currently operating within the Authority
Corporate Purchasing Agreement	A Contract or Framework Agreement which has been endorsed and approved for use by the PO, Finance and Resources and its use shall be mandatory. This includes joint procurement arrangements and membership of official planning consortiums
Contract	A Contract covered by The Procurement Act 2023 Regulations
Authority	North Wales Fire and Rescue Authority

E-Sourcing	Electronic systems for the facilitation and conducting of procurement exercises
Find A Tender (FTS)	Service manages tenders and contracts whose overall spend is, or will be, above the current public procurement thresholds.
Framework Agreement	An agreement which allows a Responsible Officer to Call Off or undertake a mini competition to provide goods, services or works in accordance with the terms of the agreement. The Framework Agreement usually constitutes a non-binding offer with no obligations to Call Off from the Contractor. If the Authority Calls Off from the Contractor a binding Contract comes into being.
GPA	Government Procurement Agreement
Chief Fire Officer (CFO)	Overall responsibility for each area of North Wales Fire and Rescue Service
Principal Officer (PO)	Responsible for specific areas within the North Wales Fire and Rescue Service
Invitation to Tender	Invitation to Tender documents in the form required by these Contract Procedure Rules
Member(s)	A Member of the Authority
Monitoring Officer	The Officer designated by the Authority as its statutory Monitoring Officer from time to time
Month	A calendar month
Most Advantageous Tender	The tender which is the most advantageous to the Authority based on a combination of price and quality criterion
Public Procurement Thresholds	Thresholds determined by the World Trade Organisation's (WTO) Government Procurement Agreement (GPA) reviewed every 2 years.
Quotation	A quotation of price and any other relevant matter made without the formal issue of an Invitation to Tender
Relevant PO	The PO whose department is responsible for the procurement exercise in question

Responsible Officer	Any permanent or temporary staff member or consultant or any other person properly authorised by the Authority to carry out any of the Authority's Contracts functions
Section 151 Officer	the officer designated by the Authority to undertake its duties under section 151 of the Local Government Act 1972
Tender	a Contractor's formal proposal submitted in response to an Invitation to Tender
Tenderer	a Contractor who is invited to submit a Tender for the provision of works, services, goods or concessions to the Authority
Value for Money	the optimum combination of whole life costs, quality and benefits to meet the Authority's requirement. Such term equates to the WTO's GPA procurement requirement of "most advantageous offer"
Working Day	any day other than a Saturday or a Sunday or a day which is a bank or a public holiday throughout Wales
WTO	World Trade Organisation

- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.4 Any reference to actions within these Contract Procedure Rules can also be undertaken by Responsible Officers with the appropriate delegated authority to carry out such tasks.
- 1.5 Under these Contract Procedure Rules, periods expressed as a certain number of days from a particular event run from the day following that on which the event takes place. If the last day of the period falls on a Saturday, Sunday or a bank or public holiday it will end on the next working day.
- 1.6 Periods will include public holidays and weekends unless these are expressly excluded or the periods are expressed as a certain number of working days.

## **2. Compliance with Contract Procedure Rules and Legislation**

- 2.1 These Contract Procedure Rules apply to all Contracts entered into by or on behalf of the Authority.
- 2.2 The ACFO (Finance and Resources), Monitoring Officer or Section 151 Officer shall advise on the implementation and interpretation of the Authority's Contract Procedure Rules.
- 2.3 Every Contract entered into by the Authority or on its behalf shall be entered into pursuant to, or in connection with, the Authority's functions and shall comply with:
  - 2.3.1 all relevant statutory provisions;
  - 2.3.2 the relevant UK law and the UK and Wales public procurement rules;
  - 2.3.3 the Authority's constitution including these Contract Procedure Rules and the Authority's Financial Regulations.
  - 2.3.4 schemes of delegation;
  - 2.3.5 the Authority's strategic objectives and policies;
  - 2.3.6 the relevant data protection legislation.
- 2.4 Should there be a conflict between the provisions of the Authority's Contract Procedure Rules and any provision of an UK directive or any domestic legislation, the directive or legislation shall prevail.
- 2.5 All Responsible Officers must comply with the Authority's Contract Procedure Rules and Financial Regulations. Other officers must not enter into Contracts on behalf of the Authority.
- 2.6 Any failure by a Responsible Officer to comply with any of the provisions of these Contract Procedure Rules or the Authority's Financial Regulations or associated guidance adopted by the Authority or any UK legal requirements may result in disciplinary action.
- 2.7 Any failure to comply with these Contract Procedure Rules by Responsible Officers shall be reported immediately to the ACFO (Finance and Resources).
- 2.8 Any failure to comply with these Contract Procedure Rules by Members shall be reported immediately to the Monitoring Officer.

## **3. Duties of Responsible Officers and Members**

- 3.1 The highest standards of probity are required of all Responsible Officers and members involved in the procurement, award and management of Authority Contracts.



- 3.2 Responsible Officers shall always:
- 3.2.1 seek value for money;
  - 3.2.2 show no undue favour to any Contractor or Tenderer, nor discriminate against any Contractor or Tenderer;
  - 3.2.3 ensure that all procurement is in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
  - 3.2.4 do nothing that contravenes UK domestic law;
  - 3.2.5 ensure that adequate Contract files are kept for Contracts upon which they are engaged.
- 3.3 Members and officers must comply with the Authority's policy and processes in relation to gifts and hospitality. As a general rule, offers of gifts or hospitality must not be accepted without the written authorisation of the CFO or Relevant PO. This includes offers from Contractors, Tenderers or any firm or organisation with whom the Authority has had, is having or may have any dealings of any kind. Authority members may wish to discuss the offer of a gift or hospitality, with the monitoring officer / clerk.
- 3.4 Members shall comply with the members' code of conduct.
- 3.5 Responsible Officers shall comply with the officers' code of conduct.
- 3.6 Members and officers should seek advice from the Procurement Team in respect of any matter arising out of these Contract Procedure Rules whenever there is any doubt as to the correct procedure.

#### **4. Declaration of Interests**

- 4.1 No Member, officer or agent of the Authority shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Authority.
- 4.2 The following shall declare any interests which may affect the Contract process:
  - 4.2.1 all Responsible Officers who play any role in the procurement process, including those designated under a scheme of delegation in CPR 5.3;
  - 4.2.2 Members involved in the procurement process; or
  - 4.2.3 external consultants.

4.3 The CFO or responsible PO shall ensure that members, officers, consultants or anyone else who is not an officer of the Authority appointed or agreed by them make declarations on their appointment and on any change in circumstances (and annually in the case of officers), and shall either certify them as acceptable or take any necessary action in respect of potential conflicts of interest. Responsible Officers shall keep completed consultants' declarations on the Contract file.

4.4 All members and Responsible Officers must complete a declaration of interest form, which must be appropriately approved in compliance with the Authority's declaration of interests policy. The Authority shall maintain a register of declarations indicating the names and grades of those declaring and the nature of their declaration.

## **5. Scheme of Delegation**

5.1 The Authority shall maintain a scheme of delegation setting out the delegated limits for Chief Officers and Responsible Officers. Responsible Officers must operate within delegated limits when entering into a Contract on behalf of the Authority.

5.2 Each PO shall compile and maintain a scheme of delegation specific to their service, detailing the names and grades of Responsible Officers approved for the purposes of obtaining quotations, tendering, entering contracts and placing orders on behalf of the authority and the maximum contract or order value allocated to each Responsible Officer for these purposes.

5.3 Each PO must provide the ACFO (Finance and Resources) with their scheme of delegation before the start of each financial year and on making any amendment.

5.4 The ACFO (Finance and Resources) shall keep a register of all schemes of delegation and shall ensure the appropriate scheme of delegation is replicated within the purchase-to-pay solution (for ordering, receipting and payments).

## **6. Electronic Procurement Solutions**

6.1 All purchase to pay processes including requisitioning, ordering, receipting and invoice payments shall be conducted via the corporate purchase-to-pay solution.

## **7. Corporate Purchasing Agreements and Dynamic Purchasing Agreements**

7.1 The use of the following Corporate Purchasing Agreements as endorsed by the ACFO (Finance and Resources) shall be mandatory, unless a justification not to use them has been made in writing and been approved by the ACFO (Finance and Resources):

7.1.1 Corporate purchasing agreements resulting from the WGCD (Welsh Government Commercial Delivery) or any other approved official purchasing consortiums;

7.1.2 Any other Framework Agreements and any subsequent call off arrangements; and

7.1.3 Joint procurement arrangements.

7.2 Any membership of an official purchasing consortium which requires upfront Authority commitment shall be approved by the ACFO (Finance and Resources) prior to the involvement by or on behalf of the Authority.

## **8. Use of Consultants**

8.1 The engagement of consultants must be approved, in the first instance, by the Relevant PO and such approval shall be recorded on the corporate Contracts Register.

8.2 When calculating the estimated value of the Contract, due consideration must be given to any follow on work that may result from the original Contract. Where it is proposed that consultants are engaged by the Authority, the Relevant PO shall ensure that:

8.2.1 there is a clear identification of need. In particular, the availability of in-house resources must be considered before seeking to engage external consultants;

8.2.2 a budget has been agreed;

8.2.3 a project brief has been prepared;

8.2.4 Contracts are in accordance with these Contract Procedure Rules, unless CPR 14 applies;

8.2.5 comprehensive criteria against which proposals will be evaluated are set;

8.2.6 the selection decision is clearly documented;

8.2.7 a formal agreement or detailed letter of engagement is prepared and signed;

8.2.8 fee payments and progress are monitored;

8.2.9 a detailed Contract file is maintained;

8.2.10 performance is reviewed and adequate management monitoring and reporting is in place, including implementation of any recommendations made by consultants;

8.2.11 there is a clear requirement for knowledge and skills transfer from the consultant to in-house staff;

- 8.2.12 declare any interests which may affect the Contract process.
- 8.3 Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the Relevant PO for the periods specified in the respective agreement. The excess for any one claim shall be no more than £20,000 except with the approval of the ACFO (Finance and Resources).
- 8.4 For the engagement of technical external staff such as architects, surveyors, engineers and lawyers, the Relevant PO shall annually review the level of use of such external staff.
- 8.5 Where consultants or technical external staff such as architects, surveyors, engineers or lawyers are appointed to be responsible for supervision of a Contract on behalf of the Authority, it shall be a condition of appointment that they shall comply with these Contract Procedure Rules and the Authority's Financial Procedure Rules in relation to that Contract as if they were an officer of the Authority and that on completion of the Contract they shall submit all relevant records to the Relevant PO.

## **PROCUREMENT PLANNING**

### **9. Purchasing Need and Procurement Planning Approval**

- 9.1 The Relevant PO shall, having established and identified a purchasing need, nominate a Responsible Officer to fully assess the purchasing need.
- 9.2 Before undertaking a procurement exercise the Responsible Officer shall ensure that the authority's business planning process is followed. This includes the appropriate scoping of goods/service requirements, ensuring that there is approved budget for such expenditure and the route to market is compliant with these procedure rules.

### **10. Determining the Contract Value**

- 10.1 Before conducting any procurement exercise the Responsible Officer will estimate and record the total expected cost of a proposed Contract, including any Contract extensions, incidental or ancillary costs net of recoverable VAT over the full duration of the Contract. For construction Contracts the estimate must be produced by a suitably qualified officer.
- 10.2 Where a service or supply Contract does not stipulate a total price, the value shall be estimated as follows:
- 10.2.1 fixed term service Contracts of up to 48 months: total consideration payable over the term;

- 10.2.2 service Contracts or Contracts for the hire of goods for an indefinite or uncertain period or for a fixed term of more than 48 months; consideration payable in respect of each month multiplied by 48.
- 10.3 The value of regular or renewable service or supply Contracts shall be estimated either:
  - 10.3.1 by aggregating the value of similar Contracts for the same categories of services or supplies awarded by the Authority over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the next 12 months; or
  - 10.3.2 by taking the estimated aggregate value during the 12 months following the first supply or service performed, or during the term of the Contract where this is greater than 12 months.
- 10.4 A Contract cannot be artificially divided, nor a valuation method selected with the intention of avoiding any clauses within these Contract Procedure Rules. Contracts shall be packaged to ensure best service delivery, competition and value for money.
- 10.5 Where a purchasing requirement is subdivided into several smaller Contracts, the estimated value of each shall be aggregated to estimate the total Contract value. However it will not be necessary to aggregate the following:
  - 10.5.1 any works Contract that has an estimated value of less than the small lots provision in the table of values; or
  - 10.5.2 any service Contract that has an estimated value of less than the small lots provision in the table of values, provided that the aggregate value of all those smaller Contracts is less than 20% of the total Contract value.

## **11. Pre-Tender Enquiries**

- 11.1 Enquiries of Contractors may be made before tenders are invited in order to:
  - 11.1.1 establish whether goods, works or services that the Authority wishes to purchase are available and within what price range;
  - 11.1.2 prepare the Invitation to Tender, price estimates and Contracts;
  - 11.1.3 establish whether particular Contractors wish to be invited to tender or quote.

## 11.2 In making enquiries:

11.2.1 no information shall be disclosed to one Contractor which is not then disclosed to all those of which enquiries are made, or who are subsequently invited to submit a tender or quotation;

11.2.2 no Contractor shall be led to believe that the information they offer will necessarily lead to them being invited to submit a tender or quotation, or being awarded the Contract;

11.2.3 a written record, including notes of any meetings held, the responses and the names of all individuals present shall be kept by the Responsible Officer on the Contract file.

## 12. Sustainable Procurement and Safeguarding

12.1 The Authority has a duty under the Wellbeing of Future Generations (Wales) Act 2015 to act in accordance with the sustainability principle and to ensure this guides decision making. The Authority must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

12.2 For all Contracts for goods and services the Authority shall consider social, economic and environmental issues when setting the tender evaluation criteria.

12.3 For all Contracts exceeding £2,000,000 the Authority must demonstrate compliance with the Welsh Government's Community Benefits in Procurement requirements. For relevant Contracts, Contractors will be required to complete the Community Benefits Toolkit as part of their Contractual requirements.

## EXEMPTIONS

### 13. Exempt Contracts

13.1 An Exempt Contract is one to which these Contract Procedure Rules do not apply.

13.2 The following Contracts are exempt from the requirements of these Contract Procedure Rules:

13.2.1 employment Contracts;

13.2.2 agreements relating solely to disposal or acquisition of an interest in land with the exception of Development Agreements (see CPR 52);

13.2.3 internal purchases or service provision;

13.2.4 Contracts for the engagement of counsel; and

13.2.5 Contracts for the engagement of an expert witness.

#### **14. Exemption from Contract Procedure Rules**

14.2 For Contracts other than those specified under CPR 13, a Responsible Officer may seek an exemption from applying these Contract Procedure Rules in exceptional circumstances.

14.3 A Contract shall only be negotiated with a single Contractor where the Authority having considered all the circumstances decides that such a course is desirable in the public interest. Such a decision shall be made only after consideration by the ACFO (Finance and Resources) in conjunction with the Monitoring Officer where appropriate. Circumstances may include:

14.3.1 where the works, goods or services can only be provided by a particular Contractor for reasons that are technical or connected with the protection of exclusive rights;

14.3.2 urgency brought about by events unforeseeable by the Authority and in accordance with the strict conditions stated in the Procurement Act 2023 Regulations;

14.3.3 goods are required as a partial replacement or addition to existing goods or installations and obtaining them from another Contractor would result in incompatibility or disproportionate technical difficulties in operation or maintenance;

14.4 No exemptions may be granted which would result in a breach of UK domestic law.

14.5 A register of approved exemptions will be maintained.

#### **APPROVED LISTS**

##### **15. Authority's Approved Lists**

15.1 Approved lists may be established for certain types of goods, works and service Contracts. Generally these will be for low value high frequency purchases.

15.2 The approval from the ACFO (Finance and Resources) must be sought prior to set up or adoption of an Approved List.

15.3 Authority Approved Lists shall:

15.3.1 indicate whether the Contractors listed are approved for all Contracts or for only some of the specified categories, values or amounts;

- 15.3.2 be publicly advertised and reviewed in full at least every four years. As a minimum, a public advertisement must be published on the National Procurement Service website (Sell2Wales);
  - 15.3.3 be open to receive new expressions of interest from any Contractor;
  - 15.3.4 be an Approved List prepared by another public body providing that it has been composed in a proper manner by that body and that the Responsible Officer is satisfied that the procedure used does not conflict with the Authority's policies and procedures.
- 15.4 The financial standing of Contractors may be subject to financial assessment. Where the CFO or POs choose not to adhere to the financial assessment limits advised by the ACFO (Finance and Resources), a documented risk assessment must be undertaken to support the decision.
- 15.5 A Contractor shall not be placed on an Authority Approved List or invited to tender if:
- 15.5.1 it is bankrupt or is being wound up or is having its affairs administered by a court or has entered into an arrangement with creditors or has suspended its business activities or is subject to court proceedings regarding any of these matters;
  - 15.5.2 it, or any of its directors, have been convicted of an offence concerning professional conduct or have been guilty of grave professional misconduct;
  - 15.5.3 it has not fulfilled obligations relating to the payment of taxes or other statutory contributions;
  - 15.5.4 it has fundamentally misrepresented information supplied to the Authority.
- 15.6 Where an Approved List is in place, the consideration of other Contractors shall only be permitted where the Contractors are to be subject to a separate pre-qualification questionnaire exercise as part of a specific procurement exercise.
- 15.7 Responsible Officers must ensure a process of continual checking and verification is in place with respect to Contractors who are on an Approved Lists or Framework Agreements or have a Contract in place. Issues which shall be subject to verification shall include financial standing (see CPR 15.6), level of insurance cover (including any policy exclusions), accreditations, level of prosecutions and any other relevant information which may be subject to change or renewal.



## **16. Removal of a Contractor from an Approved List**

- 16.1 The Relevant PO may, in consultation with the ACFO (Finance and Resources), immediately suspend a Contractor from an Approved List, Framework Agreement, dynamic purchasing agreement or (in exceptional circumstances) Contract, whenever there are substantiated concerns regarding the Contractor's financial standing or technical capability or compliance with health and safety requirements.
- 16.2 Investigations of the Contractor must take place immediately. If the suspicions are confirmed, the Contractor must be removed from the Approved List, Framework Agreement or dynamic purchasing agreement. If the suspicions are dispelled, the Relevant PO must immediately reinstate the Contractor.
- 16.3 A Contractor may be removed from an Approved List, Framework Agreement if the Relevant PO considers that the Contractor or its staff have breached standards of conduct that are relevant to the nature of the work performed by the Contractor. Action may be taken under this paragraph even if there are no doubts about the financial standing or technical capability of the Contractor.
- 16.4 In the event that a Contractor is removed from an Approved List, Framework Agreement the ACFO (Finance and Resources) will be notified of the decision.
- 16.5 A Contractor which has been removed from an Approved List or Framework Agreement shall have the right to appeal the decision within 7 working days of receipt of the letter informing them of their removal.
- 16.6 Any appeal shall be heard by the Procurement Team and Section 151 Officer.

## **PROCUREMENT APPROACHES**

### **17. Requirements for All Contracts**

- 17.1 The Authority is actively involved in collaborative agreements and arrangements across the public sector. These include joint procurement agreements to secure economies of scale and the use of public sector procurement frameworks.
- 17.2 Such arrangements known as Corporate Purchasing Agreement must be considered in the first instance. If in place an order shall be placed under the Corporate Purchasing Agreement accordingly.
- 17.2 A purchase order must be sent via the purchase-to-pay solution following award of the Contract.

## **18. Contracts Valued up to £30,000 (Goods, Works and Services)**

- 18.1 The need to obtain one quotation shall be at the Relevant Officers discretion although this does not alleviate the Relevant Officer of their responsibility to demonstrate that value for money has been obtained.

## **19. Contracts Valued between £30,000 and £119,000 (Goods, Works and Services)**

- 19.1 Where a Corporate Purchasing Agreement is not available, the Responsible Officer must follow the tender requirements and obtain formal quotations through Sell2Wales.

## **20. Contracts Valued between £120,000 and World Trade Organisation (WTO) Government Procurement Agreement (GPA) Threshold (Goods, Works and Services)**

- 20.1 Where a Corporate Purchasing Agreement is not available, the Responsible Officer must follow the tender requirements and issue Invitation to Tender through advertisement on Sell2Wales

## **21. Contracts Valued over WTO's GPA Threshold (Goods, Works and Services)**

- 21.1 Where a Corporate Purchasing Agreement is not available, the Responsible Officer shall invite tenders with appropriate advertisements on Sell2Wales.

## **22. Request for Quotes and Invitation to Tender Documentation**

- 22.1 The Invitation to Tender and all other procurement documentation (including requests for quotation, pre-qualification questionnaires and Contract award letters) used shall be in compliance with the corporate standard documentation.

- 22.2 Every set of procurement documents shall state the nature and purpose of the Contract for which tenders are invited, specify the last date and time when tenders will be received and state that the Authority reserves the right not to accept any tender or to accept a tender other than the lowest where payment is to be made by the Authority or the highest where payment is to be received by the Authority.

- 22.3 The Invitation to Tender must include an indication of the method of selection of the successful tender i.e. price basis, quality basis or a combination of price and quality (most economically advantageous tender).

- 22.4 Instructions must be given to Tenderers regarding submission of documents which state that tenders must be received by the time and date indicated on the Invitation to tender. Receipts will be issued for hand delivered tenders.

22.5 All Tenderers shall be required to submit a signed statement to the effect that their tender price has not been communicated to others apart from that disclosed in confidence to insurers and that they have not adjusted the amount of any tender or quotation in accordance with any agreement or arrangement between the proposed Tenderer and any other person.

### **23. Tender Specifications**

23.1 The Responsible Officer shall ensure the Invitation to Tender specifies the quality, performance, safety and other characteristics required of the works or goods or services or supplies. Specifications may include requirements relating to methods of construction, design and costing, tests, testing methods, inspection and acceptance, quality assurance, packaging, marking and labelling.

23.2 Technical specifications shall be defined by reference to relevant specifications, in the following order: to British technical specifications, British standards implementing international standards, other British standards and technical approvals or any other standards. Where an appropriate standard is current at the date of tender, all works, goods, services and supplies shall be at least of equal quality.

23.3 Specifications shall not refer to goods of a particular make or source unless:

23.3.1 it is justified by the purchasing requirement; or

23.3.2 the purchasing requirement cannot otherwise be described precisely and intelligibly, provided references are accompanied by the words 'or equivalent'.

### **24. Tender Bid Clarifications**

24.1 At all times during the procurement process the Authority shall ensure that all Tenderers and Contractors are treated equally and in a non-discriminatory and transparent manner.

24.2 Tenderers must be provided with an opportunity to ask questions of the Authority in relation to the procurement exercise and Contract requirement. Where a Tenderer seeks clarification from the Authority prior to tender submission, the Responsible Officer shall ensure that the clarification question and response are brought to the attention of all Tenderers.

24.3 Following receipt of tenders, the Responsible Officer may seek clarification from Tenderers where appropriate in consultation with the ACFO (Finance and Resources).

### **25. Tender Submissions**

25.1 The principles governing the submission of tenders should apply to electronic submissions. and in compliance with the instructions to Tenderers issued as part of the Invitation to Tender.

25.2 The tender should be submitted electronically in accordance with the subject to which it relates, and the tender conditions shall clearly indicate the last day and time for receipt of tenders.

25.4 No Responsible Officer or member shall communicate with any Tenderer once the Invitation to Tender has been posted to or collected by the Tenderer. No information relating to that procurement process shall be disclosed to anyone not involved directly in arranging the Contract, except where it is necessary:

25.4.1 for an officer or Tenderer to carry out an inspection of works, in which case all Tenderers shall be offered an equal opportunity to carry out an inspection; or

25.4.2 to inform Tenderers of a change in the procurement arrangements, including the supply of additional or changed information, in which case all Tenderers shall be sent the same information at the same time; or

25.4.3 in response to a request for clarification.

## **26. Tender Opening**

26.1 All tenders shall be opened at the same time and place after the closing time for receipt of tenders as stated in the Invitation to Tender or as early as reasonably practical thereafter.

26.2 The Authority have arrangements in place to record the following details of each tender:

26.2.1 The last date and time for the receipt of tenders;

26.2.2 The time and date the tender was received;

26.2.3 The name of each Tenderer and where practicable the value of each tender;

26.2.4 The date the tenders were opened;

26.2.5 Contract title;

## **27. Late Tenders Received**

27.1 Any tender received after the specified time shall be endorsed with the time and date of receipt.

27.2 If all other tenders have been opened, the late tender shall not be considered for evaluation and shall be opened only to ascertain the name of the Tenderer. No other details of the tender shall be disclosed. The Responsible Officer shall arrange for the tender to be returned to the Tenderer immediately. A notification letter explaining why the tender has not been considered shall be sent to the Tenderer.

- 27.3 The late tender may be considered, providing that the other tenders have not been opened and that the Monitoring Officer or relevant PO is satisfied:
- 27.3.1 that there is evidence that the late tender was posted or submitted in time for delivery by the due date in the normal course of postal service or internet service; or
- 27.3.2 that exceptional circumstances surround the submission of the late tender.
- 27.4 Any decision is to be recorded on the tender opening document and a copy of the decision should be included in the register.

## **28. Tender Evaluation**

- 28.1 All tenders for goods, services or works shall be evaluated and awarded on the basis of most economically advantageous tender, which shall include a combination of price and quality criteria, unless an exemption to this requirement has been approved by the ACFO (Finance and Resources).
- 28.2 Any scoring or weighting attributable to any criteria or sub-criteria must be clearly stated in the Invitation to tender. The criteria shall be strictly observed and remain unchanged at all times throughout the evaluation process. It must be noted that prior disclosure of and adherence to award criteria and weightings is a fundamental requirement of the core principle of transparency. The core procurement principles of transparency, equal treatment and non-discrimination apply to all procurements.

## **29. Errors in Tenders**

- 29.1 As a general rule no adjustment or qualification to any tender shall be permitted. However, errors identified during the examination of tenders may be addressed. invitations to tender must state the method to be used for dealing with errors in tenders.
- 29.2 Responsible Officers may invite Tenderers to amend their tender to correct genuine arithmetical error(s). In this case, no other adjustment revision or qualification is permitted.
- 29.3 Where examination of tenders reveals other errors not stated in CPR 34.2 or omissions which would affect the tender figure, the Tenderer shall be given details of such errors and an opportunity of confirming or withdrawing its tender.
- 29.4 Where a standard form Contract is used, the Responsible Officer shall deal with errors in accordance with the rules applicable to that form of Contract.

- 29.5 The Responsible Officer shall ensure that the forms of tender are scrutinised in order to identify any errors or other discrepancy affecting the validity of the tender. Where tender values are compiled from a detailed bill of quantities the Responsible Officer shall also scrutinise the priced bill of quantities supporting the lowest tender received and any others he considers appropriate.
- 29.6 If a Tenderer withdraws or a corrected tender is no longer the highest ranking, the tender from the next highest-ranking Tenderer in competitive order will be examined in more detail.

### **30. Negotiations**

- 30.1 Where procurement is conducted pursuant to the Procurement Act 2023 Regulations through either the open or restricted procedures, no negotiations are permitted following tender submission. The Responsible Officer may seek clarification from Tenderers where appropriate. Negotiations on price are never permissible.
- 30.2 At all times during the procurement (whether subject to the Procurement Act 2023 Regulations or not), the Authority shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 30.3 The Responsible Officer shall keep a written record of all negotiations, including notes of all meetings and the names of all individuals present and signed as such by all participants. At least two officers should be present when conducting negotiations; these procedures also apply where it is proposed to extend an existing Contract by negotiation.
- 30.4 Where negotiation results in a fundamental change to the specification or Contract terms, the Contract must not be awarded but re-tendered.

### **31. Contract Award**

- 31.1 The Authority shall only award a Contract where it represents best value for money. Tenders duly invited and submitted in accordance with the provisions of these Contract Procedure Rules may be awarded in accordance with the Authority's scheme of delegation.
- 31.2 In respect of Contracts where the lowest price is predetermined to be the appropriate criteria for award, a tender or quotation other than the lowest if payment is to be made by the Authority or the highest if payment is to be received by the Authority shall not be accepted until the ACFO (Finance and Resources), has considered a written report from the Relevant PO.

## **32. Joint Procurements**

- 32.1 The use of any Framework Agreements or Joint Contracts resulting from a procurement exercise involving other public bodies as the lead authority shall be approved by the ACFO (Finance and Resources) prior to their use. All such requests shall be made in writing to the ACFO (Finance and Resources) and, once approved; the Responsible Officer shall ensure that the Framework Agreement or Joint Contract shall be inputted onto the Corporate Contract Register.
- 32.2 The Responsible Officer will ensure that the Contract Procedure Rules or equivalent of the lead authority or organisation will be acceptable to the Authority and are to be followed throughout the procurement exercise and the duration of the Contract.32.3 Any joint procurement arrangement with any other public sector organisation that results in the Authority being committed to Contractual obligations on behalf of those other organisations (not including Framework Agreements) shall be approved by the ACFO (Finance and Resources) prior to commitment stage.

## **33. Standstill Period**

- 33.1 'Standstill' letters issued as part of the process for procurements over the WTO's GPA threshold under the Procurement Act 2023 Regulations or optionally as part of any Sub public procurement process must not be issued prior to confirmation of Contract award.
- 33.2 There must be a mandatory standstill period between communicating the award decision to all Tenderers and conclusion of the Contract with respect to procurements above the WTO's GPA threshold. This standstill period shall be 8 working days. Where the last day of the standstill period is not a working day, the standstill period is extended to midnight at the end of the next working day.
- 33.3 With respect to Contract awards involving mini competitions undertaken within a Framework Agreement or Contract awards with respect to Sub public procurement threshold procurements a standstill period is not mandatory, but a voluntary standstill period may be applied.

## **34. Notification of Tender Award and De-briefing Requests**

- 34.1 The notification letters which are sent to any Tenderer who was successful or unsuccessful at either prequalification or Contract award stage shall be sent promptly once the decision has been made. The unsuccessful Tenderer shall be informed of the reasons for being unsuccessful and shall also be informed of the characteristics and relative advantages of the successful Contractor as well as the name of Contractor awarded the Contract.

## **35. Post-Contract Award Requirements**

- 35.1 Following approval for Contract award and having received no legal challenges during the 'standstill' period, the Responsible Officer shall ensure all Contracts are in writing as per CPR 42 and that a purchase order is entered on to the purchase-to-pay solution (where available), once the Contract has been signed.
- 35.2 The Responsible Officer shall record all Contracts awarded by their service on the corporate Contracts register along with the E-Sourcing solution (where available).
- 35.3 The Responsible Officer shall issue a Contract award notice on the FTs portal within 30 days of the award with respect to an above WTO's GPA Threshold Contract. The Responsible Officer shall publish a Contract award note to be published on the Welsh Government Commercial Delivery Platform (Sell2Wales) website for Sub WTO's GPA Contracts.

## **36. Letters of Intent**

- 36.1 Letters of intent must only be used in exceptional circumstances after prior approval in writing has been obtained from the Procurement Team and shall only be used as follows:
  - 36.1.1 where the Contractor is required to provide services, goods or works prior to formal written acceptance by the Authority; or
  - 36.1.2 where all the Contractual terms and conditions have been agreed and there would be an unacceptable delay in waiting for the Contractual documentation to be completed.
- 36.2 In all cases, where appropriate, Contract award letters should be used rather than a letter of intent.

## **37. Non-Concluded Terms and Conditions of Contract**

- 37.1 The Authority must always ensure that terms and conditions are fully agreed by including them in the Invitation to Tender and requiring Tenderers to accept them as part of the procurement process.
- 37.2 Where the terms and conditions of Contract are not fully agreed, no Contractor shall be allowed to commence delivery of goods, works or services until all terms and conditions have been agreed and signature or written agreement of both parties obtained.
- 37.3 Responsible Officers must in no circumstances contemplate entering a Contract on the Contractor's own standard terms and conditions or negotiate terms which are significantly different to those included or referred to during the procurement process without the prior approval of the Procurement Team and subject to CPR 31.



## FORM OF CONTRACT

### 38. Contracts in Writing

- 38.1 The following Contracts shall be in writing and executed under seal:
- 38.1.1 if the Authority wishes to enforce the Contract for more than six years after its end;
  - 38.1.2 where the price paid or received under the Contract is a nominal price or there is no consideration and does not reflect the value of the works, goods or services;
  - 38.1.3 where there is any doubt about the authority of the person signing for the other Contracting party;
  - 38.1.4 where it is required by law; or
  - 38.1.5 where the total value of the Contract exceeds £1m.
- 38.2 The seal must not be affixed without the authority of the Executive Panel or a Member or CFO or PO acting under delegated powers. All Contracts under seal will also require an official purchase order to be created on the purchase-to-pay solution (where available).
- 38.3 All Contracts shall be in writing and in a form of Contract approved by the Procurement Team and be signed by the Relevant PO or their nominated representative. All Contracts require an official purchase order to be created on the purchase-to-pay system.
- 38.4 All Contracts shall be in the form of an official purchase order which refers to the Authority's relevant general terms of conditions or such other terms and conditions included in request for quotation. All such Contracts shall be created on the purchase-to-pay solution (where available) and can be approved or signed by the CFO or Relevant PO or their nominated representative.
- 38.5 Emergency Contracts awarded under CPR 14.3.3 or 14.3.11 need not be in writing before commencement but must be confirmed in writing as soon as possible.
- 38.6 All original Contracts in writing should be retained by the Responsible Officer.
- 38.7 Where there is an appropriate national standard form of Contract, that standard form shall be used, subject to any amendments as may be agreed with the Procurement Team in consultation with Relevant PO. Responsible Officers must ensure that any standard form Contract used in any procurement is still in force, up to date and reflects current legislation.

38.8 Commencement of any Contract shall not take place until the written documentation is finalised, except in cases of emergency, in which case the written documentation shall be finalised as soon as practicable.

### **39. Bonds, Securities, Liquidated and Other Damages**

39.1 The Responsible Officer shall undertake a risk assessment to determine whether a performance bond or performance guarantee is required.

39.2 All Contracts shall include a provision for liquidated damages to be paid by the Contractor where applicable in case the terms of the Contract are not duly performed, save where the Procurement Team approves another type of remedy.

### **40. Parent Company Guarantee**

40.1 The Responsible Officer shall seek a parent company guarantee when a Contractor is a subsidiary of a parent company and:

40.1.1 The award is based on evaluation of the parent company; or

40.1.2 There is some concern over the stability of the Contractor.

## **OPERATION OF CONTRACT**

### **41. Contract Management**

41.1 All Contracts must have a named Contract manager for the duration of the Contract. Contract managers must comply with these Contract Procedure Rules and where appropriate a project management framework.

41.2 All Contracts which are strategically critical or high risk or high value or high profile as determined by the Relevant PO, are to be subject to a formal Contract review with the Contractor.

### **42. Contract Performance**

42.1 All Contractors shall be subjected to regular Contract performance reviews through feedback received from external and internal stakeholders. Where appropriate, a performance review shall be undertaken at the end of each completed Contract or job. This shall include a requirement to record good and poor performance including complaints, issues and defects arising under a Contract and to monitor the aggregation of Contractor defaults including performance issues.

42.2 Incidents of poor performance shall first be raised with the Contractor in writing or at a meeting where notes are made and sent to the Contractor before the annual report is despatched. In cases of particularly poor performance or persistent poor performance, the Responsible Officer shall consider whether to recommend suspension or exclusion from the Authority's Framework Agreement or Dynamic Purchasing Agreement or to terminate early the Contract as per CPR 47.

### **43. Termination of Contract**

43.1 Legal advice should be sought prior to the early termination of any Contract.

43.4 Any Contracts that are terminated early must be recorded against the Contract entry on the corporate Contracts register.

### **44. Contract Variations and Contract Extensions**

44.1 Any Contract may be varied or extended in accordance with its terms and conditions and providing that the Contract has not expired.

44.2 Where the terms do not expressly provide for variation or extension then variations or extensions may be made with the agreement of the other Contracting parties and approval from the Relevant PO.

No variation or extension may be made if the proposed variation would:

(a) mean the works, services or goods to be added to or deleted from the original Contract are substantially different in scope: or

(b) be in breach of UK legislation.

44.3 The value of a variation or extension shall be calculated by taking the aggregate value of all variations or extensions made to the Contract. No variation which adds to the cost of the Contract shall be made until funding has been identified by the Relevant PO.

44.4 CPR 44.2 shall not apply in cases of emergency, the variation or extension may be approved by the Relevant PO providing that the same is reported as soon as practicable.

44.5 All Contract variations shall be entered in the register of Contracts and an amendment shall be made to the original purchase order via the purchase-to-pay solution (where available).

### **45. Contract Payments**

45.1 The relevant officer shall maintain Contract documents, ensure the Contracts register is updated and raise a purchase order on the purchase-to-pay solution.

- 45.2 Payments to Contractors on account of Contracts shall be made only on a certificate issued by the Relevant PO, or private consultant whenever engaged by the Authority, or by an officer nominated by the Relevant PO as appropriate. The names of officers authorised to approve such records shall be sent to the Section 151 Officer.
- 45.3 The final certificate of any Contract should not be issued until the Responsible Officer has produced a detailed statement of account and all relevant documents.
- 45.4 The ACFO (Finance and Resources) may use discretion to offset any sums due from a Contractor to the Authority against any sums due from the Authority to the Contractor, provided that a standard form Contract is in place, any action taken is in accordance with that standard form.
- 45.5 Claims from Contractors in respect of matters not clearly within the terms of any existing Contract shall be referred to the Procurement Team before a settlement is reached.
- 45.6 The Responsible Officer shall consider applying liquidated damages in accordance with the conditions of the Contract where the requirements of the Contract are not duly performed.

#### **46. Assignments and Novation**

- 46.1 Assignment of any Contract to another Contractor can only be done with the prior approval of the Relevant PO providing this has been included as a Contract condition and is permissible under UK legislation.

#### **47. Nominating Products or Contractors or Suppliers**

- 47.1 The core procurement principles of transparency, non-discrimination and equal treatment are undermined by the nomination of products and suppliers.
- 47.2 Responsible Officers must seek to specify goods and services by reference to objective, non-product specific descriptions. Equivalent goods or services are nearly always capable of being specified. If this is not possible for genuine technical reasons, and a particular type of product or service or method of production or delivery has to be stated, then the words “or equivalent” must always be added.
- 47.3 The Authority may provide potential main or principal Contractors with a list of Authority-approved suppliers or sub-Contractors provided that it is made clear that they are free to sub-Contract to whoever they wish, subject to the Authority’s right to consent. The Authority’s consent shall not be unreasonably withheld. Any sub-Contractors must meet the Authority’s reasonable requirements in relation to technical standards, financial standing and insurance levels.

- 47.4 These Contract Procedure Rules apply to the nomination of a sub-Contractor or supplier for carrying out works or services or supplying goods. Sub-Contractors or suppliers shall send with the tender an undertaking to work for the main Contractor and indemnify them for the sub-Contracted works, services or goods.

## **SPECIFIC CONTRACTS**

### **48. Land Contracts**

- 48.1 All land transactions must comply with Section 120 - 123 of the Local Government Act 1972.
- 48.2 The appointment of a developer under a Development Agreement may be subject to the Procurement Act 2023 Regulations and CPRs 18, 19, 20 and 21 of these Contract Procedure Rules.
- 48.3 Legal advice must be sought in respect of any land transactions which involve Development Agreements.

## **OTHER**

### **49. Retention of Contract Files**

- 49.1 Where funding has been received from an external organisation, the Responsible Officer must ensure that the Contract and Contract file are retained for the length of time specified by that funding body.
- 49.2 In all other cases, the Contract file prepared for all Contracts over £40,000 must be kept for **six years from the end of the Contract term** unless the Contract was executed under seal, in which case the Contract must be kept for **twelve years from the end of the Contract term**.
- 49.3 Documents relating to unsuccessful Tenderers may be micro-filed or electronically scanned or stored by some other suitable method after 12 months from award of the Contract, provided there is no dispute about the award.

### **50. Review and Amendment of the Contract Procedure Rules**

- 50.1 The ACFO (Finance and Resources) and Procurement Team may make any minor or consequential changes to these Contract Procedure Rules.
- 50.2 The ACFO (Finance and Resources) in conjunction with the Procurement Team shall continually review these Contract Procedure Rules and shall undertake a formal review every three years.