

Part 3 – Section 7 – Contract Procedure Rules

1 Introduction

- 1.1 This part of the Constitution sets out the Council's rules for buying goods, services and works on behalf of the Council and disposing of some types of property. In this document they are referred to as the "CPRs".
- 1.2 The Council must have CPRs under section 135 of the Local Government Act 1972.
- 1.3 A glossary of key terms is at section 8 of these CPRs.
- 1.4 Responsible Officers of the Council (referred to as 'officers' or 'responsible officers' in these rules) must have regard to the Council's Procurement Cycle and guidance that supports this or any replacement of such Guidance from time to time in force. In these CPRs this is referred to as "the Guidance."

2 Scope of the CPRs

- 2.1 The CPRs apply whenever the Council is commissioning or procuring Supplies, Services or Works, or disposing of Assets.

Officer Responsibilities

- 2.2 Subject to any overriding legal obligation, officers must comply with the CPRs when commissioning and/or procuring Supplies, Services or Works, disposing of Assets and making decisions about these matters.
- 2.3 Officers responsible for commissioning, procurement and disposal of Assets must in addition comply with other relevant parts of the Constitution, such as the Access to Information Procedure Rules and the Finance Procedure Rules, and with all applicable laws.
- 2.4 Officers must ensure that any person or organisation acting on behalf of the Council within the scope of the CPRs also complies.
- 2.5 Officers must take all legal, procurement, financial, technical and other advice that they need to ensure they comply with the law and the Council's rules and policies and that the procurement method and contract are fit for purpose.
- 2.6 Officers must comply with measures put in place by the Council to prevent, identify and remedy conflicts of interest which arise during the conduct of procurement. In particular:
- 2.7 Officers must comply with the Officers' Code of Conduct when conducting procurement
- 2.8 Officers must comply with section 117 of the Local Government Act 1972 by declaring in writing any personal interest in a contract to the Section 151 Officer.
- 2.9 Officers must not accept any gift or hospitality from any Candidate for any contract being procured by the Council and to do so is a disciplinary offence. Officers must inform the Monitoring Officer if offered a gift or hospitality during a tender process.

Application of these CPRs

- 2.10 These CPRs apply to all Relevant Contracts. A Relevant Contract is any arrangement, including Framework Agreements and other arrangements permitted under the Regulations, made by or on behalf of the Council for the carrying out of Works or for the supply of Supplies or Services, or the disposal of an Asset, unless the arrangement is subject to an Exception in these Rules - see section 2.14 below.
- 2.11 A Relevant Contract includes a contract for the appointment of consultants.
- 2.12 A contract procured on behalf of or by any organisation which is in receipt of funding for which the Council is the Accountable Body is also a Relevant Contract under these Rules.
- 2.13 Local Authority Maintained Schools are expected to comply with these CPRs.

Exceptions to these CPRs

- 2.14 The CPRs do not apply to the following arrangements, to the extent that this complies with the law:
 - 2.14.1 Contracts of employment which make an individual a direct employee of the Council.
 - 2.14.2 Agreements for the acquisition, disposal or transfer of land/buildings which do not form part of a wider transaction under which the Council also procures Supplies, Services or Works.
 - 2.14.3 Grants which the Council may receive or award, except as otherwise provided in the CPRs.
 - 2.14.4 Contracts for an educational or care placement for a specific individual where the relevant Director considers such placement to be in the best interests of the individual.
 - 2.14.5 Contracts for care services to be provided to a specific individual household where the relevant Director considers such a contract to be in the best interests of an individual.
 - 2.14.6 Contracts with a third party where sections 184 and 278 of the Highways Act 1980 apply.
 - 2.14.7 Contracts for representation by a lawyer in arbitration, conciliation, or judicial proceedings; legal advice given by a lawyer in the preparation of any such proceedings, or where there is a clear indication and high probability that the matter will become subject of proceedings and any other legal services which are exempt from the Regulations.
 - 2.14.8 Contracts for financial services in connection with the issue, sale or transfer of securities or other financial instruments within the meaning of EU Directive 2004/39/EC as amended from time to time.

For the purposes of paragraphs 2.14.4 and 2.14.5 contracts are only exempt from these CPRs if the aggregate value of contracts awarded to a single provider does not exceed the relevant Procurement Threshold.

- 2.15 In addition to the above, the CPRs do not apply to:

- 2.15.1 contracts below the relevant Procurement Threshold which are required in circumstances of extreme emergency such as an immediate danger to life or property and
- 2.15.2 contracts above the relevant Procurement Threshold which are procured using the negotiated procedure without prior publication under Regulation 32 (2) (c) of the Regulations, except insofar as to require compliance with the Regulations.

In both these circumstances relevant Directors are authorised to take appropriate action and must report such action and the expenditure incurred to the next meeting of the Executive.

3 Record Keeping

- 3.1 The Responsible Officer must keep records pertaining to the procurement of any Relevant Contracts, including any contract for which an Exemption (see below) has been approved.
- 3.2 Where the Total Value of the Relevant Contract is less than £100,000 the following records must be kept for the contract:
 - 3.2.1 A unique reference number for the contract, the title of the contract and the parties;
 - 3.2.2 The request for tender documents/correspondence;
 - 3.2.3 Criteria for the award of the contract;
 - 3.2.4 The contracting decision and the reasons for it;
 - 3.2.5 Records of all communications with the Candidates; and
 - 3.2.6 The contract.
 - 3.2.7 Record of consideration of the public sector equality duty, the (Public Contracts) Social Value Act 2012 and consultation.
- 3.3 Where the Total Value of the contract is £100,000 or more the following records must be kept in addition to those specified above:
 - 3.3.1 Outline of the Business justification (including details of pre-tender market research, options appraisal and risk assessments);
 - 3.3.2 Tender documents sent to and received from Candidates;
 - 3.3.3 The records of the evaluation of the tender;
 - 3.3.4 Records of all clarification and post tender discussion (including minutes of any meetings); and
 - 3.3.5 Record of the decision making;
 - 3.3.6 Record of consideration of the public sector equality duty, the (Public Contracts) Social Value Act 2012 and consultation.
- 3.4 The above records required under this Rule must be retained in compliance with the Council's corporate document retention policy.
- 3.5 In addition to the above requirements, within 30 days of award of the contract, the Responsible Officer must arrange for details of the award of any contract with a Total Value over £50,000 to be included in the Contracts Register (which is held by the Assistant Director of Commissioning and Procurement). The details that must be included are:

- 3.5.1 Start date and duration of the contract;
- 3.5.2 Supplier;
- 3.5.3 Title of the contract;
- 3.5.4 Any contractual provision for extension; and
- 3.5.5 Internal contact name and email address

3.6 In any instance where the Total Value is over £25,000 the Responsible Officer must arrange for details of the award to be notified on Contracts Finder or Find A Tender by completion of an Award Notification Form and sending to the Assistant Director of Commissioning and Procurement by emailing procurement.mailbox@cumberland.gov.uk.

4. Key Decisions

- 4.1 The decision to commence a procurement exercise is a Key Decision where the total value of the contract exceeds the financial threshold for a Key Decision and/or forms part of and is taken at the same time as a decision that will result in a change to service provision which will have a significant effect one or more wards of the Council. The decision to procure a Relevant Contract which is a Key Decision must adhere to the Access to Information Procedure Rules relating to Key Decisions.
- 4.2 The decision to award a Relevant Contract is a Key Decision where the total value of the contract exceeds the financial threshold for a Key Decision, and the key decision was not taken at the commencement of the procurement exercise. The award of a Relevant Contract which is a Key Decision must adhere to the Access to Information Procedure Rules relating to Key Decisions.

5. Steps Prior to Procurement

Common Requirements

- 5.1 The Responsible Officer must check whether there is a suitable existing contract, internal Framework Agreement or collaborative agreement before seeking to procure another contract. Where a suitable arrangement exists, this must be used unless there is a compelling legal or financial reason not to.
- 5.2 Subject to 5.1, the Responsible Officer may use any appropriate procurement procedure which is permitted by these CPRs or by the Regulations. Where the Regulations apply, the Responsible Officer must use a procurement procedure which complies with The Regulations, seeking advice from the Assistant Director of Commissioning and Procurement.
- 5.3 The Responsible Officer must consider the implications of the public sector equality duty under the Equality Act 2010; and (in respect of Services) of the Public Contracts (Social Value) Act 2012; and whether the proposed contract requires prior consultation under the "best value" requirements of the Local Government Act 1999 or for any other reason.
- 5.4 The Responsible Officer must consider whether, and if so how, social, economic or environmental issues could be addressed through the contract. Social, economic

and environmental issues may be addressed through procurement where what is sought to be achieved is relevant and proportionate to the subject matter of the contract.

Market Consultations

- 5.5 Before commencing a procurement exercise, the Responsible Officer may consult with the market with a view to preparing the procurement exercise and informing contractors of the Council's procurement plans and requirements.
- 5.6 In carrying out market consultations, the Responsible Officer may seek advice from independent experts, authorities or from market participants and use this in planning and conducting the procurement exercise provided that it does not have the effect of distorting competition, result in discrimination or breach the principle of transparency. The prior written approval of the Assistant Director of Commissioning and Procurement must be sought before seeking advice from anyone who may have a commercial interest in the contract to which the procurement exercise relates.

Framework Agreements

- 5.7 Framework Agreements are agreements with one or more suppliers for the provision of Supplies, Services or Works on agreed terms for a specified period, for estimated quantities against which orders may be placed if and when required. Once established "Call Offs" from the Framework Agreement may be conducted by mini competition or by direct call off, according to the terms of the Framework Agreement. The 'call off' process as relevant to each different Framework Agreement must be adhered to. Approval should be sought from the Assistant Director of Commissioning and Procurement prior to 'calling off' from any external Framework Agreement by emailing: procurement.mailbox@cumberland.gov.uk.
- 5.8 Where an internal Framework Agreement is established with a Total Value exceeding the Procurement Threshold the Regulations must be followed to establish the Framework Agreement and the maximum term of the Framework Agreement may not exceed four years, except in exceptional circumstances, following consultation with the Assistant Director of Commissioning and Procurement and the Monitoring Officer, with full reasoning for the recommendation provided in the report seeking authorisation to start a procurement exercise.

Collaborative Procurement Arrangements

- 5.9 The Council may enter into collaborative procurement arrangements with other local authorities, government departments, public bodies or public service purchasing consortia and may use Framework Agreements or lists of pre-qualified contractors established by such bodies.
- 5.10 Responsible Officers proposing to use such arrangements must ensure that they have been established in a way which complies with the law. In particular where the Regulations apply the collaborative agreement must comply with them, the Council must be among the bodies named in the Find a Tender notice as having access to

the arrangements and there must be scope in the arrangement to permit its lawful use for the purposes proposed.

Partnership Arrangements including Shared Services and Joint Commissioning

- 5.11 Where the Council enters into a **Partnership Arrangement** with another organisation or other organisations, agrees to act as Accountable Body, or enters into a shared service arrangement, the governance arrangements must include procurement and contract arrangements if any procurement will be undertaken.
- 5.12 Where the Council is the Lead Body or the Accountable Body for any arrangements, these CPRs should be included in the arrangements and followed as a minimum.
- 5.13 Before the Council agrees to enter into a contract on behalf of another organisation, the Responsible Officer must obtain written agreement from that organisation that it will provide sufficient funding and take any other action necessary for the Council to meet its obligations under the contract on behalf of that organisation.
- 5.14 Where the Council is not the Lead Body or the Accountable Body, the other organisation's tendering rules should be followed provided that they comply with the law.

Rolling Contracts

- 5.15 Where it is proposed to procure a Relevant Contract on terms which will provide for renewal on a "rolling" basis, the Responsible Officer must make a reasonable estimate up to a maximum of 4 years of the term of the contract in order to estimate the Total Value.
- 5.16 If during the term of the contract it appears that the estimated Total Value may be exceeded by anticipated further renewals of the contract, the officer responsible for managing the contract must refer the matter to the Director of Business Transformation and Change who must review the position in consultation with the Monitoring Officer.

Exemptions from these CPRs

- 5.17 The Director of Business Transformation and Change is authorised to approve Exemptions from the CPRs, following consultation with the Monitoring Officer.
- 5.18 The Director of Business Transformation and Change may not approve a request for an Exemption that would result in a breach of the Regulations in respect of a contract to which the Regulations apply.
- 5.19 The Exemption must be approved before any alternative procedure not wholly in accordance with these CPRs is followed.
- 5.20 The request for Exemption must state from which of the requirements of the CPRs Exemption is requested and give reasons for the request. An exemption should not be sought as a way of bypassing competition.
- 5.21 Examples of circumstances in which it may be appropriate to request an Exemption include but are not limited to:

- 5.21.1 Supplies of goods where the Council's best interests will be served by purchase through auction and the relevant Director has agreed an upper limit for bids.
- 5.21.2 There is only one contractor in the market relevant to the Supplies, Services or Works who is suitable to provide the Supplies, Services or Works required.
- 5.21.3 The Council's need for the Supplies, Services or Works is so urgent that compliance with these Rules would in the judgement of the relevant Director prejudice the Council's interests. (Rule 2.15 automatically dis-applies these CPRs in circumstances of extreme emergency such as an immediate danger to life or property).
- 5.22 The Director of Business Transformation and Change will keep a record of all Exemptions approved.

Authorisation to Start Procurement

- 5.23 The persons or bodies authorised to approve the start of a procurement exercise are set out in the table below:

Estimated Total Contract Value	Decision Maker
£0 - £1,000,000	Relevant Director
£1,000,001 - £5,000,000	Relevant Executive Councillor
£5,000,001 and above	Executive
Contracts of any value the budget for which has been wholly included in the approved Capital Programme	Relevant Director
Contracts for Consultancy over (£250,000) and no wholly externally funded budget	Executive

- 5.24 The permission to procure any contract which is a Key Decision must include within the report to the decision maker the following information, if applicable:
- 5.24.1 The anticipated value.
- 5.24.2 The tendering process intended to be used.
- 5.24.3 The award criteria to be used.
- A Delegation to award the contract (if appropriate)
- 5.24.4 A risk assessment and risk management arrangements.

5.24.5 TUPE implications.

5.24.6 Contract monitoring and management arrangements.

5.24.7 Any impact on the local economy, suppliers based in Cumbria and the third sector.

5.24.8 Legal, finance, and procurement comments by suitably qualified officer;

5.24.9 Where a number of similar contracts are recommended to be awarded on or around the same time a composite report may be used.

5.25 For contract over the value of £100,000 the Responsible Officer must ensure authorisation to procure is obtained and is responsible for ensuring that the CPRs have been complied with and that the proposed procurement documents (business justification, advertisement, invitation to tender, contract terms and conditions, etc.) have been approved by the relevant Director or Assistant Director in respect of the contract.

6 Procurement of Contracts

Common Requirements

6.1 In conducting any procurement exercise, the Council must treat all Contractors equally and without discrimination and must act in a transparent and proportionate manner.

6.2 Electronic procurement using the e-tendering portal must be used for all tenders unless authorisation to use an alternative method has been given by the Director of Business Transformation and Change. The e-tendering portal may be used for 'written quotations'.

6.3 The Responsible Officer must consult the Assistant Director of Commissioning and Procurement by emailing Procurement.mailbox@cumberland.gov.uk the appropriate procurement procedures. The Responsible Officer must have regard to the Guidance given.

Identifying Potential Candidates

6.4 Where a Relevant Contract is being procured the minimum procurement process and rules for inviting Candidates are as follows. “–”

Estimate Total Contract Value	Minimum Process	Method of invitation
Up to £2,000	Responsible Officer must use a process which obtains best value for money and wherever possible seek one quote locally	One oral quotation (confirmed in writing where the quotation exceeds £500)

£2,001 £50,000	-	2 written quotations which obtains best value for money and wherever possible seek one quote locally	Invitation to submit a quotation in writing to at least 2 candidates
£50,001 £100,000	-	3 written quotations which obtains best value for money and wherever possible seek two quotes locally	Invitation to submit a quotation in writing to at least 3 Candidates
Exceeding £100,000 but below relevant Procurement Threshold	Written Tender		Open advertisement of contract appropriate to the relevant market
Procurement Threshold and above	Written Tender		Open advertisement of the contract in accordance with the Regulations
"Cal" offs" from relevant framework		In accordance with the terms of the Framework Agreement	In accordance with the terms of the Framework Agreement

- 6.5 Where a contract with a value above £25,000 and below the procurement threshold is openly advertised the Responsible Officer must ensure the advert is published on Contracts Finder. Where a contract value exceeds the Procurement Threshold and is openly advertised the Responsible Officer must ensure the advert is published on Find A Tender. The Responsible Officer should provide the relevant details to Assistant Director of Commissioning and Procurement (procurement.mailbox@cumberland.gov.uk) to ensure this is complied with.

Selection and Award Criteria for Tenders

- 6.6 The Responsible Officer must use appropriate criteria to select Candidates (where a two- stage tender process is used) and award the contract. Where the Regulations apply, these must comply with the Regulations.
- 6.7 The Responsible Officer must ascertain the standards necessary to properly define the subject matter of the contract, having regard to any relevant British, European or international standards. The Assistant Director of Commissioning and Procurement must be consulted if it is proposed to use any standards other than European Standards.
- 6.8 The Responsible Officer must define the award criteria that are appropriate to the procurement in order to secure value for money. The criteria must be one of the following:

- 6.8.3 Lowest Price;
- 6.8.2 Highest Price: where payment is to be received by the Council); or
- 6.8.3 MEAT (Most Economically Advantageous Tender): where considerations other than price also apply. This is the only award criteria permissible under the Regulations.

6.9 If using a Framework Agreement then the award criteria must be in accordance with the defined 'call off' process.

Invitations to Tender

6.10 An invitation to tender must state that the Council reserves the right to reject a tender that is not received by the date and time stipulated in the invitation to tender. A tender which contravenes the requirements as to date and time for submission must not be considered without the prior approval of the Director of Business Transformation and Change and Monitoring Officer and must not be considered in any circumstances if it is received after the other tenders have been opened.

6.11 All invitations to tender must include the following:

- 6.11.1 A specification to describe the Council's requirements in clear sufficient detail to enable the submission of competitive offers.
- 6.11.2 The contract terms and conditions unless emphatic market practice is that supplier's terms are used, in which case the requirement is that they are supplied as part of the tender.
- 6.11.3 A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the Candidate to any other party (except where the disclosure is made in confidence for a necessary purpose).
- 6.11.4 A requirement for Candidates to complete fully and sign all tender documents including a form or tender and certificates relating to canvassing and non-collusion.
- 6.11.5 Notification that tenders are submitted to the Council on the basis that they are compiled at the Candidate's expense.
- 6.11.6 A description of the award procedure (selection and award) and unless defined in a prior advertisement a definition of the Award Criteria. Where the criterion of MEAT is used, it must be further defined by reference to sub-criteria which may only refer to considerations relevant to the award of the contract. Award criteria must be defined in objective terms and wherever possible in descending order of importance.
- 6.11.7 Unless the tender is sought in accordance with an electronic procurement process approved by the Assistant Director of Commissioning and Procurement, a statement that tenders submitted by fax or other electronic means will not be considered.
- 6.11.8 A notice stating that the Council is not bound to accept any tender.
- 6.11.9 A notice stating that the Council is not obliged to enter into a contract as a result of a tender.

Contract Documents

6.12 All Relevant Contracts must be in writing.

6.13 All Relevant Contracts must as a minimum specify in writing:

- 6.13.1 The Works, Supplies or Services to be supplied.

- 6.13.2 The price and when it will be paid, including any arrangements for additional expenditure, disbursements etc.
 - 6.13.3 The time or times within which the contract is to be performed.
 - 6.13.4 The provisions for the Council to terminate the contract.
 - 6.13.5 A clause prohibiting the Supplier from transferring or assigning, directly or indirectly, any portion of his/her contract without the written permission of the Council, or sub-letting any portion of his/her contract other than that which is customary in the trade or profession concerned.
 - 6.13.6 A clause empowering the Council to terminate the contract and requiring the Supplier to provide an indemnity to the Council to cover all losses suffered by the Council resulting from fraud or an offence under the Bribery Act 2010 (or any statutory modification or replacement of this Act) in relation to a contract, committed by a Supplier or one of his/her employees or agents
 - 6.13.7 A clause providing for payment of undisputed invoices within 30 days by the Council, Contractors and Sub-Contractors which complies with Regulation 113 of the Regulations
 - 6.13.8 For Contracts procured using the Regulations any specific terms required to be included in the Contract under the Regulations.
- 6.14 All transactions must use an appropriate form of contract approved by a suitably qualified officer in Legal Services.
- 6.15 Legal Services must be instructed prior to the start of a tender exercise to produce an appropriate form of contract where:
- 6.15.1 The Total Value exceeds £100,000; or
 - 6.15.2 The arrangement is for leasing arrangements; or
 - 6.15.3 The Responsible Officer is proposing to use a Contactor's own terms and the value exceeds £50k and/or includes the Council providing an indemnity;
 - 6.15.4 The contract is unusual or complex in any other way.
- 6.16 Legal Services must also be consulted on the terms of any **external framework** agreement in which the Council is proposing to participate with a view to procuring Supplies, Works or Services. Consultation with legal is deemed to have taken place where the framework is a government approved frameworks or frameworks which have been created by other local authorities or long standing pan buying organisations with a strong track record of robust compliance; all of which create a direct relationship between the provider and the Council (the use of Neutral Vendors do not necessarily create a direct relationship between the provider and the Council).

Bonds and Parent Company Guarantee

- 6.17 The Responsible Officer must in consultation with the Chief Finance Officer determine whether any additional security such as a bond or parent company guarantee may be required from the contractor who is awarded the contract. If additional security may be required, this must be highlighted in the tender documents, using an appropriate form of words approved by Legal Services.

Shortlisting

- 6.18 Any shortlisting must have regard to the financial and technical standards relevant to the contract. For contracts above the Procurement Threshold the Regulations must be followed.

Submission, Receipt, and Opening of Quotes or Tenders

- 6.19 Candidates must be given an adequate period in which to prepare and submit a proper quotation or tender consistent with the complexity of the contract requirement and the law. Officers should have regard to policy commitments made in relation to procurement including the Third Sector Compact. Where the Regulations lay down minimum timescales these must be complied with.
- 6.20 The Responsible Officer is responsible throughout the procurement process for safeguarding its security, confidentiality and integrity.
- 6.21 The Assistant Director of Commissioning and Procurement and officers authorised by them are authorised to open tenders that have been received on the procurement portal, the Responsible Officer is authorised to open tenders that have been received by other authorised electronic method RFQ, quotes or tenders.
- 6.22 Responsible Officers are not permitted to carry out a procurement using physical tender documents,

All procurements

- 6.23 Tenders and quotations received after the specified closing date should be held unopened until the award has taken place. Once an award has taken place the Responsible Officer must inform the Candidate that their tender or quotation was disqualified for being received after the closing date or time.

Evaluation

- 6.24 Apart from the debriefing required or permitted by these CPRs the confidentiality of tenders and quotations and the identity of Candidates must be preserved at all times.
- 6.25 Tenders must be evaluated strictly in accordance with the Award Criteria. During this process the Responsible Officer must ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies in tenders are examined and resolved satisfactorily.
- 6.26 The arithmetic in compliant tenders must be checked. If arithmetical errors are found they should be notified to the Candidate. A Candidate who has made an arithmetical error must be permitted to correct the error if they choose to.
- 6.27 A Candidate who has made an error of omission must not be permitted to amend their tender and must be asked to confirm their tender or withdraw it without advice from procurement team.

Clarification of Tenders

- 6.28 These CPRs permit officers to provide clarification in writing of an invitation to tender to potential or actual Candidates.
- 6.29 Where a Candidate raises a question about an invitation to tender any response should be provided to all Candidates provided that the anonymity of the Candidate who raised the query is protected.

Post Tender Discussions

- 6.30 Discussion with Candidates after the submission of tenders with a view to obtaining adjustments in price, delivery or content must only take place in exceptional circumstances and with the approval of the Director of Business Transformation and Change following consultation with the Monitoring Officer. Discussion must be conducted by a team of at least two officers.
- 6.31 Post tender discussion of a contract procured under the Regulations may only be undertaken on the grounds permitted in the Regulations.
- 6.32 Where any post tender discussion would result in a material modification to a Relevant Contract (including to the specification) the contract must not be awarded but must be re-tendered.

Authorisation to Award a Contract

- 6.33 The Persons and bodies authorised to award Contracts are set out in the table below.

Total Contract Value	Decision Maker
£0 - £1,000,000	Relevant Director
£1,000,001 - £5,000,000	Relevant Executive Councillor
£5,000,001 and above	Executive except as provided below
Contracts of any value the budget for which has been wholly included in the approved Capital Programme	Relevant Director
Contracts for Consultancy over £250,000) and no wholly externally funded budget	Executive

- 6.34 The award of any contract which is a Key Decision which was not taken at the permission to procure stage must include within the report to the decision maker the following information, if applicable:
- 6.34.1 The price and details of the budgetary provision.
- 6.34.2 The number of tenders received.

- 6.34.3 The tendering process used.
 - 6.34.4 The award criteria.
 - 6.34.5 A risk assessment and risk management arrangements.
 - 6.34.6 TUPE implications.
 - 6.34.7 Recommendation of award.
 - 6.34.8 Contract monitoring and management arrangements.
 - 6.34.9 Any impact on the local economy, suppliers based in Cumbria and the third sector.
 - 6.34.10 Legal finance and procurement
- 6.35 Where a number of similar contracts are recommended to be awarded on or around the same time a composite report may be used.

Contracts for Legal Advice and/or Services

- 6.36 Contracts for the instruction of counsel or the procurement of external legal advisers may only be awarded by the Monitoring Officer or a solicitor authorised by the Monitoring Officer to award such a contract.

Providing Services to Other Organisations

- 6.37 Where a Director proposes to apply to provide services to another organisation Legal Services must be consulted about the terms and conditions on which the services are to be provided and regard had to the advice received.
- 6.38 As set out in Part 3 Section 6 Finance Procedure Rules of this Constitution, any indemnity required to be provided by the Council must be approved by the Monitoring Officer and Section 151 Officer before a contract is entered into.

Notification of Award

- 6.39 All contract award key decisions taken by Executive and Chief Officers are subject to scrutiny under the Council's procedures for call in set out in Part 3 section 5 'Overview and Scrutiny Procedure Rules of this Constitution.
- 6.40 The successful Candidate must be notified that contract award is subject to call in and award must not be confirmed until the call in period has expired, or if the decision is called in the procedures following call in have been completed.
- 6.41 Where the award of a contract or Framework Agreement is subject to the Regulations the procedures for notification of Candidates and a standstill period must be followed in respect of the award.
- 6.42 If an award decision is challenged in any way the Responsible Officer must not proceed with the award of the contract and must refer immediately to Legal Services.
- 6.43 Where a contract with a value above £25,000 and below the procurement threshold is awarded the Responsible Officer must ensure the award is published on Contracts Finder. Where a contract is awarded and the value exceeds the procurement threshold the Responsible Officer must ensure the award is published on Find A Tender. The responsible officer should provide the relevant details to

Assistant Director of Commissioning and Procurement to ensure this is complied with.

6.44 In addition to the above requirements, within 30 days of award of the contract, the Responsible Officer must arrange for details of the award of any contract with a Total Value over £50,000 to be included in the Contracts Register (which is held by the Assistant Director of Commissioning and Procurement). The details that must be included are:

6.44.1 Start date and duration of the contract;

6.44.2 Supplier;

6.44.3 Title of the contract;

6.44.4 Any contractual provision for extension; and

6.44.5 Internal contact name and email address

7 Contracts and Contract Management

Contract Formalities

7.1 Contracts must normally be completed as follows:

Total Contract Value	Method of Completion	Authorised Officer
£0 - £50,000	Signature	Officer authorised by relevant Director
£50,001 - £250,000	Signature by two officers Sealing (strategically or politically important contracts or those requiring a 12 year limitation period)	Officers authorised by relevant Director Officer authorised by the Monitoring Officer to witness the seal
£250,001 and above	Sealing	Officer authorised by the Monitoring Officer to witness the seal

7.2 Any arrangement which is strategically or politically important or requires the Council to have the benefit of a twelve year limitation period for taking legal action on the contract must be completed under seal regardless of value.

7.3 Electronic signatures are permitted using Docusign or other approved signing platform (if available) for those contracts which do not require sealing in accordance with these CPRs.

Nominated Sub-Contractors

- 7.4 Where a sub-contractor or supplier is to be nominated by the Council to a main contractor the Responsible Officer must invite tenders for the nomination in accordance with these CPRs. The invitation to tender should include the requirement for the sub-contractor to enter into a collateral warranty in favour of the Council.
- 7.5 It must be a condition of the engagement by the Council of any person (not an employee of the Council) to supervise a contract that in relation to such contract he shall comply with the CPRs as if he were an officer of the Council.

Contract Management

- 7.6 Directors are responsible for ensuring that all contracts relating to functions for which they are responsible are managed in accordance with a risk and contract management framework appropriate to the risk, value and impact of the contract. Directors are responsible for ensuring that these arrangements are kept up to date for the life of the contract.
- 7.7 For every contract managed in their directorate Directors are responsible for appointing a Responsible Officer, at an appropriate level for the risk, value and impact of the contract, to manage the contract.
- 7.8 In preparing the risk and contract management arrangements for a contract, and managing the contract, the Responsible Officer should follow the procedures set out in the Guidance.
- 7.9 Directors are responsible for identifying significant contracts in their Directorate and ensuring that they are maintained in a corporate register of significant contracts.
- Significant Contracts are defined as those few, but important contracts critical to the Council's business objectives, financial stability and/or reputation, such as:
- 7.9.1 contracts critical to the Council's delivery of statutory duties;
 - 7.9.2 contracts that pose significant risk (reputation and/or financial) and/or would have a significant impact in the event of relationship breakdown or supplier failure;
 - 7.9.3 contracts that, in the context of the Directorate budget and its ordinary contracts, are of significant value.
- 7.10 Directors are responsible for ensuring that Significant Contracts managed in their Directorate are regularly reviewed in their Management Team and for making an exception report with an action plan to the Senior Leadership Team on at least a quarterly basis.
- 7.11 The Chief Finance Officer is responsible for making a report at least annually to the Senior Leadership Team of the issues raised with Significant Contracts during the year and an assessment of the implementation of actions included in Directorate exception report action plans.

Modification of Contracts during their term

- 7.12 On the application of a Director, the Director of Business Transformation and Change in consultation with suitably qualified legal, finance and procurement

officers is authorised to approve modifications to contracts during their term. Please contact procurement.mailbox@cumberland.gov.uk for the most up to date form which also details the process to be completed.

- 7.13 Where the contract has been procured under the Regulations a contract may only be modified if the modification may be made under the Regulations and is made in compliance with the Regulations.
- 7.14 Finance and legal consultation may not be required where a modification includes an extension to the term or any other variation to the contract that has been provided for in the terms and conditions and the value of the extension was included in the original procurement and is within the services budget.
- 7.15 All modifications of contract must:
- 7.15.1 Be recorded in writing and a record retained in line in accordance with the Corporate document retention policy; and
 - 7.15.2 Be signed or sealed in accordance with the terms of the contract.
 - 7.15.3 Modifications of contracts where the Total Value of the contract exceeds £100,000 must be referred to Legal Services to draft a Deed of variation to the contract.

8 Glossary of Terms used in CPRs

Accountable Body	The arrangement whereby Cumberland Council has agreed to accept responsibility for the obligations set out in the terms of any funding granted to a third party organisation.
Asset	Refers to any property of Cumberland Council, but does not include, for the purposes of the Contract Procedure Rules, land and buildings or rights relating to land and buildings.
Award Criteria	Has the meaning given in the Public Contracts Regulations 2015
Candidate	Has the meaning given in the Public Contracts Regulations 2015.
Consultant	An individual or firm (not being a firm of solicitors or a solicitor or barrister) procured to provide professional services, including advice.
Contractor	Has the meaning given to the definition "economic entity" in the Public Contracts Regulations 2015
Contracts Register	Cumberland Council's database of contracts.
Procurement Threshold	The financial threshold at which contracts must be procured using the Regulations.

Exemption	A disapplication of the Contract Procedure Rules.
Framework Agreement	Has the meaning given in the Public Contracts Regulations 2015 (notwithstanding that a framework arrangement can be established for Supplies, Services and Works below the threshold applicable to the Regulations).
Procurement Guidance	Cumberland Council's Commissioning/ Procurement Cycle and Process Mapping Guidance (including relevant internal mini gateway review procedures, where required) or any replacement of such Guidance which is published on the Procurement section on the Council's intranet
Lead Body	The arrangement whereby Cumberland Council is the applicant and/or recipient of an external grant or other funding for a special purpose.
Partnership Arrangements	Non-contractual arrangements between Cumberland Council and one or more third parties to deliver common functions in collaboration with each other.
Regulations	Means the Public Contracts Regulations 2015 as modified from time to time including by decisions of the Courts. For public concessions contracts Regulations means the Public Contracts Regulations 2016 as modified from time to time or replaced.
Relevant Contract	Any arrangement, including Framework Agreements made by or on behalf of Cumberland Council for the carrying out of Works or for the supply of Supplies or Services, or the disposal of an Asset, unless the arrangement is subject to an Exception in these Rules.
RFQ	Request for Quotation
Responsible Officer	The Officer who has the lead responsibility for the commissioning, procurement and/or management of a Relevant Contract.
Services	Has the meaning given in the Public Contracts Regulations 2015
Social and Other Specific Services	Has the meaning given in the Public Contracts Regulations 2015
Supplies	Has the meaning given in the Public Contracts Regulations 2015
Tender Receipt Log	The formal record of tenders received by Cumberland Council.

Total Value	Is the financial value of a Relevant Contract as more particularly defined in the Public Contracts Regulations 2015 The Total Value of a Relevant Contract always includes the value of any modification to a Relevant Contract.
Works	Has the meaning given in the Public Contracts Regulations 2015