

Contract Procurement Rules - Proposed amendments

It is proposed to update the CPRs (current version 2.5) in the following six areas, as well as any ongoing administrative amendments (such as job titles) and other minor amendments.

- A.** Modern Slavery
- B.** Tax implications
 - 1. Construction Industry Scheme (CIS)
 - 2. IR35
 - 3. Reverse charge of VAT
- C.** Accessibility standards
- D.** Carbon neutral
- E.** Obtaining quotes
- F.** Disposal of council assets

A. To include the below as Section 6. MODERN SLAVERY

Section 6 - Proposed

6. MODERN SLAVERY

6.1 The Modern Slavery Act 2015 was put in place to tackle modern slavery, defined in the act as slavery, servitude, forced or compulsory labour, human trafficking and exploitation.

6.2 While the council is not an in-scope organisation for the purpose of the act, officers should ensure that proportionate due diligence is undertaken to certify that council-appointed contractors do not participate in modern slavery, either directly or within their supply chains.

B. To include the below as Section 7. TAX IMPLICATIONS, comprising three sub sections, Construction Industry Scheme (CIS), IR35 and Reverse charge of VAT

Section 7 - Proposed

7. TAX IMPLICATIONS

7.1 Construction Industry Scheme (CIS)

7.1.1 Under the Construction Industry Scheme (CIS), the council is required to deduct money from a subcontractor's payments and pass it to HMRC.

7.1.2 The deductions are considered an advance payment towards the subcontractor's tax and National Insurance and are an effort by HMRC to protect construction workers from false employment and minimise tax evasion in the construction industry.

7.1.3 Officers will need to ensure when setting up a new contractor / sub contractor on the councils payment system that all CIS related information is provided to the accounts payable team in order to verify the details.

7.1.4 When receiving invoices for works where CIS deductions are being made, a breakdown of labour and materials should be provided, with evidence of the materials if possible.

7.2 IR35

7.2.1 IR35 relates to off-payroll working, this is where a supplier is operating and providing services for the council via an intermediary, such as a limited company, and were it not for that arrangement, they would be considered an employee and within IR35. It is the responsibility of the council to determine if IR35 applies or not. If it does apply the council (or fee payer if via an agency) would be responsible for making employment tax and National Insurance deductions.

7.2.2 HMRC has developed a toolkit in determining if a supplier is in scope of IR35 but the key considerations are:

7.2.2.1 Does the supplier have to carry out the work personally, as oppose to having the option of sending a suitably qualified / experienced replacement from within the same company?

7.2.2.2 Does the council have to provide the supplier with work, and/or does the supplier have to carry out any work that the council requires?

7.2.2.3 Does the council have control over how, where and when the supplier carries out the work?

7.2.3 While the HMRC toolkit and questionnaire is designed to establish the IR35 position, evidence must be retained to justify how that decision has been reached.

7.2.4 If the answers to 7.2.1.1, 7.2.1.2, and 7.2.1.3, are yes, the supplier is likely to be in scope of IR35, they would then be outside the scope of the CPRs as this would be considered an employment contract (either directly with us or through an agency or other employer), see CPR 2.1 (Scope). If the supplier is outside the scope of IR35 they should be considered a consultant and as such are bound by these CPRs, i.e. competitive quotes must be obtained, any subsequent appointments must be in conjunction with the councils consultancy terms and conditions, unless agreed otherwise by the relevant Head of Service.

7.3 Reverse charge of VAT

7.3.1 A domestic reverse charge which affects the way VAT is collected and paid in the building and construction industry comes into effect on 1 October 2020. The changes mean the customer receiving the service will have to pay the VAT due to HMRC instead of paying the supplier. This will impact on procurements where the council is not the end user of the works. If you think this may affect you then contact the Accountancy service for more information.

C. To include the below as Section 8. ACCESSIBILITY STANDARDS

Section 8 - Proposed

8. ACCESSIBILITY STANDARDS

8.1 On 23 September 2018 the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 came into effect. These build upon existing obligations under the Equality Act 2010. Any procurement that will result in a public facing website where the council or a supplier on our behalf is presenting information relating to the council or services the council offer, must comply with the Act and Regulations and must meet the new accessibility standards. The Communications team should be consulted.

D. To include the below as Section 9. CARBON NEUTRAL

Section 9 - Proposed

9. CARBON NEUTRAL

9.1 On 18 September 2019 Waverley Borough Council declared a climate emergency across the borough with an ambition of being a carbon neutral council by 2030. As such for every procurement within the scope of these CPRs, the environmental impact must be considered, as well as steps taken to minimise / offset the carbon impact where applicable, with a focus on renewable energy or low carbon technologies.

E. To amend the current requirement of seeking Quotes to Obtaining Quotes (multiple places within the document)

Current

- 19.6 For purchases valued from £5,000 - £24,999
- a) minimum of three quotes must be sought and obtained; fewer than three is required if written approval is given by the relevant head of service
- 19.7 For purchases valued from £25,000 - £99,999
- a) minimum of three quotes must be sought.
- 19.8 For purchases valued over £100,000
- a) minimum of 4 bidders must be invited to submit a response.

Proposed

19.6 For purchases valued from £5,000 - £24,999

a) Either an Open tender or a minimum of three quotes must be sought and obtained; fewer than three is required if written approval is given by the Procurement Officer.

19.7 For purchases valued from £25,000 - £99,999

a) Either an Open tender or a minimum of three quotes must be sought and obtained.

19.8 For purchases valued over £100,000

a) Either an Open tender or a minimum of 4 bidders must be invited to submit a response and a minimum of 3 bids shall be received.

F. To amend the current wording relating to the DISPOSAL OF COUNCIL ASSETS, to reflect current working practices, remove reference to redundant groups, such as Asset Advisory Group and to better align with the scheme of delegation.

Current

26. DISPOSAL OF COUNCIL ASSETS

Land and buildings

26.1 This section refers to disposals that are subject to market conditions.

26.2 Disposal (including sales, leases, easements and wayleaves) of land and buildings owned and funded by the General Fund shall first be valued by a qualified valuer. The Director of Finance and Resources shall report to the Corporate Management Team to determine whether, in the light of the valuation and location, there are strategic issues, risks or conditions of disposal relative to the Asset Management Plan (or equivalent) and Corporate Plan. If such considerations exist, the disposal shall be referred to the Asset Advisory Group, which will report its views and recommendations to the Corporate Management Team.

26.3 Disposal (including sales, leases, easements and wayleaves) of land and buildings owned and funded by the Housing Revenue Account, with the exception of sales under the Right to Buy Scheme, shall first be referred to the Head of Strategic Housing who shall consult the relevant director (or otherwise as may be specified in the Scheme of Delegation) to consider any risks associated with the disposal and the strategic and long-term issues in the light of the Asset Management Plan (or equivalent). The Head of Strategic Housing shall obtain a current valuation of the land and/or buildings and report his views and recommendations to the council's Corporate Management Team.

26.4 Any resultant proposal to dispose of the land and/or buildings shall then be discussed by the chairman of the Asset Management Team (or equivalent) or the Head of Strategic Housing (as appropriate) with the S151 Officer and the relevant portfolio holders responsible

for the services in question and the management of the council's assets. A report outlining the reasons why disposal is recommended, and showing how it would be in accordance with the Asset Management Plan (or equivalent) and the proposed method of disposal of the land and/or buildings shall be presented to the Executive for approval.

Other council assets

26.5 Proposed disposals of other council-owned assets, including surplus or obsolete furniture or equipment, shall be discussed with the relevant Head of Service to obtain agreement that there is no further need for the items. Items shall first be offered for transfer to other sections or departments of the council.

26.6 The Asset Advisory Group will be consulted on the disposal of assets where deemed appropriate by the relevant head of service.

26.7 Any items that remain for disposal shall be sold at the highest price possible. An estimated sale value shall be agreed by the relevant Head of Service and the S151 Officer or Deputy S151 Officer, taking note of any value included in the council's accounts and any professional valuations as may be deemed appropriate by the S151 Officer. A note shall be made and retained on file as evidence to support the adopted approach and the valuation. The method of disposal shall be agreed with the S151 Officer.

26.8 If deemed appropriate by the relevant Head of Service and the S151 Officer, items may either be

26.8.1.1 sold to a member of staff at an agreed price (where the item is of little or no intrinsic value); or

26.8.1.2 offered for sale to all members of staff at the price agreed; or

26.8.1.3 advertised for sale in local papers or relevant trade magazines, as appropriate, at the price agreed; or

26.8.1.4 sold via an open electronic auction, run on the council's E-tendering portal where appropriate providing its use is approved by Legal and the S151 officer. The relevant Head of Service and the S151 Officer may set a reserve price below which an item may not be sold without the approval of the relevant portfolio holder responsible for the management of the council's assets.

26.9 If it is considered that there is a ready market for the item(s) in question, then sealed bids shall be invited from Contractors or organisations that are identified as having a potential interest. The minimum number of bids sought shall be determined in accordance with the thresholds contained in CPR 15.5, 15.6, 15.7 and 15.8.

26.10 All sealed bids shall be treated as being tenders and their opening evaluation and acceptance shall be in accordance with CPRs 17, 18 and 19.

26.11 Where there is the option of trading an old piece of equipment in part-exchange for a new piece, this option shall be expressly mentioned in any invitation to tender or request for quotation.

26.12 Disposal of any stocks and stores that are recorded in the council's accounts shall be disposed of after obtaining the agreement in writing of the relevant director and the S151 Officer and shall be undertaken in accordance with the provisions of the council's Financial Regulations.

Proposed

30. DISPOSAL OF COUNCIL ASSETS

Land and buildings

- 30.1 This section refers to disposals that are subject to market conditions.
- 30.2 Disposal includes sales, leases, easements and wayleaves of land and property owned by the Council with the exception of sales under the Right to Buy Scheme.
- 30.3 A report outlining the reasons for disposal shall be prepared, including how it accords with Asset Management Plans (or equivalent), and the proposed method of disposal.
- 30.4 Disposals will be evaluated against the Council's criteria for disposal.
- 30.5 Land and property shall be valued by a qualified valuer.
- 30.6 Disposals valued under £250,000 will be administered by the Head of Finance and Property under the Scheme of Delegation.
- 30.7 Disposals valued over £250,000 will be put to the Investment Advisory Board for evaluation and, if agreed, recommended to Council and Executive for approval to sell.
- 30.8 Disposal of land and property owned and funded by the Housing Revenue Account shall first be referred to the Head of Housing Operations who will evaluate the disposal in the light of the Housing Asset Management Plan. Disposals will then be recommended to Council and Executive for approval to sell.

Other council assets

- 30.9 Proposed disposals of other council-owned assets, including surplus or obsolete furniture or equipment, shall be discussed with the relevant Head of Service to obtain agreement that there is no further need for the items.
- 30.10 Items shall first be offered for transfer within the council.
- 30.11 Any items that remain for disposal shall be sold at the highest price possible. Professional valuations shall be sought as appropriate and estimated sale values shall be agreed by the relevant Head of Service and the Head of Finance and Property. The method of disposal shall be agreed with the S151 Officer.
- 30.12 If deemed appropriate by the relevant Head of Service and the S151 Officer, items may either be:
- a) offered for sale to all members of staff at an price agreed; or
 - b) advertised for sale, at an price agreed; or
 - c) sold via an open electronic auction, run on the council's E-tendering portal, where appropriate providing its use is approved by Legal and the S151 officer. The relevant Head of Service and the Head of Finance and Property may set a reserve price below which an item may not be sold without the approval of the relevant portfolio holder responsible for the management of the council's assets.
- 30.13 If it is considered that there is a ready market for the item(s) in question, then sealed bids shall be invited from Contractors or organisations that are identified as having a potential interest. The minimum number of bids sought shall be determined in accordance with the thresholds contained in CPR 19.5, 19.6, 19.7 and 19.8.
- 30.14 All sealed bids shall be treated as being tenders and their opening evaluation and acceptance shall be in accordance with CPRs 21, 22 and 23.
- 30.15 Where there is the option of trading an old piece of equipment in part-exchange for a new piece, this option shall be expressly mentioned in any invitation to tender or request for quotation.

30.16 Disposal of any stocks and stores that are recorded in the council's accounts shall be disposed of after obtaining the agreement in writing of the Head of Finance and Property and shall be undertaken in accordance with the provisions of the council's Financial Regulations.