

CPR Version 4 Tracked Amendments 2022

Key

 Highlighted in yellow shows new wording

Existing CPR V3 Clause wording	Amended wording for V4	Comments / Rationale for the amendment
	Deleted references to EU, OJEU throughout the document. Amended 'OJEU' to 'Above Threshold'	Due to UK leaving the EU
Introduction		
<p>1.4. The Corporate Procurement Unit (CPU) must be contacted before any formal action is taken in respect of a goods or service activity exceeding £75,000 in total Contract value.</p>	<p>1.4. The Corporate Procurement Unit (CPU) must be contacted before any formal action is taken in respect of a goods or service activity exceeding £75,000 in total Contract value, including where action is taken to modify or extend an existing contract and the modification or extension will cause the overall contract value to exceed £75,000 (see CPR 13 below).</p>	Additional wording on the new modification clause
<p>1.8. Evaluation criteria of all Authority led exercises over £25,000 must consist of at least 70% based on Price. Where this is inappropriate the agreement of the Director of Corporate Services must be sought. (See CPR 8.3.1 for further details).</p>	<p>1.8. Evaluation criteria of all Authority led exercises over £25,000 must consist of at least 60% based on Price. Where this is inappropriate the agreement of the Director of Corporate Services must be sought. (See CPR 8.3.1 for further details).</p>	Geldards – advised of the Welsh Government guidance to give at least a 10% weighting to social value. This leaves just 20% for quality at the current 70/30 ratio. Bethan Lloyd from Geldards advised we will need to think about using some scoring safeguards (e.g. a threshold pass mark for quality) or some contractual safeguards to ensure you get the quality needed, and to avoid a situation where the contract must go to a winning bid which is cheap but of very poor quality. NB: We

		<p>already include minimum score thresholds where appropriate to do so.</p> <p>Agreed to modify to 60/40 ratio in meeting with Section 151 and Monitoring Officer</p>
<p>Openness and Transparency</p>		
<p>3.1. In order that all potential suppliers are treated fairly, equally and in a manner that does not discriminate, officers should ensure that they abide by the EC Treaty principles which include openness, transparency, proportionality and non-discrimination.</p>	<p>3.1. Officers should ensure that they treat all potential suppliers equally and without discrimination and that procurement exercises are run in a transparent and proportionate manner.</p>	<p>Geldards - Advised the duties of equal treatment, non-discrimination, transparency and proportionality no longer apply in relation to below threshold procurements, but recommended that the Council applies a requirement to observe these principles across the board because it will help to keep bidders happy and help to ensure that the correct behaviours become ingrained in those officers carrying out procurement activity.</p>
<p>General Data Protection Regulation (GDPR)</p>		
<p>4.12. The Lead Officer must consider whether the supplier(s) will be provided with Personal Data by the Council or collect personal data on our behalf in line with the Data Protection Act 2018/General Data Protection Regulation. If this is the case the Information Governance and Complaints Manager must be consulted for further guidance.</p>	<p>4.12. The Lead Officer must consider whether the supplier(s) will be provided with Personal Data by the Council, collect personal data on our behalf and/or process Personal Data in any other way, as defined by the Data Protection Act 2018/UK General Data Protection Regulation. If this is the case the Information Governance Manager must be consulted for further guidance.</p>	<p>New wording as advised by John Tillman</p>

<p>4.12.1. If the product/service being procured requires the use of new technologies in the collection/use of Personal Data that may be likely to result in a high risk to the rights and freedoms of the individuals a Data Protection Impact Assessment must be undertaken to identify and reduce any privacy risks. The Information Governance and Complaints Manager must be contacted for further guidance.</p>	<p>4.12.1. If the product/service being procured requires the use of innovative new technologies in the processing of Personal Data and/or may otherwise be likely to result in a high risk to the rights and freedoms of the individuals, a Data Protection Impact Assessment must be undertaken to identify and reduce any privacy risks. The Information Governance Manager must be contacted for further guidance.</p>	
<p>4.13. Any Contracts where the Contractor makes a profit from the works/service is covered by the Concession Contracts Regulations 2016 (CCR 2016). The CCR has a higher threshold for its application (Please see procurement pages on the Intranet for the latest threshold). The Lead Officer must contact the Corporate Procurement Unit for guidance and support on the application of CCR.</p>	<p>4.13. Any Contracts where the Contractor provides the works/services on behalf of the Authority and exploits those works or services for its own benefit may be covered by the Concession Contracts Regulations 2016 (CCR 2016) rather than the Public Contracts Regulations 2015. The CCR has a higher threshold for its application (Please see procurement pages on the Intranet for the latest threshold). The Lead Officer must contact the Corporate Procurement Unit for guidance and support on the application of CCR.</p>	<p>As advised by Geldards</p>
<p>Aggregation</p>		
<p>6.1.3. Where the Lead Officer is unable to determine the value of a proposed contract an estimate shall be made on the basis of a 48 month contract period.</p>	<p>6.1.3. Where the Lead Officer is unable to determine the value of a proposed services contract an estimate shall be made on the basis of a 48 month contract period or, where the contract term will be less than 48 months, on the basis of the full term of the proposed contract.</p>	<p>As advised by Geldards</p>
<p>6.1.4. In estimating relevant contract values, officers shall have regard to the principle of aggregation. Repeat purchases of the same set of</p>	<p>6.1.4 In estimating relevant contract values, officers shall have regard to the principle of aggregation. Repeat purchases of similar</p>	<p>Geldards – advised the rules on contract valuation could be set out more fully here but they are rather</p>

<p>goods/services/works over a sustained period may exceed the Authority's or EU's threshold, and must be treated as one contract. (e.g. 48 monthly purchases at £4,000 per month equals £192,000 total contract value) and the appropriate Tender/EU procurement process must therefore be adhered to.</p>	<p>goods/services/works over a sustained period may amount to an aggregate requirement which exceeds the Threshold or any lower threshold of the Authority set out in these CPR's. You must apply the detailed rules set out in regulation 6 of the Public Contracts Regulations 2015 where the value is, or may be equal to or over the Threshold (e.g. a 12 month requirement for regular purchases made every few weeks or 48 monthly recurring purchases. The appropriate Procurement process must therefore be adhered to.</p>	<p>detailed. Geldards suggested the approach of cross-referencing regulation 6 to estimate the contract value, even for below-threshold procurements. However, Geldards advised there is no legal requirement to aggregate requirements provided you are below the public procurement threshold.</p> <p>Section 151 and Monitoring Officer confirmed this wording is to remain</p>
<p>Tenders</p>		
<p>7.2.1.3. In addition to any requirements under the Public Contracts Regulations 2015 a minimum 21 days public notice shall be given in www.Sell2Wales.gov.wales and, if considered appropriate by the Tender Evaluation Panel, in one or more appropriate local, regional and/or national newspapers, publications and/or trade journals, or other media that targets the relevant market for the particular contract.</p>	<p>7.2.1.3. In addition to any requirements under the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016, a minimum 21 days public notice shall be given in www.Sell2Wales.gov.wales and, if considered appropriate by the Tender Evaluation Panel, in one or more appropriate local, regional and/or national newspapers, publications and/or trade journals, or other media that targets the relevant market for the particular contract.</p>	<p>As advised by Geldards</p>
<p>7.3.1. Where the estimated value of a contract exceeds the current EU threshold, then the contract must be tendered in accordance with the UK's Public Contracts Regulations (2015) and these CPR's. In all such circumstances appropriate advice must be sought from the Corporate Procurement Unit.</p>	<p>7.3.1. Where the estimated value of a contract exceeds the current Threshold, then the contract must be tendered in accordance with the UK's Public Contracts Regulations 2015 or, as applicable, the Concession Contracts Regulations 2016, and also in accordance with these CPR's. In all such circumstances appropriate advice must be sought from the Corporate Procurement Unit.</p>	<p>As advised by Geldards</p>
<p>Evaluation Criteria</p>		

<p>8.3.1. Evaluation criteria of all Authority led exercises above £25,000 needs to ensure that at least 70% is based on Price. Where this is inappropriate then the agreement of the Director of Corporate Services must be sought in writing.</p>	<p>8.3.1. Evaluation criteria of all Authority led exercises above £25,000 needs to ensure that at least 60% is based on Price. Where this is inappropriate then the agreement of the Director of Corporate Services must be sought in writing.</p>	<p>As part of the wider review – proposed changing from the 70/30 split to 60/40.</p>
<p>Evaluation Panel</p>		
	<p>8.4.1 For all Tenders above the Procurement Threshold a Principal Procurement Officer from CPU will lead the Tender Evaluation Panel.</p>	<p>Additional wording following recent tender evaluations where it was advised that Principal Procurement Officers should be involved in high value tenders. This is now our policy</p>
<p>Insurances</p>		
<p>8.6 The Authority’s Head of Revenues and Financial Compliance shall be consulted to determine the appropriate type and level of Insurance Protection (e.g. Employers’ Liability, Professional Indemnity etc) to cover the Authority’s potential liability which must be maintained for the duration of the Contract/Framework</p>	<p>8.6 The Authority’s Risk Management Team shall be consulted to determine the appropriate type and level of Insurance Protection (e.g. Employers’ Liability, Professional Indemnity etc) to cover the Authority’s potential liability which must be maintained for the duration of the Contract/Framework</p>	<p>Updated wording to direct to the Risk Team</p>
<p>Net Zero Carbon / Sustainability</p>		
<p>Additional wording added</p>	<p>8.9 The Lead Officer shall include suitable provisions in the tender documentation as to how they can reduce the carbon impact of goods/services or works as appropriate.</p>	<p>New wording in accordance with the Net Zero Carbon</p>
<p>e-Tender</p>		
<p>No previous clause</p>	<p>9.1.1 However, if the contract value is above Threshold, you can only consider the late tender if every other tender received is ‘unsuitable’ (as defined in regulation 32(3) of the Public Contracts</p>	<p>As advised by Geldards</p>

	Regulations 2015) and provided you do not make any substantial alterations to the contract as advertised.	
Errors		
9.2.1. No adjustment or qualification to any tender(s) is permitted. Errors found during the examination of tenders shall be dealt with in one of the following ways:-	9.2.1. No adjustment or qualification to any tender(s) is permitted (save to the extent permitted when using the Competitive Dialogue procedure, or to the extent you have reserved the right to negotiate in the procurement of a concession contract). Errors found during the examination of tenders shall be dealt with in one of the following ways:-	Additional wording as advised by Geldards
9.6. For Contracts above the EU Threshold and subject to the Public Contract Regulations 2015 any award must be subject to a minimum standstill period of 10 calendar days between communication of intention to award decision and the start of the contract. CPU can offer guidance and templates.	9.6. For Contracts above the Threshold and subject to the Public Contract Regulations 2015 any award must be subject to a minimum standstill period of 10 calendar days between communication of intention to award decision and the award of the contract. CPU can offer guidance and templates.	As advised by Geldards amended our wording from start of contract to award of the contract.
Terms and Conditions		
10.3.7. In every written contract a clause shall be inserted requiring the contractor to comply with any relevant directives or regulations of the European Commission for the time being in force in the United Kingdom.	Removed this clause from Version 4	Geldards deleted clause due to UK's exit from EU
Contract Management		
11.1. After the Contract has been awarded a Contract Manager (if different to the Lead Officer) must be identified who will manage the day to day aspects of the contract for its term. An appropriate contract management plan must be agreed upon award and advice sought from CPU.	11.1. After the Contract has been awarded a Contract Manager (if different to the Lead Officer) must be identified who will manage the day to day aspects of the contract for its term. An appropriate contract management plan must be agreed upon award and advice sought from CPU. A Contract	Additional wording added to reflect new Guidance

	Management Guidance document is available on the Intranet	
Contract Modification		
11.2. When contracts are modified at any time during the contract term a new tender process will be required unless specific conditions as set on in the Public Contracts Regulations (2015) are met. Advice must be sought from CPU before proceeding under these conditions.		Remove this clause from this section as now covered in Clause 13.
Exceptions and Waivers to Requirements of Competition		
No previous wording	CPR 12 sets out the circumstances in which you are able to award a contract directly to a contractor without running a competition, also known as a Single Tender Action. Please also see CPR 13 which sets out the circumstances in which you are permitted to modify or extend the term or scope of an existing contract without running a new competition.	Geldards added this wording to the start of Clause 12
No previous wording	The Section 151 Officer and Monitoring Officer have delegated authority to the Head of Revenues and Financial Compliance and the Legal Services Manager to consider, and approve as required, exceptions and waivers to competition (clause 12) and modification of contracts (clause 13) up to the value of £75,000.	Geldards added this wording to the start of Clause 12
12.2. Head of Revenues and Financial Compliance Decision (Up to £25,000)	12.2. Head of Revenues and Financial Compliance & Legal Services Manager Decision (Up to £75,000)	Added in Rob Edgecumbe's role in approving exceptions and amended the value from £25,000 to £75,00 as agreed with Section 151 Officer and monitoring Officer.

<p>12.2.1.3. the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer are carried out by only one provider and where no reasonably satisfactory alternative is available;</p>	<p>12.2.1.3. the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer must be carried out by a particular provider because no reasonably satisfactory alternative is available;</p>	<p>Geldards added additional wording and made an amendment</p>
<p>12.3. Monitoring Officer and Section 151 Officer Decision (Above £25,000 and up to OJEU Threshold Value)</p>	<p>12.3. Monitoring Officer and Section 151 Officer Decision (Above £75,000 and up to Threshold Value)</p>	<p>Amended to reflect the new value thresholds.</p>
<p>12.3.1.3 the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer are carried out by only one provider and where no reasonably satisfactory alternative is available;</p>	<p>12.3.1.3. the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer must be carried out by a particular provider because no reasonably satisfactory alternative is available;</p>	<p>Geldards suggested amendment</p>
<p>12.4 Monitoring Officer and Section 151 Officer Decision (Above OJEU Threshold value)</p>	<p>12.4 Monitoring Officer and Section 151 Officer Decision (Above Threshold value) Exceptions and waivers over the Threshold value must be approved by department's DMT before the request is submitted via the online system.</p>	<p>New layer of approvals added in following discussion with Section 151 and Monitoring Officer</p>
<p>12.4.1. Where a Negotiated Procedure without Prior Publication is proposed (OJEU Procedure) the Lead Officer will be required to seek approval from the Monitoring Officer and Section 151 Officer.</p>	<p>12.4.1. Where a Negotiated Procedure without Prior Publication is proposed (see regulation 32 of the Public Contracts Regulations 2015) the Lead Officer will be required to seek approval from the Monitoring Officer and Section 151 Officer.</p>	<p>Geldards suggested amendment</p>
<p>12.4.1.1. Negotiated Procedure without Prior Publication can only be used in the following cases: - (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to</p>	<p>12.4.1.1 Negotiated Procedure without Prior Publication can only be used in the following cases: - (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to</p>	<p>Geldards suggested amendment</p>

participate have been submitted in response to an open procedure or a restricted procedure.	participate have been submitted in response to an open procedure or a restricted procedure, provided no substantial alternations are made to the contract as it was advertised.	
No previous clause	(d) where you require additional supplies from the original contractor as a partial replacement for, or an extension to, existing supplies or installations and a change of supplier would result in the Authority having to acquire supplies with different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Any contract awarded for this reason must not exceed 3 years without approval from the Monitoring Officer and Section 151 Officer.	Additional clause added to include another ground for using the Negotiated Procedure without Prior Publication – extract from Reg 72
12.5.1. The Section 151 Officer will prepare a retrospective report to the Authority’s Audit Committee for all Single Tender Actions (exceptions granted above £75,000 under clauses 12.2 or 12.3 above) and the subsequent procurement activity undertaken.	12.5.1. The Section 151 Officer will prepare a retrospective report to the Authority’s Audit Committee for all Single Tender Actions (exceptions granted above £75,000 under clauses 12.3 or 12.4 above) and the subsequent procurement activity undertaken	Amended to reflect clauses above
13. Modification or Extension of Existing Contracts		
No previous Clause	13.1 Provided the Lead Officer obtains the appropriate approval as set out in CPR 13.3, changes to an existing contract or framework above Threshold, or extend the term or scope of an existing contract, in any of the following circumstances:	As advised by Geldards and agreed by Legal

13.1.1. Where the original tender document or contract contained a clear, precise and unequivocal clause allowing for the change and setting out the circumstances in which the change may be made, provided the change does not alter the overall nature of the contract;

13.1.2. Where additional works, services or goods have become necessary and the following three conditions are satisfied:

(a) a change of contractor cannot be made for economic or technical reasons, such as for reasons of interchangeability or interoperability with existing equipment, services or installations supplied under the contract as originally awarded; and

(b) a change of contractor would cause significant inconvenience or substantial duplication of costs for the Authority; and

(c) any increase in price does not exceed 50% of the original contract value;

There is a requirement to publish details on the Find a Tender Service where you modify a contract relying on this exemption.

13.1.3. Where the modification is required as a result of circumstances which a diligent contracting authority could not have foreseen, provided the modification does not alter the overall nature of the contract and any increase in price does not exceed 50% of the original contract value;

There is a requirement to publish details on the Find a Tender Service where you modify a contract relying on this exemption.

13.1.4. Where the value of the modification is below the relevant Threshold for the contract, and also less than 10% of the original contract value (in the case of a contract for services or goods) or less than 15% of the original contract value (in the case of a contract for works), provided that the modification does not alter the overall nature of the contract;

13.1.5. Where the proposed modifications are not substantial, meaning that they do not do any of the following:

- (a) render the contract materially different in character;
- (b) introduce changes which, had they been included in the original procurement, would have allowed for the admission of other candidates, the acceptance of a different tender or attracted additional participants;
- (c) change the economic balance of the contract in favour of the contractor;
- (d) extend the scope of the contract considerably; or
- (e) replace the existing contractor (save as permitted by CPR 13.1.6);

	<p>13.1.6. Where the original contractor is replaced by a new contractor and either:</p> <p>(a) this is in accordance with CPR 13.1.1; or</p> <p>(b) the new contractor steps into the position of the old contractor as a result of a corporate restructuring, acquisition or insolvency, provided the new contractor meets the selection criteria set out in the original procurement exercise and provided there are no other substantial modifications to the contract.</p>	
<p>No previous clause</p>	<p>13.2. Provided the original value of the contract was below the relevant Threshold and provided you obtain the appropriate approval as set out in CPR 13.3, you can also make changes to an existing contract, or extend the term or scope of an existing contract, in any of the following circumstances:</p> <p>13.2.1. Where the need for a modification has been brought about by circumstances which could not have been foreseen.</p>	<p>As advised by Geldards and agreed by Legal</p>
<p>No previous clause</p>	<p>13.3. The approvals you need to make changes in accordance with either CPR 13.1 or CPR 13.2 are as follows:</p> <p>13.3.1. If the original value of the contract was £5,000 or less, provided the Lead Officer is satisfied that the modification represents value</p>	<p>Wording as advised by Geldards and agreed by Legal.</p> <p>Awaiting confirmation from Legal about approvals</p>

	<p>for money there is no requirement to obtain approval for modifications worth up to £5,000.</p> <p>13.3.2. If the original value of the contract was above £5,000 and the contract was awarded using a competitive procedure which fully complied with these Contract Procedure Rules, the Lead Officer must obtain approval from: (a) the Head of Revenues and Financial Compliance and Legal Services Manager if the value of the modification will not exceed £75,000; and (b) the Monitoring Officer and Section 151 Officer if the value of the modification will exceed £75,000; Where a series of modifications are made to a contract, for the purposes of working out which approval is required under CPR 13.3.2 the value of any previous modifications must be added to the original contract value.</p> <p>13.3.3. If the original value of the contract was above £5,000 and not awarded using a competitive procedure which fully complied with these Contract Procedure Rules, the Lead Officer must comply with Clause 12 – Exceptions and Waivers to Requirements of Competition.</p>	
<p>No previous clause</p>	<p>13.4. Modification Reporting</p> <p>13.4.1. All Modifications must be reported to CPU for consideration prior to submission for</p>	<p>Wording as advised by Geldards and agreed by Legal.</p>

	approval via the online Exception & Modification Reporting System.	
APPENDIX 1 - Definitions & Interpretations		
	Threshold The contract value for the type of contract concerned at which the Public Contracts Regulations 2015 or the Concession Contracts Regulations 2016 (as applicable) apply. These Thresholds are updated every two years	Geldards advised amended wording