

4.8 Procurement Procedure Rules

1. Introduction

- 1.1. The Contract Procedure Rules (CPRs) are established under section 135 of the Local Government Act 1972 and the Procurement Contract Regulations 2015. These rules govern the procurement of all supplies, services, and works for EMCCA, including EMCCA controlled bodies where EMMCA acts as a lead commissioner using external funds. These rules apply to all EMCCA officers, and third parties involved in procurement activities.
- 1.2. The procurement process must be designed to facilitate competition, optimise quality, and deliver value for money throughout the contract's entire life cycle. This depends on the nature of the procurement, its value, and any specific social interests the contract may attract.
- 1.3. To achieve these goals, all procurements must adhere to a specific legal framework and be based on the principles of equal treatment, transparency, and non-discrimination.
- 1.4. Where there is a discrepancy between these rules and any procurement legislation, the procurement legislation is the dominant authority.
- 1.5. Where there is a conflict between the procurement legislation and any other relevant legislation (as identified during procurement planning) the Monitoring Officer must be consulted immediately to carry out a legal, project risk assessment.
- 1.6. When designing a procurement process, consider Central Government guidance, including Procurement Policy Notes (PPNs) and the National Procurement Policy Statement (NPPS), for best practice. While these guidelines are generally not mandatory, they must be followed where specifically identified as such. For guidance on when and how to apply current PPNs and the NPPS, consult the Head of Procurement.

1.7. Failure to comply with any provisions of these CPRs, EMCCA's Constitution, or legal requirements may be reported to the Section 73 (S73) officer, Deputy S73 officer, or the relevant officer as appropriate. Depending on the nature of the non-compliance, disciplinary action may be taken.

2. Principles

2.1. All procurement procedures must:

- 2.1.1. Achieve optimal value for money.
- 2.1.2. Maintain transparency in operations.
- 2.1.3. Ensure fairness in all processes.
- 2.1.4. Adhere to the Public Contract Regulations 2015 (PCR).
- 2.1.5. Prevent non-commercial considerations from influencing contracting decisions.
- 2.1.6. Support all relevant EMCCA priorities and policies.
- 2.1.7. Comply with these CPRs.

3. What these rules govern.

- 3.1. any contract for the supply (for pecuniary interest), of goods, services or works, (not exempt / excluded within these CPRS) regardless of value,
- 3.2. using Frameworks or Dynamic Purchasing Systems,
- 3.3. collaborative procurements,
- 3.4. consultancy requirements,
- 3.5. equipment hires or lease through rental agreements,
- 3.6. disposal of assets.

4. Exemptions

- 4.1. These rules specifically relating to competitive processes do not apply to contracts that are classified as excluded as defined by the Public Contract Regulations 2015, including:
 - 4.1.1. Public contracts between entities within the public sector subject to meeting the tests within Regulation 12 of the PCRs.
 - 4.1.2. The acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property.
 - 4.1.3. Broadcasting time or programme provision via media service providers. Arbitration or conciliation services.
 - 4.1.4. Judicial proceedings before the courts. Legal advice in preparation of any judicial proceedings.
 - 4.1.5. Document certification and authentication services which must be provided by notaries.
 - 4.1.6. Legal services provided by trustees or appointed guardians.
 - 4.1.7. Financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments.
 - 4.1.8. Loans, whether or not in connection with the issue, sale, purchase or transfer of securities or another financial instrument.
 - 4.1.9. Employment contracts.
- 4.2. All other requirements of these CPRs, except for the competitive process, remain applicable to the aforementioned exemptions.

5. Waivers

- 5.1. Waivers from Contract Procedure Rules may be granted in exceptional circumstances, where this is needed it will be approved by the Head of Procurement, Monitoring Officer, S73 or Deputy S73 Officer and Chief Executive Officer.
- 5.2. If the value of the waiver is greater than the PCR threshold for Services and Supplies, then approval must be sought from the Procurement Assurance Group and be in line with the tests under Regulation 32 of the PCR.

- 5.3. A Waiver is approval that the CPR's cannot be followed for a reason that is out of EMCCA's control.
- 5.4. All Waivers from the CPR's must be recorded using the Waiver Form and approved prior to entering the contract.
- 5.5. Circumstances where time is lost through inadequate forward planning or unnecessary delays will not constitute a reason for a Waiver. Waivers cannot be approved retrospectively.
- 5.6. Waivers will only be approved as meeting any of the following criteria:
 - 5.6.1. Where there is only one supplier within the market
 - 5.6.2. Where the procurement activity is grant funded and the supplier is named as a condition of that funding
 - 5.6.3. Where an existing contract that is suitable for the services, supplies or works required is not used.
 - 5.6.4. Where EMCCA is buying goods on behalf of another organisation
 - 5.6.5. Where EMCCA is matching grant funding and the original grant has been given conditionally on the use of a named supplier, group of suppliers or framework.
 - 5.6.6. Where EMCCA has required an applicant for a grant to provide a detailed breakdown of their costs and to do so they have identified a supplier
 - 5.6.7. Where services need to be procured as a matter of extreme urgency - e.g. in response to an emergency - and there is insufficient time to advertise etc.
 - 5.6.8. Where software is being procured that must be compatible with an existing ICT system and the cost of change is uneconomic
 - 5.6.9. Contracts offered by the Monitoring Officer for the appointment of counsel.
 - 5.6.10. Where EMCCA is providing a grant or other funding to an external organisation
 - 5.6.11. Where a contract requires novation due to a change in ownership for a contracted supplier

- 5.6.12. Special circumstances make it appropriate and beneficial to negotiate with a single firm or that a single tender be invited and that best value for EMCCA can be achieved by not entering a competitive process.
- 5.7. If a waiver is not approved, then a change to what is being proposed will need to be undertaken to comply with these CPRs. If it is impossible to do this then a non-compliance will be recorded by Procurement, notified to the S73 or Deputy S73 Officer and an action plan to correct what is wrong will need to be put in place.
- 5.8. Where there are repeated requests for waivers or where non-compliances are occurring in a team then the relevant Contract Owner and Head of Procurement will produce a plan to assess the situation and propose remedial action to be taken. This plan will be provided to the relevant Director of the service and actioned.
- 5.9. These occurrences will also be reported to the S73 or Deputy S73 Officer for investigation.
- 5.10. A list of waivers that have been approved will be reported to the Procurement Assurance Group at the next available meeting.
- 5.11. A list of waivers that have been approved will be reported on an annual basis to the Audit and Governance Committee summarising the number of waivers together with the rationale for the approval.

6. Grants

- 6.1. EMCCA cannot simply choose to treat a procurement as a grant to avoid conducting a competitive process. Advice should be sought from Monitoring Officer in relation to the grant process.
- 6.2. A grant is a gift of funds designated for a specific purpose and should be supported by a grant agreement. This agreement typically imposes conditions on how the grant can be utilised. The recipient may propose to use the grant to provide goods or services that align with their objectives. Failure to use the grant as intended

may result in the recovery of funds. They cannot be contracts as there is no consideration and they are not services required to be delivered by EMCCA.

6.3. The arrangement may be a grant if:

- 6.3.1. it's something that EMCCA wishes to support, the funding is given voluntarily, and EMCCA does not receive a direct benefit in return for the funds given.
- 6.3.2. Funding is provided in a way that meets the organisation's objectives.
- 6.3.3. The organisation may decide to use the funding to meet the objectives (e.g. provide activities) or to return the funds to EMCCA.
- 6.3.4. Any surplus funding must be returned to EMCCA.

6.4. Where external grant funding is received EMCCA will:

- 6.4.1. Where a procurement process is funded via external grant funding, in whole or part, which has been awarded to EMCCA by an external funding body, the Contract Owner must ensure that any rules or conditions imposed by the funding body are adhered to, in addition to the requirements of these CPRs.
- 6.4.2. Where there is any conflict between these CPRs and the rules or conditions imposed by the funding body, The Monitoring Officer will determine which should be followed.
- 6.4.3. A waiver form will need to be completed for grants where one of the following conditions are met:
 - 6.4.3.1. Where the procurement activity is grant funded and the supplier is named by the grantor as a condition of that funding.
 - 6.4.3.2. Where EMCCA is providing a grant to another organisation
- 6.4.4. If conditions in 6.4.3 are not met when applying for grant funding, then a compliant procurement process will need to be adhered to as outlined in these CPRs.

7. Roles and Responsibilities

7.1. Officers will comply with:

- 7.1.1. EMCCA's constitution including these CPRs.
- 7.1.2. All relevant legislation
- 7.1.3. Ensure all parties acting on behalf of EMCCA also comply.
- 7.1.4. Keep the records required by section 10 of these CPRs.
- 7.1.5. Take all necessary procurement, legal, financial and professional advice.
- 7.1.6. prior to letting a contract on behalf of EMCCA, check whether:
 - 7.1.6.1. there is already an appropriate contract in place.
 - 7.1.6.1.1. where EMCCA already has an appropriate contract in place, then this must be used (subject to there being enough headroom in the advertised contract value and or permitted variations utilising Regulation 72 of the PCR) unless it can be established that the contract does not fully meet EMCCA's specific requirements in this case, and this is agreed following consultation with Procurement team and a waiver must be completed.
 - 7.1.6.2. there is an appropriate national, regional or other collaborative contract is already in place.
 - 7.1.6.2.1. where an appropriate national, regional or collaborative contract is available, consideration should be given to using this, provided the contract offers value for money and meets strategic requirements of EMCCA and EMCCA can legally use the contract.

7.2. Directors/Heads of Service will:

- 7.2.1. ensure their Service Area complies fully and are familiar with the requirements of these CPRs.
- 7.2.2. ensure contracts are recorded in the Contracts Register as held and maintained by Procurement, and original contract documents to be retained by the Monitoring Officer.
- 7.2.3. ensure compliance with all relevant legislation and EMCCA's constitution and strategic goals.
- 7.2.4. ensure value for money and optimise risk allocation in all procurement matters.
- 7.2.5. ensure compliance with any guidelines issued in respect of these CPRs.

- 7.2.6. take immediate action in the event of a breach of the CPRs.
- 7.2.7. ensure that all existing and new contracts anticipated during the forthcoming financial year are clearly itemised in the budget supporting documentation.
- 7.2.8. submit to the Procurement team tender forms as required by these CPRs.
- 7.2.9. ensure effective contract management, contract reviews and monitoring during the lifetime of all contracts in their areas.
- 7.2.10. seek and act upon advice from the Procurement team where necessary to ensure compliance with these responsibilities.
- 7.2.11. keep records of waivers/variations of any provision of these Contract Procedure Rules.
- 7.2.12. Keep their own register of contracts entered by or on behalf of EMCCA and exemptions recorded under Section 5 and satisfy themselves that the use of waivers has been monitored by the Procurement team.

7.3. Procurement will:

- 7.3.1. be responsible for all procurement process and compliance, including; ownership of Starting a Procurement Document and approvals, ownership of Gateway Process, process design, procurement training, procurement process management (including responsibilities for all notices up to the publication of the Contract Award Notice, ownership of e-tendering portal, ownership and provision of all procurement templates (including Authority standard form contracts), completion/ approval of procurement template and reports, and oversight of all activities relating to waivers, contract modifications or termination.

7.4. Contract Owners will:

- 7.4.1. be responsible for pre-procurement governance and budgetary management and approvals, supporting the planning for and management of all contracts (regardless of how they are procured); specifically, feeding into procurement documents relating to contract management requirements, managing all applications for waivers, exemption or modification requests, jointly owning the contract register with Procurement

(ensuring that information is kept up to date and that copies of contracts are attached) and forward planning for re-procurement of cyclical requirements.

7.5. Contract Lead will:

7.5.1. be responsible for overseeing all technical document creation, organising any legal documents that are required in conjunction with Procurement, supporting all stages of the procurement process, co-ordinating the resourcing of tender evaluation and moderation sessions, completing any procurement related reports and any pre-contract governance requirements and working with the monitoring officer to finalise contracts all in accordance with this document, relevant procurement legislation and other associated legislation.

7.6. Monitoring Officer will:

7.6.1. be responsible for all legal decisions and activities; whether delegated to legal representatives or being actioned on behalf of the Combined County Authority Board. In the event of a disagreement within the procurement process relating to approach, legislation application, or governance, the decision will sit with the Monitoring Officer.

8. Separation of Duties

8.1.1. As part of the commitment to transparency, an individual that conducts a procurement, raises a purchase order, or requests a waiver cannot also approve one.

9. Prevention of Corruption

9.1. Every Officer, including temporary, agency and interim staff, Councillor, or Mayor involved in any decision in respect of any Provider or contract in which they, any immediate member of their family, or close associate has a Pecuniary Interest

shall immediately notify the Monitoring Officer who shall make a record in the register kept for the purpose under s.117 Local Government Act 1972.

9.2. In the event of any doubt or uncertainty as to whether a Pecuniary Interest will occur advice should be sought from the Head of Procurement who will consult with the S73 or Deputy S73 Officer and Monitoring Officer.

9.3. The following clauses must be included in every written EMCCA contract, with the exception of framework agreements not governed by EMCCA:

9.3.1. EMCCA may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

9.3.1.1. Offer, give or agree to give anyone any inducement or reward in respect of this or any other EMCCA contract (even if the Contractor does not know what has been done); or

9.3.1.2. Commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or

9.3.1.3. Commit any fraud in connection with this or any other EMCCA contract whether alone or in conjunction with EMCCA members, contractors or employees.

9.3.1.4. Any clause limiting the Contractor's liability shall not apply to this cause.

9.4. Any suspected irregularity shall be referred to the S73 or Deputy S73 Officer who shall notify the Monitoring Officer where necessary. Any examination of contractors' or tenderers' books and records because of any such suspected irregularity shall be conducted by the S73 or Deputy S73 Officer. If, in the investigation of any irregularity, the Monitoring Officer considers that disciplinary procedures may need to be invoked, the appropriate Director, shall also be notified.

10. Records

10.1. Adequate records, including electronic copies of contracts, shall be kept of each procurement process. These records will be kept for the time periods listed below:

10.1.1. Ordinary contracts - contract expiry + 6 years

10.1.2. Sealed contracts – contract expiry + 12 years

10.1.3. Property maintenance contracts - contract expiry + 15 years.

10.1.4. For building construction, it's the life of property plus 15 years or transfer to new owner.

10.1.5. The standard retention rule for unsuccessful tenders is process complete (date of last paper) + 1 year.

11. Estimating Contract Values

11.1. The contract lead must establish the total value of the procurement including whole life costs and incorporating any potential extension periods which may be awarded.

11.1.1. in the case of fixed-term public contracts less than 48 months in length, the total estimated value for the term of the contract.

11.1.2. in the case of public contracts without a fixed term, or public contracts the term of which cannot be defined, the monthly value multiplied by 48.

11.2. Contracts must not be artificially under or overestimated or divided into two or more separate contracts where the effect is to avoid the application of the CPRs or relevant legislation.

12. Route to market

12.1. Officers should use the following table to determine the stages, activities, and documents to be included in the design of the procurement.

Anticipated Value of a contract (Excluding VAT)	Procurement Route	Advertising	Evaluation	Approval	Authority to Sign Contract
Up to £24,999	<p>Request for Quotation (RFQ)</p> <p>Obtain at least one written quote. However, to ensure value for money, it is best practice to obtain two written quotes.</p> <p>Managed by Service Area.</p> <p>Advice available from Procurement.</p>	Not required.	Lowest price.	<ol style="list-style-type: none"> 1) Contract owner as per the Scheme of Delegation 2) Procurement 3) Technical specialist (if applicable) 	Not required. Purchase Order.
£25,000 to £99,999	<p>Request for Quotation (RFQ)</p> <p>2 suppliers can be provided by the Service Area with 2 identified by Procurement Team where available within the East Midlands Combined Authority Area.</p> <p>Managed by Procurement.</p>	If openly advertised, then Procurement Team to advertise on e-tendering site and advertise on Contracts Finder Portal.	Lowest price or by exception most economically advantageous tender based on criteria published with the request for quotation.	<p>Procurement Team provides a reference number to be used with requisition to service team.</p> <p>If the most advantageous criteria are used, then an "Authorisation to Award" form is completed.</p>	<p>Purchase Order</p> <p>If the EMCCA's Standard Terms and Conditions are used, then a Head of Service or Director</p> <p>Or</p>

	Services must contact Procurement to run quotation processes. If most economically advantageous criteria used a tender or other relevant route identified via Procurement			<p>If a new Provider complete Vendor Request Form and send to finance/procurement.</p> <p>Attach “Authorisation to Award” or equivalent to requisition.</p> <p>Approvals:</p> <ol style="list-style-type: none"> 1) Contract owner as per the Scheme of Delegation 2) Procurement 3) Technical specialist (if applicable) 	If a bespoke contract, then the monitoring officer.
£100,000 to threshold for Services and Supplies	<p>Invitation to Tender (ITT)</p> <p>Advice must be sought from Procurement before commencing and a “Starting a Procurement” form completed.</p> <p>Tender process using the EMCCA’s e-tendering system.</p>	<p>EMCCA’s e-tendering system</p> <p>Contracts Finder Website</p>	<p>Most economically advantageous tender based on criteria published within the Invitation to Tender.</p>	<p>An “Authorisation to Award” form is completed.</p> <p>Then</p> <p>If a new Provider complete a Vendor Request Form and send to finance/procurement.</p> <p>Then</p>	<p>Purchase Order and then the monitoring officer.</p>

	<p>An open tender must be used for all contracts up to the Goods and Services threshold.</p> <p>Managed by Procurement Team</p>			<p>Approvals:</p> <p>(1) Contract owner (as per the Scheme of Delegation)</p> <p>(2) Procurement</p> <p>(3) Technical specialist (if applicable)</p>	
<p>Above threshold for services and supplies</p> <p>Threshold applies to all contracts including Works</p>	<p>Advice must be sought from Procurement before commencing and a "Starting a Procurement" form completed.</p> <p>Delegated authority should be sought from Procurement Assurance Group to award the contract when the evaluation is completed.</p> <p>Tender process using the EMCCA's e-tendering system.</p> <p>Relevant procedure will be determined via Procurement.</p> <p>Managed by Procurement.</p>	<p>EMCCA's e-tendering system</p> <p>Contracts Finder</p> <p>and</p> <p>UK FTS e-notification service</p>	<p>Most economically advantageous tender based on criteria published within the Invitation to Tender.</p>	<p>A Contract Award or Delegated Authority report is completed for inclusion in the Procurement Assurance Group Report for contracts exceeding the supplies and services threshold.</p> <p>Or</p> <p>An Authorisation to Award report is completed if Delegated Authority the Procurement Assurance Group has been granted in advance for contracts exceeding the supplies and services threshold.</p> <p>then</p>	<p>Purchase Order</p> <p>and</p> <p>then the monitoring officer.</p>

				<p>If a new Provider complete a Vendor Request Form.</p> <p>then</p> <p>Approvals:</p> <ol style="list-style-type: none">1) Contract owner (as per the Scheme of Delegation)2) Procurement3) Technical specialist (if applicable)	
--	--	--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

13. Planning procurement activity

- 13.1. If the value of a contract is forecast to be £100,000 or greater then Procurement must be contacted at the earliest stage possible. A 'Starting a Procurement' form must be completed prior to the commencement of a procurement process.
 - 13.1.1. The "Starting a Procurement" form considers risk with any contract and must be fully completed and signed off by relevant stakeholders prior to any procurement process commencing. When completing the form, procurement can support you. You will also require feed in from other teams.
- 13.2. Insurance and liability requirements:
 - 13.2.1. the legal minimum of Five Million Pounds is required for employer's liability insurance.
 - 13.2.2. Public liability insurance is not legally required in the UK, risks need to be considered to identify the correct cover, no contract should be absent of this type of insurance.
 - 13.2.3. Professional indemnity insurance is not a legal requirement and will not be required in all contracts, it is usually required if the supplier provides professional services or advice.
- 13.3. Authority for awarding of contracts, greater than the supplies and services threshold, rests with the Procurement Assurance Group. To facilitate the timely award of contracts it can be beneficial to seek a delegation, at the start of the process, from the Procurement Assurance Group to the relevant Executive Director.
- 13.4. Any contract with EMCCA staff transferring under Transfer of Undertakings (Protection of Employment) Regulations 2006, regardless of value, will also be subject to approval from the Procurement Assurance Group.
- 13.5. Where the contract is complex or high value the Procurement Assurance Group may, by exception, request that a further report is provided setting out the results of the evaluation prior to the contract being awarded.

- 13.6. Where delegated authority has not been previously approved then authority to award the contract greater than the supplies and services threshold must be requested from the Procurement Assurance Group.
- 13.7. A Conflict-of-Interest declaration must be signed by all parties, including Officers (including temporary, agency and interim staff), involved in the procurement process and submitted to Procurement prior to a process commencing. For more see section 9.
- 13.8. Where a forecasted estimated contract value varies above 10% of the maximum delegation of a director prior to award, following a tender process i.e. 10% above the supplies and services threshold, then a new contract award will need to be completed and approved by the Procurement Assurance Group. Below 10%, but above the supplies and services threshold the relevant Executive Director in consultation with the S73 or Deputy S73 Officer will approve the award of contract.
- 13.9. The S73 or deputy S73 officer in conjunction with the Monitoring Officer may approve an additional uplift to contract value without further approval from the Procurement Assurance Group. This process applies where a contract value varies above the maximum delegation already approved via the Procurement Assurance Group due to prevailing market conditions.

14. Procurement Launch

- 14.1. EMCCA is required to publish a full set of procurement documents when they publish the contract notice. This as a minimum should include the invitation to tender, specification, contract terms, evaluation criteria and background documentation. If applicable anonymised staffing and pensions liabilities information must also be issued.
- 14.2. All competitive procedures above £25,000 must be managed through EMCCA's procurement team.

- 14.3. All communication with bidders should be, as far as practicable, be via electronic means, e.g., the e-tendering portal. Once a process has commenced only the procurement team should be communicating directly with bidders.
- 14.4. Where discussions are held between stakeholders and potential bidders prior to the issue of an advert or Contract Notice then these must be recorded and included in the tender pack to ensure equal treatment for all bidders.
- 14.5. All clarifications (by suppliers and EMCCA) must be raised and managed through the e-tendering portal.
 - 14.5.1. Where a supplier asks a question, the questions and responses must be shared with all bidders; an exception being where the bidder specifies that the question is commercially sensitive, and EMCCA accepts this. If EMCCA does not accept this the bidder may either withdraw the question or accept if will be shared with other bidders.
 - 14.5.2. Where, as part of the evaluation process, EMCCA identifies something that appears erroneous, needs to be clarified or was omitted, this must also be raised through the e-tendering portal.
 - 14.5.3. Where, as part of the evaluation process, EMCCA identifies something that appears erroneous, needs to be clarified or was omitted, must also be raised through the e-tendering portal.
 - 14.5.4. A record of all clarifications must be maintained.

15. Submissions

- 15.1. All responses to processes above £25,000 to ITTs of RFQs must be submitted electronically through EMCCA's e-tendering system and cannot be opened until after the RFQ or ITT closing date.
- 15.2. For RFQs below £25,000 responses should be returned by email to the Procurement team.
- 15.3. All late quotations and tenders must be referred to the Head of Procurement. They will only be accepted in exceptional circumstances if:

- 15.3.1. the other tenders have not been opened and;
- 15.3.2. there has been a failure of the e-tendering system or if the failure to comply is the fault of EMCCA.
- 15.4. The final decision on whether a tender will be accepted is at the discretion of the Head of Procurement.
- 15.5. The date for receipt of tenders may only be extended in exceptional circumstances. This must be approved by the Head of Procurement, and the reasons documented.

16. Evaluation Process

- 16.1. The contract lead will identify a team of suitably qualified and experience persons to carry out individual evaluations of their allocated question in accordance with the Selection/ Award Criteria as set out in the published procurement documentation. All evaluators will then be required to attend a moderation session.
- 16.2. EMCCA has the right (but is not obliged) to seek clarification on the submissions as part of the process. Where this prerogative is utilised, all bidders will be treated equally.
- 16.3. Evaluators must come to a consensus on scores awarded via a moderation meeting, scores must not be averaged.
- 16.4. Following the moderation of the quality element, evaluators will also review and score pricing within the process, this will then be checked and discussed with procurement. Pricing information will not be released until the moderation is complete.
- 16.5. If two bidders have the same overall score following a tender process, the contract will be awarded to the bidder with the higher quality score. If the quality scores are also identical, the contract will be awarded to the bidder with the lowest price.

- 16.6. Negotiations with bidders are only permitted in limited instances with approval of the Head of Procurement.
- 16.7. If a supplier attempts to negotiate a contract post award where this is not permitted in most circumstances, EMCCA may disregard the supplier and award to the next ranked supplier.

17. Award Decisions and Approvals

- 17.1. Before bidders can be notified of the recommendation, the decision to award must be approved in accordance with section 12 and 13 of these CPRs.
- 17.2. Unsuccessful bidders should be informed of the outcome of a procurement process as soon as possible.
 - 17.2.1. Where there are two or more stages in a procurement process, unsuccessful bidders should be provided with feedback on their submission at the point they are excluded from the process.
 - 17.2.2. For RFQs where the only evaluation criteria is the lowest price the unsuccessful bidders should be advised of the total price of the winning bidder, unless this could disadvantage the winning bidder commercially. For example, if bidding for a fixed amount of one product.
 - 17.2.3. For supplier selection Questionnaires the unsuccessful bidders should be advised of the reasons they did not meet the standard to be shortlisted.
 - 17.2.4. For ITTs where the evaluation criteria comprise quality, price and if applicable social value, then unsuccessful bidders should be advised of their score against each criteria and weighted marks, the relative strengths and weaknesses of its proposal and total score and price of the winning bidder.
 - 17.2.5. Information on the successful bidder's proposal including the method of undertaking the work or a breakdown of the price should not be provided to unsuccessful bidders. If there is any doubt advice should be sought from Procurement.

- 17.3. For all contracts with a value above the PCRS threshold a mandatory 10 day 'standstill period' must be observed between notification of the contract award and conclusion of the contract in accordance with the PCRs. No public announcements should be made prior to contract signature except for relevant requirements in PCRs. (Excluding light touch or call off contracts awarded under a framework)
- 17.4. Contract leads must not issue letters of intent, memorandums of understanding or similar communications without the prior approval of the Monitoring Officer.
- 17.5. Contract Award Notices must be placed on Find a Tender and Contracts Finder in accordance with the PCRs. The publication of notices will be undertaken Procurement.

18. Exclusion of bidders from contracts

- 18.1. If any of the following apply to a bidder, any person who has powers of representation, decision or control of the bidder, or an associated bidder, (e.g. within the same group, with same directors or owners etc.), then the bidder may be excluded from being awarded any EMCCA contract or order:
 - 18.1.1. Have failed to comply with any other agreements with EMCCA, e.g. failure to meet grant conditions, defaulted on a contract or other legal agreements.
 - 18.1.2. Are subject to any of the Mandatory and Discretionary exclusions in Regulation 57 of the PCRs.
 - 18.1.3. Are subject to any of the Selection Criteria exclusions in Regulation 58 of the PCRs.
- 18.2. If any of the above apply then the bidder should be requested to submit an explanation which details actions taken to rectify the situation. It is the Head of Procurement's decision, in consultation with the Monitoring Officer, to assess the bidder's explanation and whether to exclude the bidder.

19. Contract Documents

19.1. Every Relevant Contract/must be in writing and must state clearly:

- 19.1.1. what is to be supplied (description and quality)
- 19.1.2. payment provisions (amount and timing)
- 19.1.3. rights to terminate the contract
- 19.1.4. to the law as to prevention of corruption
- 19.1.5. that the contractor may not assign or sub-contract without prior written consent
- 19.1.6. any insurance requirements
- 19.1.7. health and safety requirements
- 19.1.8. ombudsman requirements
- 19.1.9. data protection requirements if relevant
- 19.1.10. a right of access to relevant documentation and records of the bidder for monitoring and audit purposes

19.2. EMCCA's standard terms and conditions must be used where possible.

19.3. Where EMCCA's standard terms and conditions are not utilised the Monitoring officer must authorise use of nonstandard terms or framework agreements.

20. Contract Execution

20.1. All contracts must be signed or executed in accordance with section 12 of these CPRs.

20.2. A contract entered by or on behalf of EMCCA must:

20.2.1. Where the contract is in the form of a deed, be made under EMCCA's seal and attested as required by the Constitution, or:

20.2.2. Where the contract is in the form of an agreement be signed by an authorised officer as required by the Constitution.

20.3. A contract must be sealed where;

- 20.3.1. EMCCA wishes to enforce the contract for more than six years following a risk assessment by the contract owner, then the Monitoring Officer and Procurement or;
 - 20.3.2. The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
 - 20.3.3. It relates to a transfer of Land or is a requirement of the Land Registry; or
 - 20.3.4. Where there is any doubt about the authority of the person signing for the contracting party.
- 20.4. Contracts entered on behalf of EMCCA can be executed by electronic means (using an electronic execution software tool) in accordance with the process set out in Rule 19.2 and 19.3.
- 20.5. The Officer responsible for securing the signature of the contractor must ensure that the person signing for the contracting party has authority to bind it.
- 20.6. All contracts must be concluded formally in writing above £10,000 before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer.

21. Light Touch Regime

- 21.1. The light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the PCRs and a consolidated list can be seen below:
- 21.1.1. Domestic help
 - 21.1.2. Supply services of nursing personnel
 - 21.1.3. Agency staff, Manpower, Home help services for households
 - 21.1.4. Education and training services
 - 21.1.5. Event services
 - 21.1.6. Festival organisation services
 - 21.1.7. Catering services for private households

21.1.8. Canteen management services

21.1.9. School-meal services

21.1.10. Postal services

21.2. Services highlighted above still require the specific CPV codes in Schedule 3 to be listed otherwise they will be classified as a standard goods or services contract and will comply with regulations, accordingly, including the lower threshold. For a mixed contract including LTR and non-LTR services, the classification of the overall contract is determined by whichever constituent part is greater by value.

21.3. Below the LTR threshold, contracts do not normally need to be advertised in the UK e-notification service. The PCRs recognise that only services above the threshold identified in the biannual Procurement Policy Note covered by the LTR would normally be likely to be of cross border interest. Following from this, services below this threshold do not need to be advertised via the UK e-notification service, unless there are concrete indications of cross-border interest.

21.4. A small number of procedural rules for above these thresholds. EMCCA must follow the light-touch set of procurement rules for LTR contracts above the relevant threshold. The main mandatory requirements are:

21.4.1. UK e-notification service advertising: The publication of a contract notice (CN) or prior information notice (PIN). Except where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required.

21.4.2. The publication of a contract award notice (CAN) following each individual procurement, or if preferred, group such notices on a quarterly basis.

21.4.3. Compliance with PCRs principles of transparency and equal treatment.

21.4.4. Conduct the procurement in conformance with the information provided in the contract notice or pin regarding: any conditions for participation;

time limits for contacting/responding to the authority; and the award procedure to be applied.

21.4.5. Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate. There are no stipulated minimum time periods in the LTR rules, so EMCCA needs to use its discretion and judgement on a case-by-case basis.

21.5. EMCCA has the flexibility to use any process or procedure they choose to run the procurement, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. Authorities can use those procedures if helpful, or tailor those procedures according to their own needs, or design their own procedures altogether.

21.6. The LTR rules are flexible on the types of award criteria that may be used, but make clear that certain considerations can be taken into account, including (this is not an exhaustive list):

21.6.1.1. the need to ensure quality, continuity, accessibility, affordability availability and comprehensiveness of the services.

21.6.1.2. the specific needs of different categories of users¹, including disadvantaged and vulnerable groups.

21.6.1.3. the involvement and empowerment of users; and

21.6.1.4. innovation.

21.7. Reserved contracts for certain services in the light-touch regime. The rules permit for certain LTR contracts to be “reserved” for organisations meeting certain criteria e.g. public service mutuals and social enterprises.

22. Advanced Payments

22.1. Advanced payments must be authorised by both the Head of Procurement and S73 or Deputy S73 Officer.

23. Disposal of Goods & Assets

- 23.1. Where EMCCA has goods or assets that are no-longer required these are to be disposed of through the following processes via Procurement:
- 23.1.1. If less than £25,000 3 written quotes
 - 23.1.2. If more than £25,000 an open competitive process
- 23.2. The S73 or Deputy S73 Officer will be required to authorise estimates of disposal valuations.
- 23.3. The highest value unconditional bid received should be accepted.
- 23.4. The chosen process must be approved in advance by the S73 or Deputy S73 Officer.

24. Finance Leases excluding Land and Property

- 24.1. Where a contract requires EMCCA to enter into a finance or lease agreement then advice should be sought from the S73 or Deputy S73 Officer in advance.
- 24.2. Finance and lease agreements must be approved by the S73 or Deputy S73 Officer prior to signing.

25. Concessions and Revenue Earning Contracts

- 25.1. Prior to EMCCA awarding a concession or entering a revenue earning contract, whether in its own right or with a commercial partner, approval of Concession Contracts is subject to the same approvals of that of Supplies, Services and Works in section 12 of these CPRs.
- 25.2. Where EMCCA is a bidder and submitting a proposal or tender in response to a contract opportunity then approval must be obtained from the S73 or Deputy S73 Officer and Monitoring Officer.

25.3. Advice from the Monitoring Officer must be sought prior to commencing any work on compiling a proposal or tender to determine if EMCCA has the power to enter the contract.

26. Land and Property Transactions

26.1. Before land or property or an interest in land or property is offered for sale or lease the advice of the Monitoring Officer and Executive Director of Place will be sought and the Executive Director of Place or a nominee (“the Director”) shall ensure a suitably RICS qualified valuer’s estimate of the likely price or rent has been obtained. EMCCA will normally expect that best consideration is obtained in accordance with the relevant legislation.

26.2. The advice of the Executive Director of Place must be sought for all land and property transactions and/or proposals. The expectation is the advice should normally be followed unless there are specific circumstances that justify any variation in which case this will require the approval of the Combined County Authority Board.

26.3. Where a contract or proposal is likely to have any property implications for EMCCA, such as the leasing, acquisition or use of premises (whether EMCCA owned or otherwise), the advice of the Executive Director of Place must be sought and followed.

26.4. Any transaction above key decision value will require the approval of the Combined County Authority Board.

Document version control	
Version:	1.0

Date:	4 November 2024
Document approved by:	EMCCA Board
To be of effect from:	4 November 2024