



CYNGHRAIR | WELSH  
CAFFAEL | PROCUREMENT  
CYMRAEG | ALLIANCE

# Delivering new-build housing to meet the Welsh Government 20,000 homes target

CHC One Big Conference – October 2018

In association with:



Trusted procurement for  
better buildings and homes

# Croeso / Welcome

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- **Neil Barker**

- Director, WPA

- **Tony Woods**

- Technical Manager, LHC

- **Helen Galsworthy**

- Technical Alliance Manager, WPA

- **Andrew Hamar**

- Client Support Manager, WPA

- **Mali Hill**

- Client Research Officer, WPA

# Croeso / Welcome

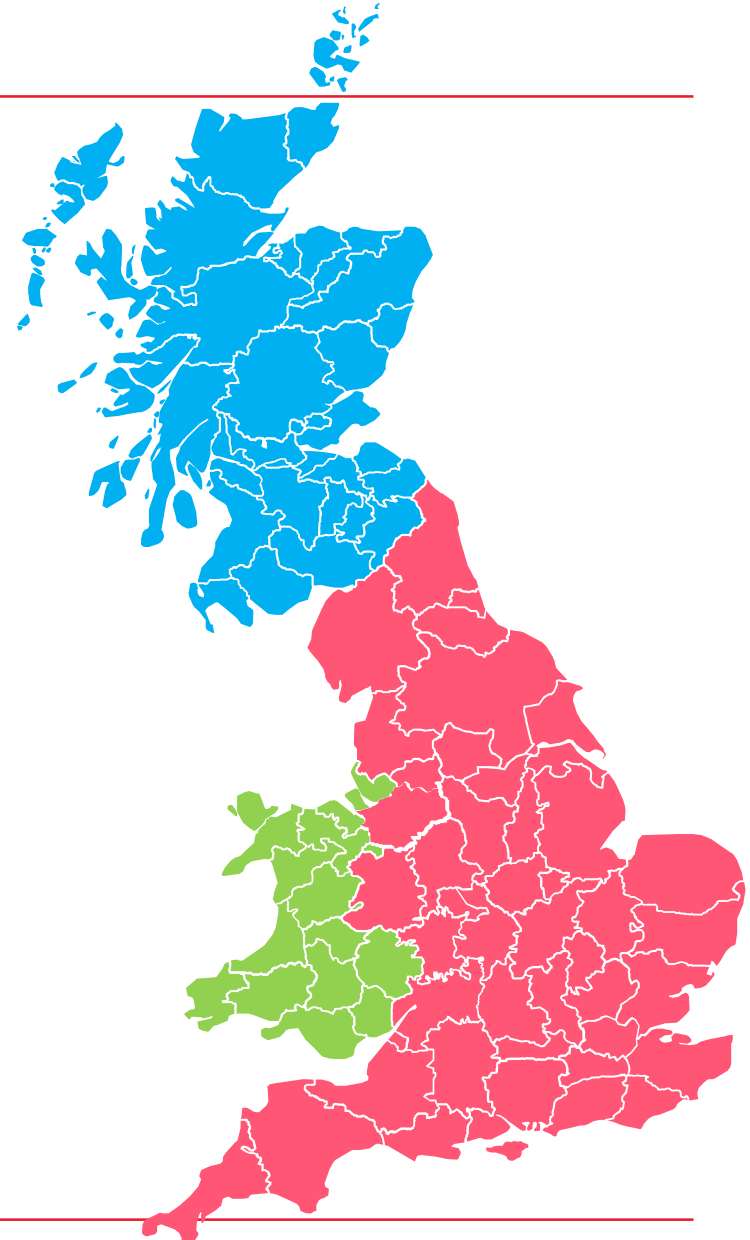
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# Introduction to WPA

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LHC group offices & staff across the UK support 200+ contracting authorities procuring £250m+ per year



# LHC

Trusted procurement for better buildings and homes

**SPA** SCOTTISH PROCUREMENT ALLIANCE

**WPA** CYNGHRAIR CAFFAEL CYMREIG | WELSH PROCUREMENT ALLIANCE

**WPA** CYNGHRAIR CAFFAEL CYMRAEG | WELSH PROCUREMENT ALLIANCE

# Introduction to WPA

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- Established April 2017
- In Wales
- For Wales

# WPA Founder Partners Committee

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## Trivallis.

## Bron Afon



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# Introduction to WPA

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## Why do organisations currently use WPA?

- Compliant procurement of fully evaluated suppliers and contractors
- Robust specifications
  - LHC's 50+ years of technical and procurement experience
- Adapting to, and delivering customer needs for:
  - Efficiency
  - Compliance
  - Quality
  - Sustainability
  - Value for Money

# WPA Frameworks

## Construction and Refurbishment

- Housing Construction (H1)
- Off-site Construction of New Homes (NH1 & NH2)
- Schools and Community Buildings (SCB2)
- Modular Buildings (MB1)
- Energy Efficiency Measures and General Refurbishment (N7)
- Kitchen & Bathroom Replacements (KB3)
- Pitched Roofing (PR3)
- Flat Roofing (FR2)

## Building Components

- Composite Entrance Doors (C7)
- PVC-U Windows & Doors (U10)
- Timber Windows & Doors (T4)
- Communal Entrance Doors (CED1)
- Supply of Kitchen Units (K6)

## Services

- Asbestos Works & Services (AS2)
- Heating Services (HS1)
- Vacant Property Protection (V7)
- Water Management (WM1)



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# Delivering New-build Housing in Wales

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Helen Galsworthy, Technical Alliance Manager, WPA

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# Workshop Agenda

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- **the options available for the procurement of new-build homes programmes**
  - Project Scoping
  - Contractors
  - Procurement Process
- **the pros and cons of off-site ‘innovative’ options v. traditional build methods**
- **the additional social and community benefits that can be built into a project**
  - Project Delivery
  - Social and Community Benefits

# options available for the procurement of new-build homes

## Projects

- Scope and specification
- Land
- Timescales
- Financing

## Contractors

- How to choose
- Size
- Experience
- Location
- Referrals

## Procurement Options

- OJEU / Sell2Wales
- Frameworks
  - Re:allies - Procure Plus, Efficiency North and CHIC £2m+
  - Undod
  - Homes England – consultancy f/w
  - WPA ‘H1’ traditional
  - WPA ‘NH2’ off-site

# traditional build methods v. off-site 'innovative' options

## Traditional Build

- Familiar
- Flexible

## Negatives

- Skills and labour shortages
- Weather issues on site
- Quality - number of snags

## Off-site / Innovative

- Fix design earlier
- Energy efficiency
- Fewer defects
- Less time on site
- Less labour required on site
- Less waste
- Less disruption around site

## Negatives

- Historic perceptions regarding quality
- Finance – mortgagability
- Needs standardisation to make cost effective

# additional social and community benefits

## Project Delivery

- Expertise in new-build
- Project management
- Resources required
- Consultancy costs
- KPIs

## Social and Community Benefits

- Apprentices
- Skills training
- Vale of Glamorgan example

# Have we covered your questions?

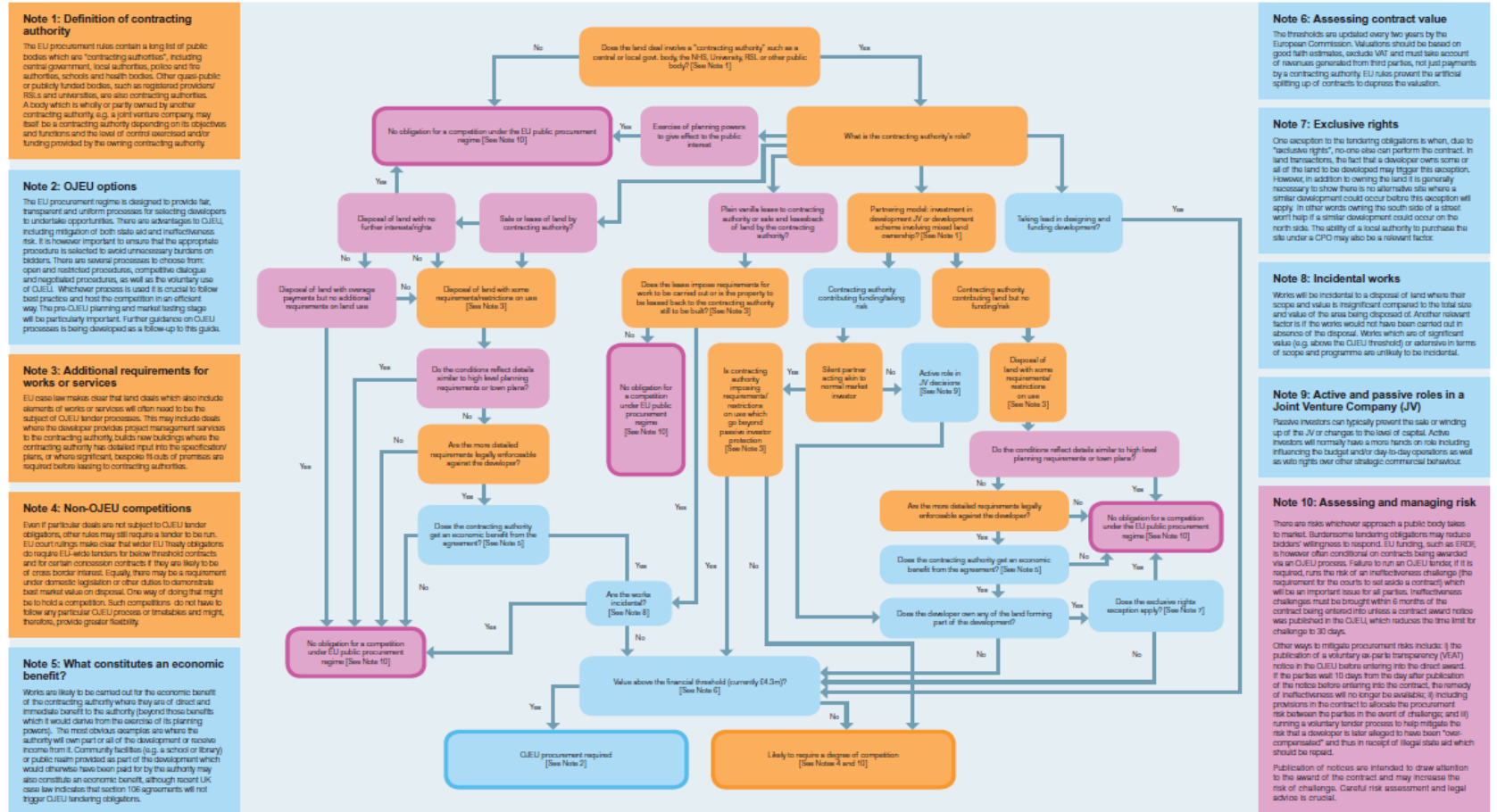
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# Land deals and OJEU

## WHEN IS AN OJEU OR OTHER COMPETITION REQUIRED FOR A LAND DEAL?

As the European case of C-220/05 Aurox v Commune de Roanne made clear, land transactions are not always exempt from the EU public procurement regime and related tendering obligations. This complex, evolving and often confusing area of law is regarded by many as a real barrier to redevelopment in the UK. This chart is designed to provide high-level guidance to both contracting authorities and developers on the strategic choices open to them. For ease, tenders which are subject to the full tendering requirements of EU Procurement Directives are referred to as "OJEU" procurements or tenders. This chart identifies the most common structures used in land developments and, through a combination of colour coding and key questions, is designed to help users identify factors which indicate OJEU tenders will normally be required, situations where some lesser form of competition may be required and circumstances where the EU procurement rules are unlikely to apply. Additional "Notes" boxes provide more detailed explanations of key legal concepts. It is important to recognise that even if there is no legal obligation to hold an OJEU or other competition, there may be other factors such as ensuring eligibility for EU funds which may prompt parties to opt for some form of tender process. The risks associated with each of the options below may differ but none of the options are entirely risk free. As such, much depends upon the particular circumstances of each deal and this guide is not intended as a substitute for specific legal advice. Other legal obligations will also need to be considered on a case-by-case basis. The chart is based on the law as at April 2013. Further guidance can be obtained from the Procurement Lawyers' Association ([www.procurementlawyers.org](http://www.procurementlawyers.org)) and the Cabinet Office ([www.gov.uk](http://www.gov.uk)), amongst others.



**Note 1: Definition of contracting authority**  
The EU procurement rules contain a long list of public bodies which are "contracting authorities", including central government, local authorities, police and the authorities, schools and health bodies. Other quasi-public or publicly funded bodies, such as registered providers' RSLs and universities, are also contracting authorities. A body which is wholly or partly owned by another contracting authority, e.g. a joint venture company may itself be a contracting authority depending on its objectives and functions and the level of control exercised and/or funding provided by the owning contracting authority.

**Note 2: OJEU options**  
The EU procurement regime is designed to provide fair, transparent and uniform processes for allowing developers to undertake opportunities. There are advantages to OJEU, including mitigation of both state aid and inefficiency risk. It is however important to ensure that the appropriate procedure is selected to avoid unnecessary burdens on bidders. There are several processes to choose from: open and restricted procedures, competitive dialogue and negotiated procedures, as well as the voluntary use of OJEU. Whichever process is used it is crucial to follow best practice and hold the competition in an efficient way. The pre-OJEU planning and market testing stages will be particularly important. Further guidance on OJEU processes is being developed as a follow-up to this guide.

**Note 3: Additional requirements for works or services**  
EU law also makes clear that land deals which also include elements of works or services will often need to be the subject of OJEU tender processes. This may include deals where the developer provides project management services to the contracting authority, such as new buildings where the contracting authority has detailed input into the specification/ plans, or where significant, bespoke IT outs of specialists are required before leasing to contracting authorities.

**Note 4: Non-OJEU competitions**  
Even if particular deals are not subject to OJEU tender obligations, other rules may still require a tender to be run. EU court rulings make clear that wider EU treaty obligations do require EU wide tenders to be run in certain circumstances and for certain concession contracts if they are likely to be of cross border interest. Equally, there may be a requirement under domestic legislation to run a tender to demonstrate best market value on disposal. One way of doing that might be to hold a competition. Such competitions do not have to follow any particular OJEU process or timetables and might, therefore, provide greater flexibility.

**Note 5: What constitutes an economic benefit?**  
Works are likely to be carried out for the economic benefit of the contracting authority where they are of direct and immediate benefit to the authority (beyond those benefits which it would derive from the exercise of its planning powers). The most obvious examples are where the authority will own part or all of the development or receive income from it. Community facilities (e.g. a school or library) or public realm provided as part of the development which would otherwise have been paid for by the authority may also constitute an economic benefit, although recent UK case law indicates that section 106 agreements will not trigger OJEU tendering obligations.

**Note 6: Assessing contract value**  
The thresholds are updated every two years by the European Commission. Valuations should be based on good faith estimates, exclude VAT and must take account of revenues generated from third parties, not just payments by a contracting authority. EU rules prevent the artificial splitting up of contracts to depress the valuation.

**Note 7: Exclusive rights**  
One exception to the tendering obligations is when, due to "exclusive rights", no one else can perform the contract. In land transactions, the fact that a developer owns some or all of the land to be developed may trigger this exception. However, in addition to owning the land it is generally necessary to show there is no alternative site where a similar development could occur before this exception will apply. In other words owning the south side of a street won't help if a similar development could occur on the north side. The ability of a local authority to purchase the site under a CPO may also be a relevant factor.

**Note 8: Incidental works**  
Works will be incidental to a disposal of land where their scope and value is insignificant compared to the total size and value of the area being disposed of. Another relevant factor is if the works would not have been carried out in absence of the disposal. Works which are of significant value (e.g. above the OJEU threshold) or extensive in terms of scope and programme are unlikely to be incidental.

**Note 9: Active and passive roles in a Joint Venture Company (JV)**  
Passive investors can typically prevent the sale or winding up of the JV or changes to the level of capital. Active investors will normally have a more hands on role including influencing the budget and/or day-to-day operations as well as veto rights over other strategic commercial behaviour.

**Note 10: Assessing and managing risk**  
There are risks whichever approach a public body takes to market. Bardonisome tendering obligations may reduce bidders' willingness to respond. EU funding, such as ERDF, is however often conditional on contracts being awarded via an OJEU process. Failure to run an OJEU tender, if it is required, runs the risk of an ineffectiveness challenge (the requirement for the courts to set aside a contract) which will be an important issue for all parties. Ineffectiveness challenges must be brought within 6 months of the contract being entered into unless a contract award notice was published in the OJEU which reduces the time limit for challenge to 30 days.  
Other ways to mitigate procurement risks include: (i) the publication of a voluntary (as-part transparency) (VAT) notice in the OJEU before entering into the direct award; if the parties wait 10 days from the day after publication of the notice before entering into the direct award, the remedy of ineffectiveness will no longer be available; (ii) including provisions in the contract to allocate the procurement risk between the parties in the event of challenge; and (iii) running a voluntary tender process to help mitigate the risk that a developer is later alleged to have been "over-compensated" and thus in receipt of illegal state aid which should be repaid.  
Publication of notices are intended to draw attention to the award of the contract and may increase the risk of challenge. Careful risk assessment and legal advice is crucial.