



Committee name: Audit

Committee date: 24/02/2025

Report title: Updated Contract Procedures Rules

Portfolio: Councillor Kendrick, Cabinet member for an open and modern council

Report from: Interim chief finance officer (S151)

Wards: All wards

Purpose

The Contract Procedure Rules have been reviewed and updated with reference to the new Procurement Act 2023, ensuring that they are fit for purpose and reflective of good practice.

Recommendation:

It is recommended that Audit consider the updated Contract Procedure Rules, prior to these being submitted to Full Council for approval on 25 February 2025.

Policy framework

The council has five corporate priorities, which are:

- A prosperous Norwich.
- A fairer Norwich.
- A climate responsive Norwich.
- A future-proof Norwich.
- An open and modern council.

This report meets all five corporate priorities and in particular the following outcomes:

- A future-proof Norwich – by ensuring that the Contract Procedure Rules are up to date and reflective of the governance and control environment that the Council is working within.
- An open and modern council – ensuring that there is assurance and confidence in the governance of the procurement activities that the council undertakes.

Report details

Background

1. The council is required to have Contract Procedure Rules, and these are made in accordance with the requirements of Section 135 of the Local Government Act.

2. The Contract Procedure Rules are part of the councils Constitution.
3. The revision of the Contract Procedure Rules are required to reflect the new government legislation, the Procurement Act 2023, which shall go live on 24 February 2025.
4. The Contract Procedure Rules are in effect the instructions of the council to officers and elected members entering contracts on the council's behalf. Setting out minimum requirements.
5. The objective has been to ensure that there is sufficient detail and clarity about roles, responsibilities and the rules that need to be followed to ensure effective and compliant procurement activity in line with both legislative requirements and internal governance such as the financial procedures and scheme of delegations found in the Constitution.
6. The Contract Procedure Rules cover the whole procurement lifecycle through plan, define, procure and manage.
7. This review has rewritten all the Contract Procedure Rules in their entirety, so whilst the subject coverage will be familiar the contents reflect a complete update. In this context the revised Contract Procedure Rules attached at Appendix A need to be seen within the broader context of the council's Constitution but also read as a single document

Consultation

8. The Contract Procedure Rules review has been undertaken by the Strategic Procurement Manager, supported by the Monitoring Officer and Chief Finance Officer.
9. The draft was presented to Executive Leadership Team on 28 January 2025 and the Constitution Working Group on 11 February and the draft as presented in Appendix A encompasses recommended changes from ELT, none arose from Constitution Working Group.
10. Following the draft being presented to Audit Committee Full Council approval shall be sought on 25 February 2025. Any recommended changes arising from the Audit Committee shall be presented verbally to Full Council.

Implications

Financial and resources

11. There are no direct financial implications arising from this review, however it will be important that all officers and members are aware of the contents, to which end, once the regulations have been approved by Full Council a briefing session will be arranged for relevant officers.

Legal

12. The review has been undertaken with support from legal officers, who have approved the draft as presented in Appendix A.
13. The Contract Procedure Rules form an integral part of the Norwich City Council Constitution therefore, once approved by Full Council, the Constitution will need to be updated accordingly.

Statutory considerations

Consideration	Details of any implications and proposed measures to address:
Equality and diversity	None
Health, social and economic impact	None
Crime and disorder	None
Children and adults safeguarding	none
Environmental impact	None

Risk management

Risk	Consequence	Controls required
Governance within the Contract Procedure Rules are not effective.	<p>Early opportunities to take corrective actions are missed</p> <p>Governance failures lead to Council breaching legislative responsibilities.</p>	<p>The Contract Procedures and adherence to them forms a key part of the system of internal control and governance for the Council.</p> <p>Monitoring will be via both on-going operational oversight and actions by officers as well as via the further oversight provided by Internal and External Audit reviews.</p>

Reasons for the decision/recommendation

14. Requirement by legislation to have Contract Procedure Rules, update required due to imminent implementation of new fundamental changes in Procurement Legislation.

Appendices: Appendix A – Updated Contract Procedure Rules

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1.0 CONTEXT

1.01 Purpose

- (a) These Contract Procedure Rules are made in accordance with the requirements of Section 135 of the Local Government Act 1972. They form part of the Council's [Constitution](#) and are, in effect, the instructions of the Council, to officers and elected members for entering into contracts on behalf of the Council. They do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out the minimum requirements to be followed. Procurement Guides shall provide internal operational guidance where appropriate.
- (b) The Council is a contracting authority for the purposes of public procurement law and is legally bound to comply with certain practices and procedures in the award, management and variation of contracts.
- (c) The overall purpose of these Contract Procedure Rules is threefold:
 - to ensure probity, transparency and equality in the procurement of works, goods and services.
 - To ensure the Council gets best value from its procurements.
 - To protect those involved in the procurement process.
- (d) The Contract Procedure Rules should be read in conjunction with other parts of the [Constitution](#) including the Financial Procedure Rules and the Scheme of Delegation, plus requirements for Key Decisions.
- (e) Officers undertaking procurement should also take regard to the Council's Procurement Strategy, Procurement Guides and Contract Management Framework. Together with the priorities found in the [Corporate Plan – 'We are Norwich'](#).
- (f) Officers undertaking procurement should have regard to the requirements of the Procurement Act 2023. These Contract Procedure Rules, for example, refer to several notices to be published but do not include an exhaustive list and neither do these Rules capture the full obligations, for example, around information to be included and timing.
- (g) The Governments Find-a-Tender service and relevant notices shall be used where required.
- (h) The Contract Procedure Rules aim to promote the highest standards of probity, integrity and impartiality using the key procurement principles of transparency, equal treatment, non-discrimination and proportionality. They thereby offer the best justification against allegations of purchases having been made fraudulently or incorrectly; and safeguard the Council's reputation from the implication of dishonesty and corruption.
- (i) If it comes to notice of an Officer that there has been non-compliance with these Contract Procedure Rules in respect of any contract which they are responsible as the officer of the procuring service, they shall without delay notify the manager of the Procurement Service, who shall take such action as deemed necessary.

(j) A Glossary of terms is included at Appendix B

1.02 **Scope**

(a) These Contract Procedure Rules apply to all contracts for goods, services, works, concessions and utilities undertaken by or on behalf of the Council with the exception of:

- the acquisition of any interest in land or property;
- the lending or borrowing of money;
- employment of an individual employee;
- the disposal of property (including any interest in land);
- the provision of specific types of legal advice, for example, in relation to litigation (the provisions of Clause 14 of Part 1 of Schedule 2 of the Procurement Act 2023 should be checked carefully to ascertain the applicability of this exception); and
- the awarding of grants;
- In the event of a genuine emergency or a major disaster involving immediate risk to persons, property or serious disruption to Council services or significant financial loss, these Rules would not apply to the extent necessary to deal with the immediate risk. Once the immediate risks of that genuine emergency or major disaster has been duly mitigated, any follow up actions which would typically be subject to these Rules.

(b) For the purposes of this document a contract is defined as any circumstance where goods, services or works are acquired, and there is an understanding by both parties that payment will be made in exchange for this.

(c) The scope of the procurement process is from the identification of a requirement through to the completion of any arrangement to fulfil that requirement, including the management of that arrangement, termination and potentially the disposal of any products of the arrangement that are not required.

1.03 **Authorities and controls**

(a) Procurement Authority is delegated by the Council to the Executive Directors who may (so far as any financial threshold in the [Constitution](#) permits) delegate to officers who need to carry out procurement in the course of their normal duties.

(b) An extract of the Executive Scheme of Officer Delegation within the [Constitution](#) states, (page 87)

- 'c) Chief Officers are empowered to
 - (iii) Take decisions that result in expenditure or savings to the council below £500k (calculated on a whole life basis). Decisions between £200k - £499k will be taken in consultation with the relevant Portfolio

Holder. All material or significant decisions (see page 84) affecting individual Wards will be notified to the local Ward member(s).

- (xii) Procure works, supplies and services, enter into contracts, review their operation, establish and maintain approved lists of contractors or suppliers and the appointment of consultants, subject to the financial regulations, the Contract Procedure Rules and budgetary provision.'
- (c) An extract of the Key Decisions definition within the [Constitution](#) states, (page 108)
- 'Key Decisions are Executive decisions that are 'significant'
 - (a) in relation to the budget for the service or function in question, i.e. if they result in the council incurring expenditure or making savings of £500k or more (calculated on a whole life basis); or
 - (b) in terms of the effect on communities living or working in two or more electoral wards'
 - 'Officers do not have authority to make Key Decisions except where:
 - (a) they are specifically authorised by the Leader, Cabinet, Full Council or a committee; or (b) the Chief Executive or (in their absence) is acting under urgency powers. (page 108)
- (d) Procurement Authority is defined as the limit that the Budget Holder can spend within their budget on a single contract. No commitment to purchase, contract, lease, hire, or rent goods, services or works on behalf of the Council can be made without appropriate budget authority and delegated procurement authority.
- (e) The Executive Leadership Team (ELT) take a strategic role in procurement and are responsible for receiving reports and ensuring their Budget Holders respond to audit requirements as appropriate. The role of Executive Directors and the Monitoring Officer is to responsibly consider and approve or otherwise situations detailed in these Contract Procedure Rules where there is an increased risk to the Council, including circumstances where there is insufficient competition and where the value/risk of a contract is assessed as high. These circumstances and approvals shall be captured in the Procurement Plan.
- (f) The role of Heads of Service is to ensure that the both the spirit and the letter of the Contract Procedure Rules are complied with. Heads of Service must involve an Executive Director and take advice from the Procurement Service and if necessary, the Legal Service, where a purchase is complex, requires special terms of contract, or a contract extension, even when the requirement is within the buyer's delegated procurement authority.
- (g) Budget Authority rests with the Budget Holder. All expenditure must have prior budgetary approval. A budget is approved when the Budget Holder has received approval through the budget process for the annual budget. However, the Budget Holder must follow the Council's standards for specific goods and services. For certain categories of expenditure technical experts, governance boards or teams are responsible for specifying products and services, e.g., IT, and approval must be sought from these experts to procure alternative goods and services, or to use alternative sources of supply.

- (h) Budget Authority permits the Budget Holder to authorise, sign or issue purchase orders or contracts, or make any other form of commitment to suppliers within the limits of their delegated authority and with due regard to these Contract Procedure Rules.

1.04 **Segregation of duties**

- (a) The activities relating to the contracting and procurement processes are segregated between the following phases:

- Purchase Order;
- Commitment (contract signatory) / Authorisation;
- Receipt;
- Payment.

- (b) Segregation of duties must exist between raising Purchase Orders and commitment of expenditure and also receipt and payment.

1.05 **Officer conduct**

1.05.1 **Conflict of interests of officers**

Officers employed by the Council must comply with clauses within the Council's "Officer Code of Conduct", specifically relating to 'Personal Interests' in respect of these Contract Procedure Rules. Either actual or those that could be perceived as conflicts.

1.05.2 **Ethical Procurement**

Officers undertaking procurement activity should have regard to the ethical obligations as detailed in the Procurement Act 2023, Procurement Strategy and appropriate professional code of ethics for example CIPS Code of Ethics.

1.05.3 **Officers responsible for procurement**

Officers responsible for purchasing must:

- comply with these Contract Procedure Rules and all relevant policies for the purchase of goods or services or order works;
- take all necessary legal, financial and professional advice;
- declare any personal or financial interest in a contract. Corruption is a criminal offence;

- conduct a value for money review appraise the need to purchase and ensure there is an adequate budget;
- check whether there is an existing corporate contract that can be used before undergoing a competitive process;
- normally allow at least four weeks for submission of bids subject to any minimum timescales prescribed by law;
- keep bids confidential;
- ensure adequate terms and conditions are in place before goods works or services are provided;
- ensure specifications meet the defined needs and requirements of the Council;
- only commence the supply or works once a council purchase order has been issued and a contract has been signed;
- identify a Contract Manager with responsibility for ensuring the contract delivers as intended;
- keep records of dealings with suppliers; and
- assess each contract afterwards to see how well it met the purchasing need and value for money requirements.

1.06 **Audit requirements**

- (a) All Budget Holders must be aware that their procurement actions will be subject to Internal and External Audit examination, to ensure that procurement is carried out in a professional and business-like manner and strictly in compliance with these Contract Procedure Rules and all relevant policies for the purchase of goods services or other works.
- (b) Decisions on procurement actions must be recorded on file to provide a clear and transparent audit trail. This should always include:
- a Procurement Plan, where required;
 - a clarification and contract reviews as part of contract management; and
 - full tender documents including a record of evaluation processes. These documents shall be either held on the e-procurement system, if used for the procurement opportunity, on in the appropriate contract folder or both.
- (c) These are the most important examples; the list is neither exhaustive nor exclusive. If a Budget Holder is ever in doubt about whether facts need to be recorded, it is advisable to err on the side of caution and record them.
- (d) It is equally important to note that recording of facts in these circumstances should not be excessive. However, records should be sufficient to justify the

decisions taken in all stages of the procurement procedure, including at evaluation, and give a reasonably easily understood picture of events to someone reading them for the first time and to assist others to explain the reasoning behind the decisions taken

- (e) All Officers recording decisions should remember that the Freedom of Information Act 2000 and/or the Environmental Information Regulations may apply to such documents.

2.0 LEGISLATION

2.01 Introduction

The law requires the Council to treat suppliers and potential suppliers equally and without discrimination and to act in a transparent and proportionate manner. Procurement activity is also subject to subsidy control and competition law. All procurement activity must comply fully with the applicable requirements of the Procurement Act 2023, and any other relevant legislation. Procurement is subject to local government law, including the general duty of best value, and to equalities legislation. Concessions (previously governed by the Concession Contract Regulations 2016) now fall within the Procurement Act 2023.

2.02 The Public Services (Social Value) Act 2012

- (a) The Public Services (Social Value) Act 2012 (Act) requires that the Council has regard to economic, social and environmental well-being in connection with public services contracts and considers the following in all procurement exercises for services:
- how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - how, in conducting the process of procurement, it might act with a view to securing that improvement.
- (b) In relation to the above, under section 1(6) of the Act, the Council must consider only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- (c) When the Council undertakes an assessment of the categories of services that it procures, to evaluate those that are high risk or where there is scope to achieve social benefit, particular effort will be made to both reduce adverse impacts and maximize opportunities whilst understanding, valuing and building on existing social capital and community assets and creating a positive ongoing impact on communities.

2.03 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

In relation to contracts where there is likelihood that employees may be transferred to a new employer the invitation to tender will state that the Council assumes that TUPE will apply unless evidence to the contrary is produced. It will then be the Council's responsibility to ensure that tenderers have access to the appropriate information to allow them to fully consider any impact that TUPE may have on their tender. Further guidance should always be sought if there is potential for TUPE obligations from the Procurement Service.

2.04 HMRC Requirements – Engagement of Individuals

The Council must ensure that individuals engaged as consultants/self-employed are able to demonstrate that they meet the IR35 test for a self-employed person. The Budget Holder must take appropriate advice from the Human Resources and Organisational Development Service before making a decision to engage an individual and take consideration of any guidance in the current Pay Policy Statement. All suppliers should provide their individual's Unique Taxpayer Reference (UTR) before a contract is entered into with them.

2.05 Previous Regulations and transitional arrangements

(a) The Procurement Act 2023 is a single, uniformed framework for public procurement and replaces the previous regulations.

- Public Contract Regulations 2015
- Utilities Contracts Regulations 2016
- Concession Contracts Regulations 2016
- Defence and Security Public Contracts Regulations 2011

(b) Where a procurement was started or contract entered into under the Public Contract Regulations 2015, or other legislation as listed above, Budget Holders shall continue to follow the governance for that procurement or contract with reference to those Regulations rather than the Procurement Act 2023.

(c) In the case of procurements/contracts started under the Public Contract Regulations 2015 they are governed by those Regulations until either:

- The end of the contract in question or
- For a framework/DPS, the end of the last call off contract.

3.0 PLAN PHASE

3.01 Business need

Executive Directors, Budget Holders and the Procurement Service must ensure that procurement decisions are made with consideration to the Council's business objectives as defined in the Council's Community Led Plan and Procurement Strategy.

3.02 Pipeline plans

- (a) Budget Holders will ensure they review the Contract Register for expiring contracts between 24-18 months in advance to plan procurement activity. 18-month procurement pipelines will be identified by Executive Directors with advice from the Procurement Service.
- (b) Suppliers are able to access basic information regarding upcoming contract opportunities via the Council's published Contract Register and through published pipeline notices, where applicable.

3.03 Pipeline Notices

As the Council's spend is greater than £100million per annum, the Council has an obligation to publish a Pipeline Notice under the Act. This shall be an 18-month forward-look at planned procurements of £2million plus value. The Council shall publish this on the Central Digital Platform as required under the Act. This improves forward planning, for the Council and suppliers.

4.0 DEFINE PHASE

4.01 Define Value

- (a) When calculating the value of a contract to be awarded, the Budget Holder must remember that under the Procurement Act 2023 the thresholds set are inclusive of VAT. (NB the internal thresholds in the table at Appendix A are exclusive of VAT).
- (b) The value must be calculated for the entire contract period including any extensions of the contract. Where the contract period is not fixed, the estimated value of the contract must be calculated by multiplying the monthly spend value by 48.
- (c) Before any procurement is begun the appropriate Budget Holder must estimate the value of the contract and must keep a written record of that estimate as part of a Procurement Plan, where required.

- (d) In the case of contracts for the supply of goods or services over a period where the Council wishes to call off as required or has a series of regular requirements by standing order the estimated value of the contract is either:
- the aggregate value of similar contracts over the previous 12 months (adjusted for any known changes in demand);
 - the estimated value of similar contracts over the next 12 months; or
 - if the contract is for a definite term of more than 12 months, the estimated value for the period of the contract.
- (e) For all supplies, services and works not covered by the above, the estimated value for the purpose of these Rules must be the total estimated value of the supplies, services or works to be supplied over the period covered by the contract.
- (f) The value of a concession for the purpose of these Rules is the estimated gross value of the service before income.

4.02 Disaggregation of demand – not permitted

Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding these Contract Procedure Rules or legislation/law.

4.03 Define budget

- (a) In addition to the likely cost of the goods, services or works (contract value) Officers must consider the following questions:
- is the appropriate level of funding in place to cover the expense of the project for the whole term?
 - in respect of capital works, is there a revenue budget allocation to cover ongoing costs (maintenance etc.)?
- (b) Officers shall ensure relevant information in respect of those questions is properly recorded in the procurement plan.
- (c) In all cases officers must adhere to the requirements of the Financial Regulations, Procedures and any guidance issued by the Chief Financial Officer.

4.04 Identify existing contracts

- (a) Where a Contract has been entered into it must be used for all requirements that relate to that contract. A Contracts Register is maintained by the Council and made available for all Budget Holders to access and review.

- (b) The Council and its contracted suppliers make a considerable investment in negotiating and preparing contracts and when a contract has been entered into with a contractor it must be honoured except in exceptional circumstances. To place purchase orders/contracts with alternative suppliers other than the contract holder may frustrate the contract and expose the Council to potentially expensive litigation.
- (c) On the exceptional occasions where a Budget Holder feels that better value can be obtained from sources alternative to those that have been awarded a Council contract, they shall contact the Procurement Service for further guidance. In all cases approval to use those alternatives must be first obtained from the service's Head of Service and the Section 151 Officer before awarding a competing contract for similar requirements.

4.05 Identify potential procurement procedure

- (a) When a contract does not exist to meet a requirement, the Budget Holder must follow the appropriate procedure in compliance Contract Thresholds, either the Act or these Contract Procedure Rules which ever apply and undertake a risk assessment.
- (b) A procurement requirement can often be met through a range of commercial models. The Budget holder must be clear as to which option will provide the best outcome and must record this in a Procurement Plan where appropriate.
- (c) Advice can be obtained from Procurement Service about effective choice of procurement procedure and suppliers. The service has knowledge of commercial category markets and access to the supplier database on e-procurement platform and Find-a-Tender.

4.06 Assessing contract risk

Budget Holders shall be required to assess the tiering of the procurement prior to commencing activity. The assessment shall consider the level of risk, the financial value and the impact to services. The identified tiering must be recorded in the Procurement Plan, where appropriate. Budget Holders shall have regard to the tiering when undertaking all the procurement activities. This assessment shall be kept under review throughout the procurement life cycle. Guidance on tiering is in the Council's Contract Management Framework.

4.07 Define the specification

- (a) The Budget Holder, with the aid of specialist functions as appropriate, is responsible for compiling the specification which must include performance criteria and any appropriate health and safety requirements. The Budget Holder must also have regard to the principles outlined in the Council's Procurement Strategy.

- (b) To ensure best value, specifications should be generic and outcome- based and not limit offers of equivalent solutions.
- (c) Budget Holders must use caution when communicating with potential suppliers during this stage of the process, to avoid compromising the Council's ability to maintain transparency, equal treatment and impartiality.
- (d) The Procurement Plan shall capture the sign off of the final specification and terms and conditions.

4.08 Define Terms and Conditions

- a) The Council's Standard Terms and Conditions for purchasing have been developed with legal advice to protect the Council from contract risk in the majority of instances.
- b) The Budget Holder must be satisfied that the terms of and conditions of any contract that is entered into are appropriate to the purchase and safeguards the Council. Under normal circumstances for low value goods and simple services the Council's Standard Terms and Conditions may be sufficient.
- c) However, consideration should be given to specifics, such as data sharing and confidentiality, insurance and health and safety, as well as other relevant issues where risk is increased. Additional terms, including social value, environmental and other elements shall be considered by the Budget holder where appropriate. Advice of the Procurement Service and Legal Service should be sought on the application of such conditions.
- d) In all cases contract terms shall include a requirement for suppliers to be paid, as a minimum, within 30 days of receipt of a valid invoice and also for suppliers to pay their sub- contractors within 30 days and to pass that requirement through the supply chain.
- e) In some limited circumstances the market operates in such a way as to prevent the Council from imposing its standard terms and it will be inevitable that the supplier's terms will be offered. The proposal of such clauses by the supplier may raise grounds for negotiation with the supplier prior to agreeing a contract. In such circumstances, the relevant Officer shall seek legal advice on the potential risks contracting on the supplier's terms and conditions may pose to the Council and appropriate amendments made in order to ensure that any such risks are suitably mitigated, and the final form of contract is acceptable to the Council. Where a supplier's terms and conditions are to be agreed this must first be approved by the appropriate delegated officer, following Procurement Service and/or Legal Service advice .
- f) The contract terms should be fully drafted and made available at the point of advertising an open procurement procedure.

4.09 Define Pricing

In the case of long-term contracts (usually longer than one year) it may be necessary to include provision for inflationary and deflationary factors during the contract. A

clause should be drafted requiring the supplier to provide evidence of increased costs and any increase must be limited to the appropriate inflationary index. Due care must be taken when drafting this type of clause and when used must be approved by the Budget Holder following advice from the Procurement Service and/or the Legal Service in conjunction with the Finance Service.

4.10 Implied Payment Terms

(a) The following prompt payment terms are implied into all regulated below-threshold contracts (and related subcontracts):

- The Council must pay valid and undisputed invoices within 30 days (beginning with the day the invoice is received or becomes due, if later).
- The Council must notify the payees without undue delay if it disputes the invoice or considers it invalid.

(b) Any attempt to restrict or override these terms in a contract will be invalid, although there is nothing to prevent the parties agreeing to pay within less than 30 days.

5.0 MARKET RESEARCH, PRE-MARKET ENGAGEMENT

5.01 Market Research

Access to accurate and relevant commercial intelligence and knowledge of the marketplace is necessary in deciding which procurement option is best. Relevant markets need to be researched and understood, however, care must be taken to ensure this does not distort competition or prejudice any bidder or potential bidder. Advice may be taken from the Procurement Service to support market research.

5.02 Premarket engagement

(a) Budget Holders shall consider if premarket engagement is appropriate for their procurement.

(b) It can be beneficial, for example, where the requirements are

- specialist, complex or niche.
- Where the market is unknown or limited.
- Where we have an idea of the specification or requirements but want to understand further what is available to us.

- Where we want to test a potential procedure to understand its suitability.
 - To assist us in the design and development of conditions of participation of the procurement tender exercise, contract award or contractual terms and conditions.
- (c) No meetings or discussions shall take place during the tendering process between tenderers and the Budget holder without the prior approval of the Procurement Service.

5.03 Communication with potential suppliers

- (a) All potential suppliers must receive the same detailed information that accurately reflects the business and Budget holder requirements. Information given to tenderers that relates to anticipated volumes or value of business is for guidance only. It must be clearly stated that the Council will not be bound by this information.
- (b) Tenderers must not be informed of the identity of competitors, as this can lead to supplier collusion and cartels and a potential loss of confidence among tenderers as well as the potential for a claim for breach of confidentiality.
- (c) All questions and answers to clarification points that may be raised by tenderers are to be administered through the e-procurement system to ensure that all tenderers receive the same information. Care should be taken to ensure that further clarification information is made anonymous before sharing with other tenderers.

6.0 SELECTING A PROCUREMENT PROCEDURE

6.01 Proportionality of sourcing strategy

- (a) Advice should be obtained from Procurement Service about effective choice of procurement procedure and suppliers. There are a number of ways in which the Council can invite suppliers to tender or quote and award a commercial contract.
- (b) Budget Holders should carefully consider whether the procurement procedure is proportionate to the value, risk and complexity of the requirement, whilst ensuring the requirements encourage broad participation and are accessible to all.
- (c) The Act places an obligation of the Council to have regard to SMEs, for example, by reducing processes which are disproportionately burdensome on SME suppliers or transfer unfair levels of risk to the suppliers.

6.02 E-procurement platform

Suppliers can register on the Council's e-procurement platform to be alerted to an advertised opportunity. Suppliers are also able to access the Government's Find-A-Tender service.

6.03 Identify existing Frameworks

- (a) Frameworks are public contracts and must be awarded in the same way as other public contracts. Correct selection and use of a Framework Agreement provides a compliant procurement process.
- (b) A Framework Agreement is a formal tendered arrangement which sets out terms and conditions under which specific purchases can be made throughout the term of the agreement. The appropriate Budget Holder may procure supplies, services or works from the successful framework tenderer(s) in unpredicted quantities at various times during the period that the agreement is in force. For this purpose, a Framework Arrangement may be internal, i.e., set up by the Council, or external, i.e., set up by CCS, ESPO or some other central purchasing body.
- (c) Consideration must be given as to whether the Council could achieve increased value for money by joining an existing consortium to enable it to benefit from using pre-tendered Framework Agreements and whether any charges for this represent a good investment.
- (d) The Budget Holder must consult with the Procurement Service as to whether and how the Council is able to utilise a specific Framework Agreement and/or provider.
- (e) Under the Procurement Act 2023, contracting authorities cannot award public contracts under frameworks or dynamic markets established by private companies, except where the private company is acting as the agent of a contracting authority.
- (f) All Frameworks whether set up by the council or authorised framework provider will require the award of contracts under it (call offs) by competitive selection
- (g) Direct awards are only permitted if there is only one supplier or if the core terms of the public contract are set and there is an objective mechanism for selection. Procurement Act explanatory notes state that core terms include key terms such as deliverables and pricing mechanism as well as basic terms such as termination, dispute, confidentiality, variation and so on. This does not apply to light touch or concession contracts.

6.04 Creating a framework

- (a) If there is no previously existing framework agreement and the requirement is of an ongoing nature and may require more than one supplier, or if the volume of the requirement over the contract term is uncertain, the Budget Holder should consider whether creating a council run framework arrangement would be beneficial and proportionate.
- (b) All call off contracts awarded under a Framework Agreement, whether Council owned framework or external framework, shall be added to the Contracts Register.
- (c) When advertising for a Framework Agreement the advertisement must indicate:
 - That it is a Framework Agreement which is being tendered;

- The parties eligible to participate in the Framework Agreement;
- The duration of the Agreement;
- The expected maximum number of suppliers;
- The estimated total value of the contracts to be covered by the Agreement;
- The award criteria for choosing suppliers and subsequent criteria for placing orders.

6.05 **Open Frameworks**

An open framework is defined as "a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms". So, it is effectively a framework that rolls over successively and is reopened to new suppliers at set times. An open framework is a hybrid of a dynamic market (which is permanently open to new suppliers) and a conventional framework (which is not open to new suppliers post award).

6.06 **Framework Agreements**

Suppliers may be awarded business under Framework Agreements and the Budget Holder will not undertake any further supplier identification. In any case where a Framework Agreement is validly in place:

- orders will be placed against a known price and do not require further competition unless required by law;
- in circumstances where the price was not specified under the Framework Agreement an order can only be placed if further competition has been undertaken in accordance with the instructions contained within the Framework Agreement. This will be with all of the suppliers specified in the Agreement or within a specific Lot of the Agreement and no other suppliers. This competition will be undertaken utilising the Council's e-procurement system;
- the further competition must be evaluated using the criteria as stated in the Framework Agreement. If the number of suppliers within a Framework Agreement or relevant Lot is not sufficient to ensure competition the Budget holder must seek Procurement Service advice;
- when an existing Framework Agreement is to be used, particularly for services and works, it is the Budget Holder's responsibility to ensure that all specified requirements remain valid. It may be necessary to request current evidence of insurance or other certification depending on how the Framework Agreement is managed.

6.07 **Dynamic Markets**

The Procurement Act 2023 has introduced a new commercial tool, dynamic markets.

A dynamic market effectively acts as a qualification tool creating a panel of suppliers who meet the Council's conditions of participation. The Council can then award public contracts by reference to suppliers' membership of the market. Unlike dynamic purchasing systems under the previous procurement regime, the Procurement Act 2023 provides that Dynamic Market Purchasing are not limited to only common commodity contracts. Where a Dynamic Market is in place quotations will be sought using an e-procurement platform. Advice should be sought from the Procurement Service if they wish use of a Dynamic Market.

6.08 **Concession Contracts**

- (a) Under the previous regime, Concession Contracts had their own stand-alone regulations with their own procurement process. The Procurement Act 2023 includes what is traditionally considered as procurements (i.e. above and below threshold, open and competitive) but also now includes and regulates Concession Contracts.
- (b) A Concession Contract is a contract for the supply of works or services where the supplier receives payment, from either the Council or a third party, but crucially is also exposed to a real operating risk.
- (c) The general rule under the Procurement Act 2023 is that concessions are treated exactly the same as Above Threshold or Below Threshold procurements. However, there are exceptions to the general rule and in some instances specific provisions provide additional flexibility for concessions. These are:
- the obligation to publish information about payments under public contracts does not apply to concession contracts;
 - the obligation to publish payments compliance notices does not apply to concession contracts; and
 - the obligation to set and publish key performance indicators does not apply in relation to concession contracts and therefore the obligation to publish related performance information in the contract performance notice also does not apply.
- (d) Below Threshold contracts, the Contract Procedure Rules provisions apply. There is no difference in the threshold for a concession contract for the supply of works and a concession contract for the supply of services.
- (e) For Above Threshold Concession Contracts, the council must go to tender via the Open or Competitive Procedure below.
- (f) A compliant valuation must be completed for each Concession Contract, irrespective of whether it is above or below threshold.
- (g) A concession contract must also include the right to exploit the works or services during the contract period. Therefore, the value calculation for each concession contract must take into account the full range of potential income to be received

by the supplier over the length of the contract, including any renewals or extensions.

- (h) When valuing a Concession Contract it is important to remember that revenue is not estimated profit and should not be reduced by factoring in costs expected to be incurred by the supplier. Other remuneration such as premiums, fees, commissions, receipt of assets, sale of assets must also be incorporated into the valuation.

6.09 Below threshold process

For below threshold contracts Budget Holders should refer to the table in Appendix A. The Budget Holder shall continue to have regard to most advantageous contract award and the corporate priorities however they may consider where appropriate direct awards or a quotation exercise.

6.10 Other compliant procurement procedures

- (a) The Act introduces 'Exempted' Contracts and Contracting Authorities. Some contracts and contracting authorities are fully exempt from the Procurement Act. This means that the Act does not need to be followed (although commercial best practices may be applied where it is appropriate to do so).
- (b) An exempt contract is a type of contract listed in schedule 2 to which the Procurement Act 2023 generally does not apply.
- (c) Schedule 2 part 1 covers contracts that are always exempt due to the nature of the relationship between the contracting authority and the other party to the contract ("counterparty exempted contracts").
- (d) Schedule 2 part 2 covers contracts that are exempt because of the nature of the subject matter of the contract ("subject matter exempted contracts").
- (e) This section of the Act codifies Vertical arrangements (previously often referred to as "Teckal" contracts) and Horizontal arrangements (previously often referred to as "Hamburg" contracts)

7.0 PROCURE PHASE

7.01 Above threshold procedures

- (a) For all procurement requirements above the Procurement Act 2023 thresholds a compliant procurement route must be used when awarding a contract.
- (b) There are now only two types of procurement procedure under the Procurement Act 2023:

- The “Open Procedure.”
 - The “Competitive Flexible Procedure.”
- (c) The **most advantageous tender** is the tender that the contracting authority considers best meets its requirements and satisfies the award criteria (by reference to the assessment methodology and, if more than one criterion) weightings.
- The Open Procedure allows the Council to award on the basis of lowest price, where price is the sole criterion, or to a supplier submitting a tender that scores best across a range of price and quality criteria.
 - Government guidance on assessing tenders means that the Council need not award on the basis of lowest price, or that price must always take precedence over non-price factors.

7.02 Open Procedure

- (a) This procedure is preferred by the Council, as it has the shortest timescales and is arguably most transparent. Any company who accesses the tender following the published hyperlink will be allowed access to the Invitation to Tender (ITT). The open procedure is suitable for simple procurements where the requirement is straightforward. It is most commonly used in practice for the purchase of goods where the requirement can be clearly defined, and the Council is seeking the least expensive supplier.
- (b) As there is no "pre-qualification" of bidders, anyone can submit a tender and it is possible that a large number of suppliers will bid. The Council also retains the ability to disregard any tenders in accordance with section 19 of the Procurement Act 2023.

7.03 Competitive Flexible Procedure

- (a) The competitive flexible procedure is non-prescriptive, leaving the Council with considerable flexibility to design something to suit its specific requirements and are likely to be multi-staged.
- (b) So, the Council may have a first stage inviting tenders to a price negotiation stage for those successful at the first stage. Or the Council may choose to pre-select suppliers by reference to essential requirements and only accept tenders from those meeting the minimum conditions.
- (c) Examples of supplementary stages include
- Participation stage,
 - Nondisclosure Agreement, confidentiality stage

- Clarification processes
 - Dialogue and negotiation
 - site visits
 - supplier presentations and product demonstrations
 - Interim assessment of tenders to narrow competition
 - Limiting the number of participating suppliers (generally, or at different tendering rounds.
 - Refining the award criteria
 - Limiting the number of lots which suppliers can tender for.
 - Excluding suppliers by reference to the conditions of participation or an intermediate assessment of tenders against the award criteria and assessment methodology; or that are not UK or treaty state suppliers (or who intend to subcontract all or part of the contract to such entities).
- (d) The Council must not allow suppliers to participate in a competitive flexible procedure where they did not submit a tender in the first round of tendering or were knocked out in an earlier round.
- (e) Officers will follow the appropriate procedures as detailed in the Procurement Act 2023. There are strict rules around contract value thresholds and mandatory timescales, including a standstill period of eight working days between notification of a preferred contractor and the award of the contract. Officers must ensure that all mandatory timescales are adhered to. Officers wishing to use a Competitive Flexible Procedure should seek advice from the Procurement Service.

7.04 Starting a Tender Procedure

- (a) All tenders shall be advertised electronically.
- (b) The Council will publish a tender notice (essentially, the advert inviting tenders or requests to participate) when starting a competitive tendering procedure (section 21, Procurement Act 2023).
- (c) The Council will provide any associated tender documents in accordance with the tender notice. Such documents may comprise the specification, terms and conditions of contract and the award criteria and assessment methodology.
- (d) To avoid delays and decrease the likelihood of disputes and poor-quality tenders, the Council will focus on early preparation of sufficient information that will enable tenderers to bid (for example, contract terms, specification and so on).

7.05 Time limits and submission deadlines

- (a) The Council must have regard to factors such as the nature and complexity of the contract when setting time limits, but that in any event the time limits must not be less than the minimum time periods set out in section 54 of the Procurement Act 2023. This section sets out periods that suppliers must be given for the submission of tenders (tendering period) and requests to participate (participation period) under a competitive tendering procedure. Each supplier must be given the same amount of time.
- (b) Suppliers can expect less time for certain procurements if there is a state of urgency, or if a planned procurement notice has been published. Suppliers may also in theory be given less time to submit tenders for light touch contracts, since no minimum period applies.

7.06 **Conditions of participation**

- (a) Section 22 of the Procurement Act 2023 enables the Council to set conditions of participation (known as selection criteria under the existing procurement regime) when awarding a public contract following a competitive tendering procedure. Conditions of participation, which must be included in the tender notice, are conditions that a supplier must satisfy if it is to be awarded the contract. The Council can only set conditions to the extent they are considered a proportionate means of ensuring suppliers have either:
- The legal and financial (previous procurement regime was economic and financial) capacity to perform the contract.
 - The technical ability (previous procurement regime was technical and professional ability) to perform the contract.
- (b) As long as they are proportionate, the Procurement Act 2023 does not prescribe how suppliers should demonstrate how they satisfy conditions of participation. The Council is also generally free to set conditions of participation as they see fit, including conditions relating to suppliers' experience, qualifications or technical ability, except that the Council cannot:
- Require suppliers to have been awarded a contract by the Council.
 - Break the rules on technical specifications (section 23)
 - Require particular qualifications without allowing for their equivalents.
 - Require submission of audited accounts (unless required to have their accounts audited under the Companies Act 2006).
 - Require insurance relating to performance of the contract to be in place prior to award.

- (c) Suppliers can rely on a supplier that is associated with it for the purposes of satisfying the conditions. A supplier is associated with another supplier if the suppliers are submitting a tender together, or the suppliers will enter into a legally binding sub-contracting or performance guarantee arrangement (section 22(9), Procurement Act 2023).
- (d) Government guidance on conditions of participation offers some practical tips on setting conditions of participation. While there is no longer a requirement on the Council's part to use a standardised selection questionnaire, as under the Public Contract Regulations 2015, templates can still be used provided that they comply with the Procurement Act 2023 requirements.

8.0 AWARD CRITERIA

(a) Award criteria must relate to the subject matter of the contract and will:

- Be sufficiently clear, measurable and specific.
- Not break the rules on technical specifications (section 23).
- Be a proportionate means of assessing tenders.

(b) The Council has an express right to refine award criteria (and their associated weightings), during a competitive flexible tendering procedure (not an open procedure), if:

- The tender notice or associated tender documents provide for the refinement of the criterion.
- Suppliers have not yet been invited to submit (final) tenders.
- The refinement would not, had it been made earlier, have resulted in one or more suppliers making it through an earlier round.
- If a refinement affects a tender notice or associated tender document, these will be modified and provided again. There is no express requirement on the Council to consider any appropriate refinement to time limits, although advice should be sought from the Procurement Service in relation to any refinements.

8.01 Modifying the Award Procedure

The Council has an express power to modify the terms of a procurement before certain key deadlines have passed

- For an open procedure, before the deadline for submitting tenders.
- For a competitive flexible procedure, before the deadline for requests to participate, if applicable, or the deadline for submitting the first or only tender; or before the deadline for the final tender, if the modification is not substantial or relates to a light touch contact.

9.0 DYNAMIC MARKETS

9.01 Conditions of Participation for Dynamic markets

- (a) A dynamic market effectively acts as a qualification tool creating a panel of suppliers who meet the contracting authority's conditions of participation. The Council can award public contracts by reference to suppliers' membership of the market. It is not limited to only common commodity contracts.
- (b) Before establishing a dynamic market, The Council will publish a dynamic market notice stating its intention to do so. Once established, a further notice is required as soon as reasonably practicable confirming this.
- (c) The Council can set conditions of membership for a dynamic market (or part of it) where considered a proportionate means of ensuring members have the legal and financial capacity and technical ability to perform any contracts awarded to them.
- (d) Conditions of membership cannot be modified during the period of the dynamic market, so the Council will ensure these are clear and appropriate from the outset.
- (e) The Council reserves the right to charge fees to suppliers. The documents which establish the dynamic market can provide that suppliers must pay fees when they are awarded a contract by reference to their market membership; this must be a fixed percentage of the contract value (section 38, Procurement Act 2023).
- (f) For utilities dynamic markets, fees can be charged but only in connection with obtaining and maintaining membership of the market.
- (g) Dynamic market notices will be published whenever a dynamic market is modified or ceases to operate. However, the requirement to publish a notice when the market ceases to operate does not apply to private utilities.

9.02 Membership of a Dynamic Market

The Council will:

- Accept applications for membership of a dynamic market (or part of it) at any time during the life of the market and consider those applications within a reasonable period. The number of members cannot be limited.
- Admit all suppliers (unless excluded or excludable) satisfying the conditions for membership to the market as soon as reasonably practicable.
- Inform suppliers of the outcome of their application (and reasons for their decisions) as soon as reasonably practicable.
- Remove a supplier from the market if the supplier is entered onto the debarment list for a mandatory exclusion ground (and inform the supplier of its decision to do so).

- The Council has the discretion to remove suppliers from a dynamic market if they are an excluded supplier (but not on the debarment list), no longer satisfy the conditions for membership or if the supplier has become an excludable supplier since it joined the market. Again, before removing the Council will inform suppliers of their decision together with reasons.

9.03 Awards by reference to dynamic market membership

- (a) The award of public contracts by reference to a dynamic market will be done via a competitive flexible procedure. Before excluding or disregarding tenders from suppliers who are not already members of the market, the Council will generally consider any applications for membership made by such suppliers.
- (b) Only in exceptional circumstances due to the complexities of the procurement, which mean that the deadline for submission of tenders/ requests to participate does not allow the contracting authority to consider the supplier's application for membership in time, can a supplier be excluded or their tender rejected because they are not a member of a dynamic market (section 34(5)).
- (c) Concession contracts cannot and will not be awarded by reference to a dynamic market, unless they are also utilities contracts.
- (d) The Council *will* disregard any tender that does not satisfy the conditions of participation.
- (e) When awarding a contract by reference to a dynamic market, the Council *will* disregard a tender from a supplier that is not a member of the dynamic market or part of the dynamic market.
- (f) The Council *may* disregard any tender from:
 - a supplier that is not a UK supplier or treaty state supplier, from a supplier that intends to subcontract the performance of all or part of the contract to a supplier that is not a UK supplier or a treaty state supplier,
 - which breaches a procedural requirement (including a requirement that a supplier provide information) set out in the tender notice or associated documents (this might cover late submission or being over the prescribed word count;
 - which offers an abnormally low price if the supplier cannot demonstrate that it will be able to perform the contract at that price).

10.0 PROCEDURES FOR USING FRAMEWORKS

- (a) There is no requirement to publish a Tender Notice if the Council advertises to a closed group of pre-selected suppliers (for example, suppliers on a framework) or from one or more targeted individual suppliers, provided that the procurement is not advertised in any other way such as in a newspaper or a local website or portal.

- (b) There may be circumstances when it will also be necessary to place an advertisement in a local newspaper, trade journal, local partnership network, or social media where appropriate, to invite potential suppliers to register on the above e-procurement systems to obtain access to the opportunity. This will particularly be the case where it is deemed that insufficient suppliers are registered for a specific category of products or services to achieve a reasonable level of competition. Such an advertisement may only be raised with the approval of the Head of Service and will include the website address for the relevant e-procurement system.

11.0 BELOW PROCUREMENT ACT 2023 THRESHOLD CONTRACTS

- (a) The Council must publish a below-threshold tender notice if they advertise (that is, for the purpose of inviting tenders) a below-threshold contract with an estimated value of or more than £30,000 (including VAT).
- (b) Before inviting the submission of tenders, have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and consider whether such barriers can be removed or reduced.
- (c) Not restrict the submission of tenders using an assessment of a supplier's suitability to perform the contract¹ e.g. their legal and financial capability or their technical ability (with the exception of works contracts above services threshold).
- (d) The Council must publish a contract details notice for notifiable below-threshold contracts as soon as reasonably practical after entering it, regardless of whether they originally invited tenders for that contract.
- (e) Quotes in accordance with these Contract Procedures Rules will not trigger a requirement to publish a below threshold tender notice

11.01 Amendments to below threshold contracts

The rules governing variations to existing contracts in the Procurement Act 2023 does not apply to below threshold contracts, so low value contracts can generally be varied without restriction. However, note that if a below threshold contract is amended and the amendment causes the contract to tip over the financial threshold for that contract, the amendment will be governed by the Procurement Act 2023's rules on variations. Below threshold guidance comments that, after this, the contract should be treated as a public contract rather than a below threshold contract.

12.0 DUE DILLIGENCE

- (a) The Council is committed to obtaining value for money through the procurement of all goods, services, works and capital projects. It is essential to ensure that only the most capable suppliers are selected as suppliers to the Council.
- (b) The selection and elimination of suppliers within a procurement exercise can only be made on grounds of capability and that assessment should include a balance

of technical, professional, and financial issues as appropriate. It is essential that any criteria used to select suppliers are notified to them in advance. This information should be contained within documents published through the applicable e-procurement platform.

- (c) Potential suppliers should be requested to provide accounts for the past two years of trading as part of the procurement process where appropriate (the Procurement Service will advise where this may be required). In the absence of audited statements, other information should be requested that is considered sufficient for assessment purposes. Potential suppliers such as SMEs and public service mutuels may have been recently formed and be unable to provide accounts for the previous two years or to provide any filed accounts at all. The Budget holder should know the level of flexibility required towards potential suppliers from information gained through market research. Other information that may demonstrate the potential supplier's economic and financial standing can include, but is not limited to:
- parent company accounts (if applicable);
 - deeds of guarantee and performance bonds (e.g., directors/parent company/personal);
 - bankers statements and references;
 - accountants' references;
 - management accounts;
 - financial projections, including cash flow forecasts;
 - details and evidence of previous contracts, including contract values; and
 - capital availability.
- (d) If a potential supplier is not selected, there must be clear and demonstrable evidence of financial risks, capacity or capability issues over and above a simple turnover or ratio measure.
- (e) Budget Holders should not impose arbitrary minimum requirements which may have the unintended effect of barring new businesses from bidding and in the spirit of encouraging supplier growth, the supplier evaluation process should not rule out a potential supplier unless there is clear evidence that the supplier's financial position places the Council or services at unacceptable risk.
- (f) This should include the consideration of the level of insurances required. Whilst the Standard Terms & Conditions include a requirement for £10 million minimum cover for Public Liability, Budget Holders should set the minimum requirements for Employers Liability and Professional Indemnity Insurance at an appropriate value relative to the contract risk, and may wish to consult the Head of Finance, the Monitoring Officer or the s151 Officer before fixing limits. Note that legally Employers Liability must be a minimum of £5 million.
- (g) Where open advertisements are used to attract potential suppliers the selection process will form a qualifying stage of the tender exercise. Qualification can only

be assessed on the grounds of financial soundness, capacity and professional and technical ability. There are 2 ways in which this process can be used, either

- the pre-qualification questionnaire is made available to all suppliers expressing an interest and only the suppliers that meet the required standard are then allowed access to the full tender documents (**Competitive Flexible Procedure**); or
- suppliers are issued with the full Invitation to Tender (ITT) document of which the qualification section forms the first element (**Open Procedure**)

13.0 FINAL REPORT

A tender report should be completed as part of the Procurement Plan and submitted to the appropriate officer for approval to award.

14.0 DIRECT AWARDS

14.01 These are to be distinguished entirely separately from Framework Agreements.

14.02 Key Principles

- (a) Direct awards can be made below the Procurement Act 2023 Thresholds but must comply with the directions in these Contract Procedure Rules.
- (b) The Council may only directly award an above-threshold public contract when section 41 (and one or more of the justifications in Schedule 5), section 42 or section 43 of the Procurement Act 2023 apply, as set out in more detail below.

14.03 Direct Award – Below threshold

The rules of these Contract Procedure Rules shall apply to all Below Threshold Direct Awards.

14.04 Direct Award – Above threshold

- (a) **Section 41** of the Procurement Act 2023 precludes the Council awarding to an Excluded Supplier, unless there is an overriding public interest, being:
 - the award is necessary for the construction, maintenance or operation of critical national infrastructure;
 - the award is necessary to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies;
 - not awarding the contract to the supplier would prejudice the conduct of military or security operations or the effective operation of the armed forces or intelligence services;

- the contract is being awarded under the urgency provisions in Schedule 5, paragraph 13, and cannot be awarded to, or performed by a supplier that is not excluded supplier within the necessary time frame.

(b) The urgency provisions (Direct Award Justifications) under Schedule 5 are:

- Where deemed necessary by regulations to protect life, health or public safety.
- Where the contract is for the supply of user choice services, as designated by regulations and supplied for the benefit of the individual. To apply, the individual to receive the services must have expressed a preference of supplier or there must be only one supplier capable, and the contracting authority must consider that it is not in the best interests of the individual to competitively award the contract.
- The supply of prototypes or the testing, viability research or development of other novel (that is, developed at the request of the contracting authority) services.
- The creation or acquisition of a unique work of art or artistic performance.
- Only one supplier can supply the goods, works or services because of intellectual property or other exclusive rights and there are no reasonable alternatives.
- Only one supplier can supply the goods, works or services due to the absence of competition for technical reasons and there are no reasonable alternatives.
- The extension or partial replacement of existing goods, services or works by the existing supplier where a change in supplier would result in receiving different or incompatible goods or services, resulting in disproportionate technical difficulties in operation or maintenance.
- The supply of similar goods, services or works by an existing supplier where the existing contract was awarded competitively to the existing supplier in the last five years and the tender notice for the award specifically mentioned the contracting authority's intention to use this direct award justification.
- The goods, services or works are strictly necessary because of extreme and unavoidable urgency and cannot be awarded in a competitive tendering procedure. The extreme and unavoidable urgency must be unforeseeable.

(c) Advice must be sought from the Procurement Service and/or Legal Services if the Council intends to rely on any of these Direct Award Justifications.

(d) **Section 42** of the Procurement Act 2023 is a standalone provision that allows an Above Threshold Direct Award to protect life, in the absence of regulations to protect life under Schedule 5.

(e) **Section 43** of the Procurement Act 2023 permits the Council to award a public contract directly to a supplier that is not an excluded supplier, if the Council:

- Has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure.
- Has not received any suitable tenders or requests in response (which includes evidence of collusion or materially breaching a procedural requirement of the tender notice or documents).
- Considers that a competitive award is not possible in the circumstances.
- Subject to any legal limitations, the Procurement Service in consultation with the s151 Officer or an Executive Director, having consulted the Monitoring Officer (or their nominated deputy), may approve an waiver to any part of these Contract Procedure Rules that is necessary because of an Operational Emergency creating immediate risk to life, persons or property within the City or causing serious disruption to Council services (including any emergency or disruption under the Civil Contingencies Act 2004). An Operational Emergency is a situation that is the result of an unforeseen event over which the Council has no control. This procedure must not be used when a requirement has become late due to lack of planning on the part of the Council.
- Full documentation must be completed regardless of the urgency of the requirement and a full and transparent audit trail must be made throughout the procurement process. Where the value of the Contract is over £500,000 a report supporting the use of this power must be taken to Cabinet at the first available opportunity.

14.05 Switching to direct award

- (a) The Council may award a public contract directly to a supplier that it not an excluded supplier, if the Council:
- Has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure.
 - Has not received any suitable tenders or requests in response (which includes evidence of collusion or materially breaching a procedural requirement of the tender notice or documents).
 - Considers that a competitive award is not possible in the circumstances.
- (b) The Council may carry out a selection process after switching to direct award, for the purposes of awarding a contract. This allows for some informal competition or selection process. However, before awarding the contract, they must also consider whether the proposed supplier is an excludable supplier or had submitted an unsuitable tender in response to the initial competitive tendering procedure.

15.0 WAIVERS

- (a) In exceptional circumstances and subject to the law when there are justifiable technical, specialist or market supply reasons and insufficient suppliers are available from the market to enable competitive offers to be obtained, any requirement to seek more than one tender or quotation may be waived, subject to authorisation in advance by the manager of the Procurement Team (or their nominated deputy).
- (b) Where the value of a single waiver request, or the sum of cumulative waiver requests are £100,000 (excluding VAT) or higher the s151 Officer, in consultation with the Monitoring Officer, (or their nominated deputies) shall be required to dual authorise.
- (c) Request for a waiver must be submitted by the relevant Head of Service to the Procurement Service. All associated documentation must be retained in accordance with the Council's Document Retention policy when a waiver is authorised. Officers should be aware that records of waivers may be published.

16.0 CONTRACT AWARD, STANDSTILL PERIOD AND CONTRACT DETAILS

16.01 Assessment summary

- (a) Before entering a public contract, the Council will provide an assessment summary to each supplier that submitted an assessed tender (these are given privately and are not published on the central digital platform). The Council shall use its e-procurement portal. The summary will contain information about the Council's assessment of the tender and, if different, the most advantageous tender submitted in respect of the contract.
- (b) That assessment summary will include:
 - The award criteria.
 - How the successful tenderer scored (total and sub-total) against that award criteria including an explanation of each score by reference to information in the tender and how the tender was assessed by reference to any sub-criteria.
 - How the supplier scored (total and sub-total) against the award criteria to the extent that the tender was assessed against that criteria.
 - Any other explanation of why the contract is not being awarded to the supplier including for example disqualification for failure to meet one or more criteria.
- (c) Under the Procurement Act 2023, an assessment summary replaces the requirement for a debrief or standstill letter.

16.02 Contract award notice

- (a) After giving the assessment summaries (but before entering into a public contract), the Council will publish a contract award notice stating that the Council intends to enter into the contract and containing any other information to be specified in regulations.
- (b) Contract award notices will also be published when awarding call off contracts under frameworks or dynamic markets (assuming that these contracts are above threshold).

16.03 Standstill period

- (a) Publishing a contract award notice triggers the start of a mandatory eight working day standstill period. The Council will not enter into (sign) the contract until the mandatory standstill period (or any longer standstill period stated in the contract award notice) is over.
- (b) Light touch contracts, awards under frameworks or by reference to dynamic markets, direct awards for urgency or protection of life or direct awards by a private utility do not need to provide a mandatory standstill period. However, the Council, when awarding these contracts, can still refer to a voluntary standstill period in their contract award notices. Any voluntary standstill period must be complied with.

16.04 Contract details notice and publication of contracts

- (a) Subject to exceptions for private utilities and directly awarded user choice contracts, the Council will publish:
 - A contract details notice confirming that it has entered into a contract.
 - For contracts over £5 million, a copy of the contract.

This includes when entering into an above threshold call off contract under a framework or dynamic market.

- (b) The contract details notice must be published:
 - i. For light touch contracts, within 120 days of the date the contract was entered into.
 - ii. For all other public contracts, within 30 days of the day the contract was entered into.
- (c) A copy of the contract will be published within 180 days of entry into the contract (for light touch contracts) or 90 days (for all other contracts).

17.0 FORM OF CONTRACT

17.01 Contract formation

- (a) Purchase Contracts should ordinarily be utilised in addition to Purchase Orders for requirements of £100,000 or over (excluding VAT) in value. For specific requirements below £100,000 (excluding VAT) a contract will also be appropriate where:
- supply will extend beyond one year;
 - special conditions apply;
 - the requirement is complex; or
 - there is significant risk associated with the purchase.
- (b) When a Purchase Contract is in place it must be used in preference to sourcing a requirement from another supplier. All Purchase Contracts must:
- be in writing; and must specify the supplies, materials or services to be supplied, the price to be paid and must contain a statement as to the amount of any discount or other deductions, the period within which the contract is to be performed and such other conditions and terms as may have been agreed between the parties through the tender process; and
 - include a clause prohibiting the contractor from transferring or assigning or sub-letting to any person any portion of the contract without the written permission of the Council signified by the appropriate Head of Service; and
 - contain a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any resulting loss if the contractor or any person employed by him/her or acting on his/her behalf whether or not to his/her knowledge shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for taking or for not taking any action in relation to the contract or any other contract with the Council, or shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
 - incorporate the Council's Standard Terms & Conditions, unless the parties agree to the contrary or it is considered inappropriate to do so by the Section 151 Officer following legal advice.
- (c) Every contract whose estimated value is £100,000 or over (excluding VAT) must where possible provide for the payment of liquidated damages by the contractor where he/she fails to complete the contract within the time specified.

17.02 Execution of Purchase Contracts

- (a) Purchase contracts may (at the discretion of the Monitoring Officer) be under seal (particularly for contracts regarding construction, land or property), but where the value is over £5,000 they must always be signed by an Executive Director or a Head of Service. (Only those officers authorised to attest the seal may authorise use of the seal.)

- (b) Heads of Service may authorise officers in their service area to sign contracts with a value of under £5,000 for specific purposes but must retain a list of those they designate and the types of contract they may sign. Heads of Service must maintain that list and produce to the s151 Officer and Monitoring Officer on request that list of those Officers whom they have authorised to sign contracts on their behalf.
- (c) Entering into arrangements of any nature without first ensuring that an appropriate agreement (e.g., simple contract, deed, lease, transfer, or other relevant documentation setting out the terms and conditions of the agreement) has been executed by all relevant parties to the agreement is not permitted unless the conditions within the following paragraph have been met.
- (d) If an Officer finds themselves in a situation where a third party is pressuring them to enter into an arrangement (whether that arrangement is proposed to be under a simple contract, deed, lease, transfer, or other documentation setting out the terms and conditions of the agreement) without the relevant agreement being properly executed by all parties to the arrangement, they must not do so unless they have first secured the written consent of at least two of the following individuals:
- Executive Director;
 - Monitoring Officer;
 - Section 151 Officer,
- and such written consent is properly documented and retained for future audit purposes in accordance with the retention periods set out.
- (e) Copies of all contracts, including those with a value under £5,000, must be retained.
- (f) Hard copies of contracts will be stored in the Contract Safe strongroom, as well as being scanned. An electronic copy should be held for officers to access via a link in the database.
- (g) All contracts which have a value of over £5,000 must also be notified by the Budget Holder to the Procurement Service for the details to be entered on the published Contracts Register.

18.0 MANAGE PHASE

The obligations in the Procurement Act 2023 do not end once the contract is signed and published. There are obligations that continue until the contract has been completed or terminated. The Contract Manager will need to be aware of these ongoing obligations in the Act.

18.01 Purchase order

- (a) The standard Purchase Order is generated by the finance system and must be utilised for all individual requirements and to call off requirements from existing

Contracts. There are very limited exceptions to this requirement and circumstances should be checked with the Procurement Service. The Purchase Order will be completed with all the appropriate details of the purchase and the Standard Terms & Conditions are referred to on the supplier's copy of the Purchase Order. The Purchase Order shall include details of the Contract Register entry number

- (b) The use of supplier-prepared agreements is not acceptable, except in limited circumstances (and with the agreement of Procurement Services with advice from Legal Services) as the whole contract will be placed on the supplier's terms and conditions, which are unlikely to be favourable to the Council.
- (c) Purchase Orders shall not be issued to a supplier until an approved and signed contract is in place

18.02 Receipt of goods & services and payment

- (a) Payment cannot be made until all supporting documentation has been completed. It is essential that receipt acknowledgements and invoices are provided promptly to the Payments Team in the finance area by the Budget Holder after receipt of the goods or services. Invoices should in the first instance be sent directly to the Payments Team.
- (b) Before an invoice is paid by the Payments Team the following checks need to be completed to certify the specific invoice is passed for payment by confirming the following:
 - the VAT invoice is an original or certified copy;
 - the goods and or services were received;
 - that the prices and all costs were agreed and invoiced correctly;
 - applicable credits and or discounts have been applied;
 - the arithmetic calculations are correct.
- (c) The Payments Team will process invoices promptly for payment. The Council is targeted by the Government to achieve all payments to suppliers within 30 days of receiving an invoice.
- (d) The Council has a No Po No Pay Policy in place and the Payments Team shall return all invoices unpaid to the supplier if not adhered to.

18.03 Publication of KPIs and performance information

- (a) Unless awarding a framework, concession contracts or light touch contracts, the Council must set and publish at least three key performance indicators (KPIs) before entering into a public contract for more than £5 million unless the Council considers that KPIs are not appropriate to assess the supplier's performance.

The Council will:

- (b) Where it has published KPIs under section 52, at least annually during the lifetime of the contract, assess the supplier's performance against the KPIs and publish certain information in relation to that assessment.
- (c) Publish information about the supplier's non-performance or breach within 30 days, where either the supplier has:
 - breached the contract resulting in termination, award of damages or a settlement agreement;
 - poorly performed and has not improved performance despite the opportunity to do so.

This requirement will not apply to light touch contracts or private utilities.

19.0 CONTRACT MANAGEMENT

19.01 Contract management – lifecycle

- (a) The score achieved in the assessment of contract risk tiering will indicate the level of contract management required and the appropriate approach to take.
- (b) Contract Managers shall adhere to the requirements of the Contract Management Framework
- (c) The Procurement Team shall from time to time undertake a program of peer reviews of significant contracts. These reviews will assess internal controls, compliance, record keeping, cost and scope changes, performance management, delivery of social value and benchmarking if appropriate.

19.02 Variations

- (a) The Council can only vary public contracts and "convertible contracts" in one of the following circumstances:
 - The modification is a "permitted modification".
 - The modification is not a "substantial modification"
 - The modification is a "below-threshold modification"
 - The contract is a light touch contract.
- (b) Except in limited circumstances, all contracting authorities varying their contracts will be required to publish a contract change notice

19.03 Permitted modifications

- (a) Urgency and the protection of life. The modification could otherwise be done using a direct award for extreme or unavailable urgency or the need to protect life.
- (b) Materialisation of a known risk. The modification is required to manage a known risk which has materialised through no fault of the contracting parties but prevents the contract from being delivered to the Council's authority's satisfaction and, additionally, the Council must consider that it would not be in the public interest to award a new contract (instead of modifying the existing one) and the amendments must not increase the estimated value of the contract by more than 50%.
- (c) Where the modification is expressly provided for in the contract.
- (d) Unforeseeable circumstances. The circumstances could not reasonably have been foreseen by the Council prior to award, the modification would not change the overall nature of the contract and would not increase the estimated value of the contract by more than 50%. (The 50% condition does not apply to utilities contracts.)
- (e) Additional goods, services or works. The modification is for additional goods, services or works and using a different supplier would result in supplies that were different from, or incompatible with, those already in the contract.
- (f) Using a different supplier must also, in the Council's view, result in disproportionate technical difficulties in operation or maintenance or other significant inconvenience and substantial duplication of costs for the Council/ The proposed variation must also not increase the estimated value of the contract by more than 50%. (The 50% requirement does not apply to utilities contracts.)
- (g) Transfer on corporate restructuring. The modification is the novation or assignment of a public contract to a supplier (provided they are not excluded) following a corporate restructuring or similar circumstance.

19.04 **Substantial modification**

A substantial modification is one which may:

- Increase or decrease the term of the contract by more than 10%.
- Materially change the contract scope (that is, provide for services, works or goods not already provided for under the contract).
- Materially change the economic balance of the contract in favour of the supplier.

19.05 **Below-threshold modifications**

Changes are permitted where they satisfy all of the following:

- Do not increase or decrease the value of the contract by more than 10% (for goods or services) or 15% (for works).
- Do not meet the criteria for a permitted modification or non-substantial modification.
- Do not materially alter the scope of the contract (that is, provide for goods, works or services not originally provided for).
- The aggregated value of below-threshold modifications is below the relevant financial threshold for the type of contract. As now, contracting authorities will therefore need to determine the value of any below-threshold modifications cumulatively throughout the term, to ensure that their total value falls below the relevant financial threshold.

19.06 **Contract change notices**

- (a) The Council will publish a contract change notice before it proceeds to vary a public contract.
- (b) This is not, however, required if either:
- The contract is a light touch contract or awarded by a private utility.
 - The proposed change increases or decreases the contract value by less than 10% (goods or services) or 15% (works); or increases or decreases the term by 10% of less than the maximum provided for on award,
- unless the proposed variation involves a permitted change in supplier.
- (c) Contract change notices may specify a voluntary standstill period, which must not be less than eight working days from the date the notice is published.
- (d) Contracts must not be varied during any voluntary standstill period (Modifying a contract during any voluntary standstill period may give rise to a claim in damages or set aside).
- (e) Where a contract notice is required and the contract is worth (before or after the modification) more than £5 million, the Council must also publish a copy of the modified contract or the modification itself within 90 days of the date the change is made.

19.07 **Cancellation of purchase order/contract**

All requests for cancellation must be made in writing to the supplier by the Budget Holder who initiated the contract. For complex contracts advice must be sought from the Procurement Service and/or Section 151 Officer and legal advice sought as required. Formal cancellation of the purchase order must be made in writing, ensuring the Payments Team are informed. The details of any discussions and clarification between the Budget holder and the supplier should be recorded with the

reasons for cancellation and the outcomes of any discussion.

19.08 Termination due to supplier non-performance

- (a) If the Supplier is not meeting their contractual obligations and discussions fail to resolve the matter, the Purchase Order/Contract may need to be terminated.
- (b) The Budget Holder should consider the consequences of the cancellation with regard to:
 - the Budget holder's needs;
 - project timing and cost;
 - overall relationship between the Council and the supplier;
 - the Council's performance in the contract;
 - contractual implication from the supplier's point of view;
 - future and other outstanding business with that supplier; and
 - the possibility of negotiating damages or consequential losses in line with the provisions of the contract conditions.

19.09 Termination Notice

- (a) Publication requirements that apply under the Procurement Act 2023 include, for above threshold contracts, a Contract Termination Notice. This is mandatory when a public contract is terminated / comes to an end. This shall be issued within 30 days from the day the contract ends.
- (b) For below threshold contracts the Council may voluntarily publish a Contract Termination Notice at contract end.

19.10 Exit strategy

- (a) As the contract progresses the Budget Holder will have responsibility for ensuring that both parties are working towards the planned exit of the contract which, for example, may involve a review of service provision not less than 6-12 months prior to the termination date.
- (b) The Budget holder will also be responsible for undertaking the procurement process for securing subsequent supply arrangements if required. For the majority of service contracts, it will be important to have built into the contract the requirements from the contractor should a change of supplier be appropriate at

contract expiry. This might include provision of staff information to facilitate TUPE or the transfer of Council data from an existing system provider to a new contractor.

- (c) Part of the exit strategy should involve ensuring that a review of the contract and supplier's performance and an assessment of lessons-learned are undertaken to inform future contracts.

20.0 DECOMMISSIONING

20.01 Disposal of assets

- (a) Disposal and/or reallocation of assets needs to be managed with the same diligence as the acquisition process. The Council has a duty of care regarding the disposal of equipment where environmental issues are appropriate.
- (b) Budget Holder shall follow the appropriate Council procedure on asset disposal and see guidance from the Finance team.
- (c) Where appropriate the Budget Holder shall ensure the Council's Asset Register is updated.
- (d) Before an item is disposed of, consideration should be given as to whether there is a use for the item elsewhere within the Council. All options must be explored and a record kept of the decisions made. It is the responsibility of each Head of Service to establish that legal title rests with the Council prior to the disposal of any item. Disposal of land will in all cases require advice and guidance from the Head of Service - Property & Economic Development, as set out in the Council's Financial Regulations.

21.0 RECORD KEEPING AND RETENTION OF DOCUMENTS

21.01 Procurement Act 2023 obligations

- (a) The Act places obligations on Contracting Authorities to keep certain records for each procurement they undertake. These obligations are set out in section 98 and cover:
 - any communications with suppliers in relation to the award of or entry into a contract, made before the contract is entered into; and
 - documentation that is sufficient to explain a material decision made during the award of or entry into a contract.
- (b) A decision is material if the contracting authority is required to publish or provide a notice, document or any other information relating to it, or if the contracting authority is required, by the Act, to make the decision.
- (c) These records must be kept for a minimum period of three years following entry into the contract. If a decision is made to award a contract, but it is not entered into, the three years runs from the date of award.

- (d) When the decision is made to terminate a procurement without awarding a contract, records are only required to be kept until the day that a procurement termination notice is published.
- (e) Documents should be filed/stored carefully to ensure they are retrievable by others if and when required.
- (f) These records may be required for any contract disputes, audits or procurement investigations.

21.02 Archive records and retention of records

- (g) On top of the Act obligations, it is a legal requirement for commercial records to be retained for inspection by various Government organisations, including HMRC (VAT).
- (h) The retention period commences once the Tender, Purchase Order or Contract is closed; all “open” documents are retained indefinitely.
- (i) Budget holders shall refer to the Council’s Retention Guidelines for the records that shall be retained and their retention period.

22.0 MAINTENANCE OF CONTRACT PROCEDURE RULES AND GLOSSARY OF TERMS

22.01 Review of Contract Standing Orders

- (a) These Contract Procedure Rules will be reviewed annually to ensure that they stay at the forefront of good procurement practice.
- (b) The Monitoring Officer in consultation with the Director of Finance (S151) shall have the power to make incidental amendments from time to time to the Rules, for example when updates are required from changes to legislation, job titles and roles.
- (c) Major changes to the Contract Procedures, such as revision of values determining procurement process are delegated to the Monitoring Officer and the Director of Finance (S151) in consultation with the appropriate portfolio holder.

APPENDIX A Procurement Authority Thresholds

Minimum Procurement Procedures for Works, Supplies or Services

The following table outlines the minimum selection procedure to be used where the procurement is within these Contract Procedure Rules and a framework is not being used.

(Note that below the public procurement thresholds the bands in the table are set exclusive of VAT. Above the public procurement thresholds figures must be considered inclusive of VAT.)

Estimated Total Value	Selection procedure	Selection / Decision by	Procurement Lead	Obligations
Up to £5,000	Single Quotation in writing including evidence of Value for Money, such as research into typical prices or rates.	Budget holder <i>(See 1.03 Authorities and controls)</i>	Service area	
£5,000 up to £25,000	Single Quotation in writing including evidence of Value for Money, such as research into typical prices or rates	Head of Service <i>(See 1.03 Authorities and controls)</i>	Service area	In line with Transparency Code 2015: <ul style="list-style-type: none"> - Publish details of all Contracts on the Council's Contract Register - If the contract award decision is £10,000 or over, then the Head of Service shall publish a Notice of Decision.

Estimated Total Value	Selection procedure	Selection / Decision by	Procurement Lead	Obligations
£25,000 up to £100,000	<p>At least three Quotations to be sought.</p> <p>If there is a decision to advertise the opportunity at all (such as in newspapers or on the Council's website or via any e-procurement system to attract local or wider interest) it must also be published on Government's Find-A-Tender service.</p>	<p>Head of Service</p> <p><i>(See 1.03 Authorities and controls)</i></p>	<p>Service area</p> <p>Supported by Procurement Team where appropriate e.g publication of notices</p>	<p>In line with Transparency Code 2015:</p> <ul style="list-style-type: none"> - Publish details of all Contracts on the Council's Contract Register. - Head of Service shall publish a Notice of Decision <p>Complete a Procurement Plan.</p> <p>Opportunities and Contract award notices must be published on Find-a-Tender.</p> <p>Notice obligations under Procurement Act 2023.</p> <ul style="list-style-type: none"> - Specific reference to those under threshold (£30,000 VAT inclusive)

Estimated Total Value	Selection procedure	Selection / Decision by	Procurement Lead	Obligations
<p>£100,000 and above but below the Procurement Act 2023 financial threshold</p>	<p>Appropriate Procurement Act 2023 procedure or Invitation to Tender issued to a minimum of three suppliers.</p> <p>With tenders the Council's e-procurement system should be used to attract local or wider interest it must also be published on the Government's Find-A-Tender service.</p>	<p>Executive Director or determine by Scheme of Delegation</p> <p><i>(See 1.03 Authorities and controls)</i></p>	<p>Procurement Team</p>	<p>In line with Transparency Code 2015:</p> <ul style="list-style-type: none"> - Publish details of all Contracts on the Council's Contract Register. - Head of Service shall publish a Notice of Decision <p>Complete a Procurement Plan</p> <p>Opportunities and Contract award notices must be published on Find-a-Tender.</p> <p>Notice obligations under Procurement Act 2023.</p> <ul style="list-style-type: none"> - Specific reference to those under threshold (£30,000 VAT inclusive)

Estimated Total Value	Selection procedure	Selection / Decision by	Procurement Lead	Obligations
Greater than the Procurement Act 2023 financial threshold	<p>Appropriate Procurement Act 2023 procedure as managed by Procurement Team with legal advice as necessary.</p> <p>With tenders the Council's e-procurement system should be used to attract local or wider interest it must also be published on the Government's Find-A-Tender service.</p>	<p>Executive Director or determine by Scheme of Delegation</p> <p><i>(See 1.03 Authorities and controls)</i></p>	Procurement Team	<p>Complete a Procurement Plan</p> <p>Publish details of all Contracts on the Council's Contract Register.</p> <p>Opportunities and Contract award notices must be published on Find-a-Tender.</p> <p>Notice obligations under Procurement Act 2023.</p>

The following defined terms are used throughout these Contract Procedure Rules:

Above Threshold – above the annually revised Procurement Act 2023 thresholds.

Below Threshold – below the annually revised Procurement Act 2023 thresholds

Budget holder – the person, service or business unit that holds the financial budget, and has the authority to raise requests for goods and services.

Commitment – the act of confirming a contract with third party suppliers and should be made by a contract or purchase order.

Confirmation Order – an order which has been placed verbally, in writing hard copy or electronically communicated and subsequently confirmed by a formal purchase order marked “confirmation order”.

Concession Contract – a contract for the supply, for pecuniary interest, of works or services to a contracting authority where—

(a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and

(b) under the contract the supplier is exposed to a real operating risk.

Contract – a legal agreement between the Council and external suppliers for the supply of goods and services. For the purpose of these Procurement Rules this does not include contracts of employment for staff.

Contractor – a supplier that contracts with the Council to supply goods, services and works.

Council – refers to Norwich City Council

Debarment List – Identifies suppliers that must be excluded from a procurement process. As the exclusion of these suppliers is mandated by a Minister of the Crown, contracting authorities cannot be challenged for breach of statutory duty for wrongful exclusion.

Direct Award – when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier.

Direct Awards Justifications – requirements for above threshold Direct Awards as provided in Schedule 5 of the Procurement Act 2023.

Ethical Working – for example [CIPS code of ethics](#)

Excluded Supplier – a supplier is an “excluded supplier” if a mandatory exclusion ground applies to the supplier or an associated person and the circumstances giving rise to that ground are continuing or likely to occur again, or if the supplier or an associated person is on the debarment list.

Excludable Supplier – a supplier is an “Excludable supplier” where a discretionary

exclusion ground applies, contracting authorities have a discretion to exclude.

Framework Agreement – an arrangement that has been advertised and tendered either by the Council or another body under which the Council can award a contract with a third party, depending on the terms of the arrangement.

Procurement – the process by which the Council identifies the most suitable provider for the supply of goods, services, or works. This covers the full procurement life cycle through the stages Plan, Define, Procure and Manage.

Procurement Code of Conduct – the behaviour and conduct that governs the correct and professional manner in which to conduct commercial business with third party suppliers as published by the Chartered Institute of Procurement & Supply

Procurement Plan – the procurement plan will be used for all procurements of £25,000 and over and is the record of the procurement strategy development for a particular purchase and provides a clear audit trail of the decision-making process and analysis of risk. The Procurement Plan template will be made available by the Procurement Service.

Proprietary Product – a product that has unique characteristics produced by one manufacturer. A proprietary product specification could exclude competitors from competing on equal terms. In consultancy the services of a named person or firm would be considered as a proprietary product.

Public Contract Regulations 2015 – one of the pieces of legislation in previous procurement regime, immediately preceding the Procurement Act 2023.

Purchase Order – a serial numbered document created by the finance system, raised by the Buyer on a specific supplier for the supply of goods, services or works. This document is a formal legal agreement with specific conditions for the supply of goods and/or services.

Purchase Order Amendment – a document communicating a change to the specified requirement, price or terms and conditions of the original Purchase Order. Like the original Purchase Order, this document is a formal legal agreement with specific conditions for the supply of goods and/or services.

Quotation – a statement of price, delivery and specification against the specific enquiry provided by a specific supplier.

Services – include the provision of consultancy, legal, cleaning, maintenance, agency staff and similar non-tangible requirements.

Specification – a clear statement of requirement for goods and/or services, normally detailed as a generic specification to enable competition and the delivery of value for money.

Social Clauses – particular terms and conditions that may be included within a procurement process, and thereafter form part of a contract, which require a supplier to undertake specific actions to generate benefits to either particular groups of people or to the wider general public.

Supplier – an organisation that contracts with the Council to supply goods, services and works.

Tender – a formal offer from a supplier to supply specified goods, services or works at a stated cost or rate.

Tenderer – a supplier offering to buy or sell a product or service. This term applies prior to the formation of contract.

Terms and Conditions of Purchase/Contract – the specific conditions under which the Council will enter into a contract or purchase order with a supplier.

Value for money – a combination of criteria that include competitive price on a whole life basis, quality, reliability and timeliness. This is not necessarily the lowest priced offer. Under the Public Contract Regulations 2015, the award criteria were designed to assess the most economically advantageous tender (MEAT), however under the Procurement Act 2023 the tender should be assessed and the contract awarded based on the most advantageous tender (MAT) when undertaking a competitive tendering procedure.

23.0 VERSION CONTROL

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