

# CONTRACT PROCEDURE RULES

## 1. Introduction and Scope

- 1.1 These Contract Procedure Rules provide the framework for the procurement of all goods, services, and works for the Council. The Council is an entity that falls under the definition of “contracting authority” and will be subject to the rules set out in the prescribed legislation.
- 1.2 All contracts for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with the provisions of the legislation where required. These Rules cannot be waived, unless explicitly approved by the Council’s Monitoring Officer, with the reasons for doing so recorded.
- 1.3 Before any tendering exercise is considered, reference must be made to the Council’s procurement and equalities guidelines. The Council is committed to dealing fairly with all relevant discrimination groups as defined in the Equality Act 2010 (as amended). A failure to consider special requirements for these groups in a tender would be a significant corporate failure, affecting the reputation and standing of the Council.
- 1.4 All procurement arrangements must ensure compliance with the Council’s responsibility in respect of the Freedom of Information Act 2000, Environmental Information Regulations 2004 and the Data Protection Act 2018 and the UK General Data Protection Regulation.
- 1.5 Breach of the Contract Procedure Rules may lead to disciplinary action. Regard must be had to complying with the Finance Rules as part of any procurement process.
- 1.6 If in doubt in respect of any part of the legislation, the procurement process to follow or these rules contact the Procurement Team. There is also a comprehensive user manual and resources on the procurement page of the Intranet. providing practical advice for officers undertaking procurement activity.

### Transition Arrangements

- 1.7 The Public Contract Regulations 2015 (“PCR 2015”) will be replaced by the Procurement Act 2023 (“the Act”) on 24 February 2025. Procurements started and contracts awarded before this date will follow PCR 2015 and the old regime. Procurements started and contracts awarded on or after 24 February 2025 will follow the Procurement Act 2023 and the new regime. These rules have been modified to reflect the new regime.

Throughout these rules various terms are shown in *italics*. The glossary contains further details on these terms.

## 2. Principles and Objectives

- 2.1 When carrying out procurement-related activity the Council must have regard to certain objectives and must treat suppliers equally. The Council can decide how the “have regard to” objectives are considered and should aim to support best

practice within the procurement exercise. How procurement objectives have been taken into consideration during procurement should be recorded alongside other procurement records. The Council must take reasonable steps to ensure that different treatment does not put a supplier at an unfair advantage or disadvantage.

### Value for Money

- 2.2 Consideration should be given how to get the best mix of economy, efficiency and effectiveness that achieves intended outcomes over the whole lifetime of a contract.

### Maximising Public Benefit

- 2.3 The public benefit objective seeks to encourage thought about the extent to which contracts can deliver greater benefit, for example by collaborating with other *contracting authorities* for a common purpose to reduce resource implications and costs, or considering *social value* or environmental benefits that could be achieved by the contract.

### Sharing Information/Transparency

- 2.4 Transparency is a key in public procurement. Information should be shared for the purpose of allowing suppliers and others to understand the Council's policies and decisions relating to procurements. This helps:
- Improve visibility of public sector contracting.
  - Drive accountability in the way decisions are made and services delivered
  - Deliver more effective competition to maximise Value for Money for the taxpayer
  - Uphold the integrity of public procurement.
  - Build public trust.

### Integrity

- 2.5 The acting, and being seen to act, with integrity will help in the fight to prevent fraud and corruption. Being able to demonstrate this through good management, prevention of misconduct, and having full control over processes is key to strengthening trust with suppliers and the public.
- 2.6 The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who *works* as a public officeholder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public officeholders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.
- 2.7 Consideration should therefore be given to the Nolan Principles when entering a procurement. This is embedded in our standard tender documentation.

Treat suppliers the same and do not put a supplier at an unfair advantage or disadvantage.

- 2.8 The Council is required to treat suppliers the same unless a difference between the suppliers justifies different treatment. If different treatment of suppliers is justified, the Council must take the appropriate steps to ensure a supplier is not put at an unfair advantage or disadvantage.

Have regard to small and medium sized enterprises (SME's)

- 2.9 The Council must specifically consider requirements from an SME perspective, for example by reducing processes which are disproportionately burdensome on SME suppliers or through the transfer of unreasonable levels of risk to the suppliers.
- 2.10 To be compliant with the Act, the Council will use the Central Digital Platform to publish all notices before publishing elsewhere. Procurements will continue to take place using INTEND which will link to directly to the Central Digital Platform.
- 2.11 Use of the Central Digital Platform is not required for below-threshold procurements.

### **3. The National Procurement Policy Statement**

- 3.1 The Act sets out a power for Ministers to publish a *National Procurement Policy Statement* (NPPS) which along with the procurement objectives sets out the national strategic priorities for public procurement.
- 3.2 The NPPS sets out the current strategic priorities for public procurement and how *contracting authorities* in England can support their delivery. The Council is required to have regard to the relevant priorities in the NPPS, alongside other local priorities, when carrying out procurements.
- 3.3 The NPPS gives suppliers greater visibility of the national priorities that should be considered by the Council when undertaking procurement. Where relevant to the specific contract, these priorities shall be clearly set out in the tender documents. Policy matters likely to be addressed by the NPPS include *social value* priorities. Inclusion in the NPPS allows for further development and guidance surrounding implementation of these priorities over time.

### **4. Pre-Procurement Considerations**

Risk

- 4.1 Officers involved in procurement activity must identify the different types at the outset. The impact of such risks will also need to be considered in terms of how they could affect the future operation of the contract.

## Policies

- 4.2 Regard must be given to the Council's policies when undertaking procurements. This should be proportionate to contract values and the nature/duration of the contract. Cross cutting policies that should be considered are included in tender documentation for advertised contracts, but consideration needs to be given to policies relevant and proportionate to the procurement in question. Consideration to policies should also be given when contracting via frameworks or quotes.

## Preliminary Market Engagement

- 4.3 Whilst preliminary market engagement is not mandatory, engagement with the market should take place wherever practical to help inform the procurement process.
- 4.4 Where preliminary market engagement is undertaken, then the preliminary market engagement notice must be published before the tender notice or reasons for not publishing a preliminary market engagement notice must be given in the tender notice.
- 4.5 There are no minimum timescales required between publishing a preliminary market engagement notice and the tender notice. Publishing a preliminary market engagement notice is not a commitment to undertake a procurement.

## Transparency and Publication Requirements

- 4.6 Prior to commencing a procurement exercise an awareness of the transparency and publishing requirements is required. This will vary depending on the selected procurement route and the value of the contract.

## Duty to Consider Lots

- 4.7 There is a duty under the Act to consider lots before entering a procurement process. Considering lots may also contribute to the objective of having regard to and removing barriers for *SME's*.

## Conflicts of Interest

- 4.8 All reasonable steps must be taken to identify *conflicts* and potential *conflicts* including personal, professional, or financial and which may be direct or indirect.

## Specifications

- 4.9 Where a specification is required, it cannot be used to unnecessarily limit competition. Awareness must be had to non-discrimination duties and regard for procurement objectives, such as opportunities for *SME's* and incorporated *Voluntary Community Social Enterprises*.
- 4.10 The specification must be clear, concise, and unambiguous. It should include information about the requirements and desired features of the goods, services

or *works* being procured. It should be specific enough so that suppliers reading it can understand what is being requested and should be comprehensive enough to cover all the relevant aspects of the product or service.

### Approvals

- 4.11 The Council's Finance Rules explain the rules governing the management of the Council's financial affairs and includes all financial matters relating to contracts entered through a procurement process.
- 4.12 All relevant approvals must be in place ahead of commencing a procurement process. These must be in line with the Council's Budget and Policy Framework and Delegation Scheme. This will include relevant approvals in line with key decision thresholds and authority to incur expenditure with an approved budget in place.

### Key Decisions

- 4.13 A "*key decision*" means an executive decision, which is likely to result in the Council incurring expenditure or making savings which are significant having regard to the Council's budget for the service or function to which the decision relates or to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the district.
- 4.14 In determining the meaning of "significant" for these purposes the Council has decided that revenue income or expenditure of £125,000 or more, and capital income or expenditure of £310,000 or more is deemed significant.
- 4.15 Contracts with a value that exceeds the relevant key decision limit should be recorded on the Forward Plan and approved by Delegated Decision or the Cabinet as appropriate.

## **5. Thresholds**

- 5.1 The Act sets out certain obligations that are triggered at set financial *thresholds*. The *thresholds* (for goods, services and *works*) are defined in Schedule 1. They include VAT and are revised every two years:
- goods and services (local government) - £214,904
  - *light touch* - £663,540
  - *works* - £5,372,609

Contracts below these values are *below threshold contracts*.

## **Frameworks**

- 6.1 *Frameworks* can be used for any value and can help save time and money by removing the need to run a lengthy and expensive tender process. Use of 'call-off' contracts with approved suppliers simplifies the process considerably. *Frameworks* can also provide more protection from commercial risks. However,

even under a *framework* the assessment of risks remains the Council's responsibility.

6.2 The thresholds (Section 5) apply to contracts procured under a *framework* so there is still an obligation to meet transparency requirements. These vary dependent on the contract value and are detailed in Section 7 below.

6.3 The contract terms will be in a form defined by the *Framework Agreement*

## **7. Contract Values**

7.1 The rules on valuation of contracts are important, particularly in relation to determining whether contracts are above or below threshold. Estimating the values of a contract must not be approached with the intention of *disaggregation* by artificially subdividing contracts for the purposes of evading the above-threshold regime.

7.2 Appendix one provides a summary of this section for ease of reference.

### **Contracts below £30,000 (inclusive of VAT)**

7.3 These are not subject to a formal procurement process.

7.4 It is good practice (for all but small value and routine purchases – see 7.5 below) to request written quotations. Should insufficient suppliers return a quote, the award can still proceed subject to the *authorised officer* being satisfied that procurement objectives are broadly being met.

### **Up to £1,000 (inclusive of VAT)**

7.5 For low value awards it is the responsibility of the authorising officer to be satisfied that procurement objectives are broadly being met. Purchase Orders must be raised in all instances and sufficient funds approved in advance.

### **£1,000 - £5,0000 (inc VAT)**

7.6 Procurements shall be by written quotations, using the template request for quotes form, requested from a minimum of one supplier.

7.7 A record of the successful quote should be retained by the Client Officer.

7.8 A purchase order must be raised in all instances and sufficient funds approved in advance. Purchase orders should be raised at the point of contract award not when an invoice is received.

7.9 No notices are required.

7.10 The contract terms will be the Council's Terms and Conditions. These are on the Council's website and referenced on the purchase order.

#### £5,000 to £30,000 (inclusive of VAT)

- 7.11 Procurements shall be by written quotations requested from at least three suppliers using the template request for quotes form. Should insufficient suppliers return a quote, the award can still proceed subject to the *authorised officer* being satisfied that procurement objectives (detailed in 2. Above) are broadly being met.
- 7.12 A record of the successful quote should be recorded on the INTEND contract management database.
- 7.13 The contract award details must be published on the Contracts Register
- 7.14 A purchase order must be raised in all instances and sufficient funds approved in advance. Purchase orders should be raised at the point of contract award not when an invoice is received.
- 7.15 No notices are required.
- 7.16 The contract terms will be the Council's Terms and Conditions. These are on the Council's website and referenced on the purchase order.

### **8. Below Threshold Contracts**

- 8.1 There are lower obligations for below threshold procurements under the Act. Advertising is not required, and less notices are required. For all *below threshold contracts* consideration must be given to the Council's procurement objectives (see section 2 above). Barriers for small and medium-sized enterprises must be considered and how any such barriers can be removed or reduced. A record should be maintained for procurement decisions.

#### £30,000 – Threshold (inclusive of VAT)

- 8.2 *Preliminary Market Engagement* can be undertaken as required.
- 8.3 There is no requirement under the Act to advertise below threshold procurements. However, the Council's own internal governance requires that procurements over £50,000 should be advertised. This does not apply where a *framework* is being used (see section 6 above)
- 8.4 Where the procurement is below £50,000 and the *authorised officer* has chosen not to advertise, procurements shall be by written quotations requested from at least three suppliers and using the template request for quotes form
- 8.5 Procurements over £50,000 must be advertised on INTEND (which links to the *Central Digital Platform*) before any other medium.
- 8.6 A record of the successful quote should be recorded on the INTEND contract management database.

- 8.7 The contract award details must be published on the Contracts Register via the INTEND Contract Management database.
- 8.8 A purchase order must be raised in all instances and sufficient funds approved. Purchase orders should be raised at the point of contract award not when an invoice is received.
- 8.9 Notices are not required where a procurement isn't advertised. Where a procurement is advertised notices are required. A schedule of notices required can be found on the procurement page of the Intranet.
- 8.10 The contract terms will be the Council's Standard Short Form Contract for goods and services. An appropriate standard form of contract (ie JCT) will define terms and works. All works contracts must be reviewed by legal services.

## **9. Above Threshold Contracts**

### Open Procedure

- 9.1 The open procedure is a single stage procurement where there is no restriction on who can submit tenders. All information needs to be provided at the point of tender and made available to all suppliers.
- 9.2 *Preliminary Market Engagement* can be undertaken as required
- 9.3 Procurements must be advertised using INTEND (which links to the *Central Digital Platform*) before any other medium.
- 9.4 *Conditions of participation* can be used to assess legal/financial capacity and technical ability. However, where *conditions of participation* are set, and a supplier fails to meet them, they must not be awarded the contract.
- 9.5 Assessment and award must use MAT principles (see 15.1 below)
- 9.6 Assessment summary data must be collated for the *Assessment Summary*
- 9.7 The contract award details must be published on the Contracts Register
- 9.8 A purchase order must be raised in all instances and sufficient funds approved in advance. Purchase orders should be raised at the point of contract award not when an invoice is received.
- 9.9 Notices are required
- 9.10 The contract terms will be in a form agreed with the Legal Services Manager who will review all above threshold contracts.



## Competitive Flexible Procedure for above Threshold Contracts

9.11 The *Competitive Flexible Procedure* is multistage procurement best suited for:

- Common off the shelf requirements where a large market exists, and an initial participation stage is needed to limit the number of suppliers submitting tenders.
- Where requirements are clear and low risk, but engagement may be beneficial in delivering better outcomes including value for money.
- where the requirement is of a specialist nature and engagement with suppliers would be beneficial in helping them to understand the requirement and potential solutions.
- when the Council may not want to limit the market through an early participation stage without first reviewing the product, technology, or software being supplied.
- for town and country planning, architecture and engineering, or data processing, where several stages may be needed to reach a final solution.

9.12 There is no limit to the number of stages or supplementary processes that can be included in the *competitive flexible procedure*. The intention of each stage, and any use of selection or intermediate assessment criteria should be clearly set out in the tender notice and any *associated tender documents*.

9.13 A preferred supplier/post tender negotiation stage can form part of the process to allow clarification or confirmation of any commitments made in the tender or to engage in post-tender negotiation with the final supplier(s), if it does not have the effect of altering the competition outcome and it follows the process outlined in the tender notice and any *associated tender documents*. It should be conducted in a transparent and auditable manner, details of discussions/negotiations, key points or outcomes must be recorded and kept.

9.14 *Preliminary market engagement* is recommended as it provides the opportunity to understand: the market, the deliverability of requirements, feasibility of alternative options and identify whether innovative solutions could help to deliver better public services and deliver value for money.

9.15 Procurements must be advertised using INTEND (which links to the *Central Digital Platform*) before any other medium.

9.16 *Conditions of participation* can be used to assess legal/financial capacity and technical ability. However, where *conditions of participation* are set, and a supplier fails to meet them, they must not be awarded the contract.

9.17 Assessment and award must use MAT principles (see 15.1 below)

9.18 Assessment summary data must be collated for the *Assessment Summary*

9.19 The contract award details must be published on the Contracts Register

9.20 A purchase order must be raised in all instances and sufficient funds approved in advance. Purchase orders should be raised at the point of contract award not when an invoice is received.

9.21 Notices are required

9.22 The contract terms will be in a form agreed with the Legal Services Manager who will review all above threshold contracts.

## 10. Time limits (Above Threshold Contracts)

10.1 The minimum time periods for above threshold procurements are:

Scenario	Tendering period (days)
Where tenders can't be submitted electronically, <b>and</b> all associated tender documents are not provided at the same time as the tender notice	35
Where tenders can't be submitted electronically but all associated tender documents are provided at the same time as the tender notice	30
Where tenders are submitted electronically but all associated tender documents are <u>not</u> provided at the same time as the tender notice	30
Where tenders are submitted electronically, and all associated tender documents are provided at the same time as the tender notice	25
A qualifying planned procurement notice has been issued	10
Where the Council considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10
Where you have included a condition of participation stage, and only pre- selected suppliers are invited to submit a tender	10
Where you have included a conditions of participation stage and only pre- selected suppliers are invited to submit a tender, AND you have agreed a timescale with those suppliers	No minimum

## 11. Direct award

11.1 Direct award is when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier of the Council's choosing. Direct award can only be considered where one or more of the grounds for direct award are met and should only be used where a competitive tendering procedure has been explored and is not appropriate or a competitive tendering procedure cannot be used, even under reduced timescales or a limited form as permitted in the Act.

11.2 Schedule 5 of the Act states a direct award can be used for:

- **Prototypes and development** - when procuring a prototype or other novel good or service aimed at testing the suitability or understanding the viability of production or supply in quantity or other research, study or development on a commercial basis.
- **Single Supplier:-**
  - where competition is absent for technical reasons or due to the supplier having intellectual property or other exclusive rights.
  - Where there is an absence of competition for technical reasons and provided there are no reasonable alternatives, only a particular supplier can supply the goods, services or *works* required.
  - where the contract is for the creation or acquisition of a unique work of art or artistic performance.
- **Commodities** - where goods are purchased on the commodity market.
- **Advantageous terms on insolvency** – where the award of a contract to a particular supplier will ensure terms particularly advantageous to the Council due to the supplier is undergoing insolvency proceedings.

**Direct Award -Urgency**

11.3 The grounds for direct award in cases of urgency are also set out in Schedule 5 of the Act which states:

*The requirement for goods, services or works is strictly necessary for reasons of extreme urgency and cannot be procured via a competitive tendering procedure and has been brought about by circumstances unforeseeable by and unattributable to the contracting authority.*

11.4 The concept of 'unavoidable urgency' would not apply if the Council has simply not allowed sufficient time to undertake a re-procurement of a contract

11.5 The reference to the goods, services or *works* being 'strictly necessary' means that the contract awarded must only be used for obtaining the goods, services and *works* that are necessary to cope with the urgency of the situation and not for wider use or the longer term; a separate procurement should be commenced if the goods, services or *works* are required for the longer term.

11.6 Even if a competitive tendering procedure cannot be carried out, undertaking some form of informal competition before awarding the contract should be considered. Carrying out any informal competition does not fetter in any way the discretion to rely on this direct award ground.

11.7 Direct Award under grounds of urgency should be used by exception and must be approved by a Senior Officer. Advice should also be sought from the Procurement Team.

## Direct Award following unsuccessful open procurement

11.8 Following an unsuccessful competitive tendering procedure there is provision to 'switch' to direct award in very specific circumstances:

- *Tenders* would be disregarded in an assessment,
- tenders do not satisfy requirements or the *award criteria*.
- there is evidence of corruption or collusion between suppliers or between suppliers and *contracting authorities*.
- there is a *material* breach of a procedural requirement in the tender notice or *associated tender documents*.

11.9 Direct award can also be used for additional or repeat goods, services or *works* from the same supplier where the original contract was awarded under a competitive tendering procedure. The timeframe in which the original contract was competitively tendered must be within 5 years and the intention to rely on a direct award for subsequent procurements must be set out in the tender notice and *associated tender documents*.

11.10 For all direct awards:

- The contract award details must be published on the Contracts Register
- A purchase order must be raised in all instances and sufficient funds approved.
- A Transparency Notice is required
- A Contract Details Notice is required
- The contract terms will be in a form agreed with the Legal Services Manager.

## **12. Light Touch Contracts**

12.1 *Light touch* contracts are wholly or mainly for the supply of services of a kind specified in regulations. These "*light touch* services" are set out in Schedule 1 of the Procurement Regulations 2024 and are identified using common procurement vocabulary (CPV) codes. There are likely to be only minimal opportunities for the Council to utilise *light touch* contracts.

12.2 The Procurement Team will advise where such opportunities present.

## **13. Dynamic Markets**

13.1 *Dynamic markets* are lists of qualified suppliers who are eligible to participate in future procurements. Only above threshold contracts can be awarded under a *dynamic market*.

13.2 *Dynamic markets* are not public contracts and therefore follow different rules. Procurement advice must be sought before considering this route.

## **14. Conditions of Participation**

14.1 *Conditions of Participation* (previously known as selection criteria) are not

mandatory but it is expected that most above threshold procurements will need to confirm a supplier's legal and financial capacity, or technical ability, to perform the contract.

14.2 *Conditions of Participation must:*

- Be related to a supplier's legal and financial capacity, or technical ability to perform a contract.
- Be a proportionate means of ensuring a supplier's relevant capacity or ability, having regard to the nature, complexity and cost of the contract.
- Allow for equivalents (eg when requesting qualifications or memberships)
- Be distinct from award criteria, focussing only on the supplier's capacity and ability and not their tender submission.

14.3 *Conditions of Participation must not:*

- Require suppliers to submit audited annual accounts unless they're required to under the Companies Act 2006
- Require suppliers to have insurances needed to deliver the contract in place prior to contract award.
- Require qualifications without allowing for equivalents.
- Require suppliers to have been awarded a contract by a specific *contracting authority* previously.

Financial Tests

14.4 Suppliers may be asked to provide the following information about their 'economic and financial standing':

- A copy of their audited annual accounts, where the supplier has been required to obtain audited annual accounts in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent or
- Alternative forms of evidence that are equivalent to this (for suppliers not required to have audited accounts).

This is to ensure that certain suppliers such as *SMEs*, *VCSEs* or recent start-ups are not disadvantaged by the *conditions of participation*.

Insurance

14.5 The Council may ask for insurances where they are proportionate to the delivery of the contract. However, it is not permitted to ask suppliers to have such insurances in place prior to contract award. The Council may request that suppliers demonstrate their capability to obtain the required insurance after contract award, such as a quotation or other proof of intention.

14.6 Where there is a legal requirement for the insurance to be in place, outside of the contract, evidence of this may be required as part of the *conditions of participation*.

## Technical Ability

14.7 Conditions relating to technical ability may include, but are not limited to:

- Qualifications
- Experience & past performance
- Modern slavery statements
- Data protection
- Carbon reduction plans
- Project-specific questions relating to the supplier's ability to perform the contract

## **15. Assessment and Award**

15.1 A contract can only be awarded to the *most advantageous tender* (MAT). The MAT is the tender that both satisfies the Council's requirements and is the best tender in respect of the award criteria. MAT may be determined based on a wide range of factors; this may include price and quality criteria in addition to wider social and environmental issues where that is decided to be relevant for the best solution.

15.2 Award criteria must:

- relate to the subject-matter of the contract,
- be sufficiently clear, measurable and specific,
- not break the rules on technical specification
- be a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract,
- be accompanied by the "assessment methodology" describing how tenders are to be assessed by reference to the award criteria and specify whether failure to meet one or more criteria would disqualify a tender, and
- if there is more than one criterion, detail their relative importance by
  - i. weighting each as representing a percentage of the total importance,
  - ii. ranking them in order of importance, or
  - iii. describing it in another way.

15.3 When developing award criteria, the Council's procurement objectives and the NPPS must be considered.

15.4 The award criteria should be sufficiently described in the tender notice and/or *associated tender documents* to allow suppliers to prepare their tenders.

15.5 In addition to the award criteria, there are five key requirements set out in the Act that must be followed when assessing tenders:

- If a supplier does not satisfy the *conditions of participation* the Council must disregard the tender
- If a supplier submits a tender which breaches a procedural requirement set out in the tender notice or *associated tender documents* or the Council may disregard the tender

- Where there is evidence of fraud or corruption or collusion the Council may disregard the tender.
- If a supplier submits an abnormally low-priced tender for the performance requirements of the contract the Council may disregard the tender \*

15.6 If a supplier is not a United Kingdom supplier or *treaty* state supplier, or intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or *treaty* state supplier the Council may disregard their tender \*\*

*\*Before disregarding an abnormally low tender, the supplier must be notified that their price is considered to be abnormally low and they must be given the opportunity to demonstrate that they will be able to perform the contract for the price offered. If the supplier satisfactorily demonstrates that they will be able to perform the contract for the price offered, the tender may not be disregarded as abnormally low.*

*\*\*Contracting authorities are permitted, but not required, to disregard tenders from suppliers that are not from a country with which the UK has signed a relevant international agreement on procurement or where the supplier intends to subcontract the performance of all or a part of the contract to a subcontractor that is not from such a country. In deciding to exclude non-UK and non-Treaty State suppliers the contracting authority must consider its other general duties under the Act*

#### Assessment Methodology

15.7 The assessment methodology will describe how tenders are to be assessed in accordance with the award criteria. Ensuring a robust assessment methodology is developed and the process is properly documented, including the justification of the award decision, will ensure an audit trail of the evidence required to stand up to internal and external scrutiny.

#### Assessment Summaries

15.8 The assessment summary must be issued following assessment and award to all suppliers that submitted an *assessed tender*.

#### Contract Award Notice

15.9 The contract award notice must be published before entering into contract.

15.10 A contract award notice is not required for below-threshold contracts or *below threshold contracts* that are awarded under a *framework*

#### Contract Details Notice

15.11 The contract details notice must be published within 30 days of the contract being entered into. If the contract is valued at £5 million or more (subject to exceptions), a copy of the contract (redacted where appropriate) and the agreed

key performance indicators must also be published within 90 days of the contract being entered into

- 15.12 The 30 days publication requirement does not apply to below-threshold procurement where publication should be made as soon as reasonably practicable.

## **16. Contract Modifications**

- 16.1 On the occasion that the execution of *works* or goods or services to be supplied constitutes an extension to an existing contract, and it is the view of the relevant Senior Officer that it would not be in the interest of the service of the Council to tender the contract, then a contract modification may be considered, subject to the conditions detailed below. The decision must be recorded by a delegated decision notice.

### Modifications to Below Threshold Contracts

A below- threshold contract may be modified in any way provided that the value remains below the relevant threshold.

If a modification would take the value above the relevant threshold it becomes a *convertible contract* and the rules that apply to above threshold contracts apply. This provision adds flexibility but should not be used as avoidance by procuring *below threshold contracts* that can reasonably be expected to increase above the threshold during their life.

### Modifications to Above Threshold Contracts

Above threshold contracts may only be modified in a way which is permitted by the Act. The grounds under which above threshold contracts may be modified are:

- where the change is a permitted modification under one of the circumstances listed in Schedule 8 of the Act or
- where the change is not a substantial modification or
- where the change is a below threshold modification

- 16.6 Only one of these grounds needs to be satisfied to make a compliant contract modification. If it is not possible to make a modification under any of these grounds then it would be necessary to undertake a new procurement process.

- 16.7 Officers considering an above threshold modification should refer to the user manual on the Intranet for further information on compliant contract modifications and seek advice from the Procurement Team.

## **17. Contract Governance**



## Records

- 17.1 Certain records must be kept for each above threshold procurement undertaken. These obligations include 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.
- 17.2 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.

## Remedies

- 17.3 *Remedies* are available to suppliers that suffer, or are at risk of suffering, loss or damage because of the Council failing to comply with the obligations under the Act.
- 17.4 A supplier has 30 days from when it first knew about the breach to raise a claim for breach of statutory duty. *Remedies* can be both pre contractual and post contractual. Successful claims can lead to a *set aside* decision and/or the award of damages.

## Contract Management

- 17.5 There is a requirement to acquire, record and publish contract information throughout the management phase of the procurement lifecycle, including:
- Contract performance data, in the form of key performance indicators (KPIs),
  - Information on poor supplier performance and breach of public contract,
  - Information about payments made under public contracts
- 17.6 Data must be published on a supplier's KPI scores for most contracts with a total value of £5m or more. Also, for all above threshold contracts, serious incidents of poor supplier performance, or breach of contract, as and when they occur must be published.
- 17.7 The INTEND Contract Management database will be used to record all information pertaining to procurement activity undertaken at the Council.

## Signing and Sealing of Contracts

- 17.8 The *Monitoring Officer* maintains a list of approved signatories.
- 17.9 The Officer responsible for securing the signature of the contract must ensure that the person signing for the other contracting party has relevant authority.
- 17.10 Where contracts are completed by each side adding their formal seal, the affixing of the Council's seal will be attested by an elected member and the Solicitor to the Council, or in their absence, any officer delegated the function.

17.11 An entry of every sealing shall be made and consecutively numbered in the register. The seal must not be affixed without the authority of the Cabinet, a committee, or a senior officer acting under delegated powers. A contract must be sealed where:

- the Council may wish to enforce the contract more than six years after its breach of contract; or
- the price paid or received under the contract is a nominal price and does not reflect the value of the *works*, goods or services; or
- there is any doubt about the authority of the person signing for the other contracting party.

17.11 Agreements shall be completed as follows:

Contract Type	Method of Completion	By
Below Threshold Contracts for goods and services	Signature	Approved Signatory
Works contracts over Key Decision (£310,000)	Sealed	Officer delegated with function and elected member
All Above Threshold Contracts	Sealed	Officer delegated with function and elected member

#### Archiving and lodgement of records

17.12 All contracts must be recorded on the Contracts Register.

#### Bonds and Guarantees

17.13 The *authorised officer* shall determine, based on advice from the Section 151 Officer, the degree of security (if any) required to protect the Council from a contractor default. This may be a bond or some other form of financial or performance guarantee.

17.14 Where a *performance bond* and/or parent company guarantee is required, then the tender documents must provide for this.

### Liquidated damages

- 17.15 Above threshold contracts for the execution of *works*, or for the supply of goods or services by a particular date or series of dates, may provide for *liquidated damages*. The amount to be specified in each such contract shall be determined by the relevant Senior Officer in consultation with the *S151 Officer* and *Monitoring Officer*.

## **18 Exempt Contracts**

- 18.1 An exempt contract is a type of contract listed in Schedule 2 of the Act.
- 18.2 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").
- 18.3 Schedule 2 part 2 covers contracts that are exempt because of the nature of the subject matter of the contract ("subject matter exempted contracts").

### Counterparty exempted contracts

- Vertical Arrangements (previously known as "teckel")
- 18.4 This exemption applies where a *contracting authority* owner has the prescribed form of control and the controlled person carries out more than 80% of its activities for or on behalf of the *contracting authority* owner. (Eg a controlled person is a local authority trading company that the *contracting authority* owner has set up to provide services).

- Horizontal arrangements

- 18.5 Horizontal exemptions apply only to contracts between *contracting authorities* where the:

- the arrangement aims to achieve a common objective in connection with the exercise of the public functions of the co-operating *contracting authorities*;
- the arrangement it is solely in the public interest;
- no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of the co-operating *contracting authorities*' public functions
- Defence contracts - a defence and security contract between a *contracting authority* and the government of another state or territory.
- Utilities contracts - a contract between a utility and relevant joint venture to which the utility is a party.

### Subject Matter Exempted Contracts

- 18.6 These contracts do not qualify as exempted if, on award of the contract, it is considered that the goods, services or *works* representing the main purpose of the contract could reasonably be supplied under a separate contract to which part 2 would not apply. This means that when considering whether goods,

services or *works* could reasonably be supplied under a separate contract, regard must be had to the practical and financial consequences of awarding more than one contract.

18.7 Schedule 2 of the Act provides a full list of subject matter exempted contracts. This includes:

a) Land and buildings

Contracts for the acquisition (by whatever means) of (or the acquisition of an interest in or right over) land, buildings or any other complete work or a contract concerning an interest or right over any such things.

- Financial services
- Contracts for the lending of money in any currency to a *contracting authority*.
- Contracts for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution.
- Contracts for the provision of services to the Bank of England.

b) Employment

Employment contracts which are defined by reference to relevant employment legislation at paragraph 18(2)) of the Act and other contracts with individuals appointed to a public office (which may include the appointment of non-executive directors of a public authority or members of a public enquiry).

c) Legal services

Contracts for specified legal services which would be inappropriate to open those contracts to competition. These are contracts relating to judicial, other dispute resolution proceedings, notary and services that must be carried-out by a particular person under order of a court, tribunal or act.

18.8 Procurement advice should be sought before applying any of the above exemptions.

18.9 All contracts that fall within the above exemptions shall be notified in writing to the *S151 Officer* and the *Monitoring Officer* via a Delegated Decision.

## **20. Engagement of Consultants**

20.1 An *authorised officer* may only appoint external consultants or advisors providing professional or consulting services if such services are not available within the Council or there are insufficient resources available to meet the needs of the service. Where such services are available in-house, the *authorised officer* must consult with the Head of Paid Service before taking any decision to make an external appointment.

- 20.2 Where external consultants or advisors are to be procured, the appropriate route to procurement should be used. Consideration should be given to using an appropriate *framework* as these provide an expedient and compliant route to market for such services.
- 20.3 In *estimating relevant contract values*, regard must be given to the rules regarding *aggregation*.
- 20.4 As part of the engagement process, the *authorised officer* shall ensure that any consultant working for the Council has the appropriate qualifications and experience required to act on behalf of the Council. Relevant indemnity insurances should also be in place.
- 20.5 In all instances a contract must be in place and shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the *authorised officer*, and lodge all such documents and records with the appropriate officer at the end of the contract.
- 20.6 External consultants and technical officers contracted to supervise contracts must follow the Council's Contract Procedure Rules and Finance Rules without exception and their contracts for services must state this requirement.

#### Agency Recruitment

- 20.7 Agency recruitment is not contained within these rules and should follow existing HR processes. However, procurement of agency service should be undertaken in line with these Contract Procedure Rules.

# **Glossary**

## **Aggregation**

Culmination of contract modifications which increase the value presenting a risk of exceeding thresholds.

## **Assessed Tender**

An assessed tender is a tender which, has not been disregarded during the procurement process (for example because it did not meet a procedural requirement) and has been assessed for the purposes of determining the most advantageous tender (that is to say, where a multi-stage competitive flexible

## **Associated Tender Documents**

Documents that supplement the tender notice and provide duplicate information or further detail about the procurement. Could include the specification, assessment methodology, terms and conditions etc.

## **Authorised Officer**

Officer designated with responsibility for approving the procurement. Must have sufficient authority granted and must adhere to the Finance Rules.

## **Award Criteria**

Criteria to evaluate and rank tenders for the purpose of awarding a public contract to the most advantageous tender (MAT).

## **Below Threshold Contracts**

A contract with an estimated total value (including VAT) less than the threshold amount for the type of contract.

## **Central Digital Platform**

The central online system provided by the Cabinet Office on Gov.uk for the publication of notices, documents, and other information in relation the the Procurement Act.

## **Competitive Flexible Procedure**

Not an “open Procedure” but any other such competitive tendering procedure considered appropriate for the purpose of awarding a public contract.

## **Conditions of Participation**

Formerly known as selection criteria. The conditions that a supplier must satisfy if they are to be awarded a public contract. Help assess a supplier's legal and financial capacity and technical ability.

### **Conflict of Interest**

A person using an official position to further private interests, or the interests of others, misuse information acquired in the course of official duties, or disclose information which is held in confidence.

### **Contracting Authorities**

A public authority including a local authority is a contracting authority and will be subject to the rules set out in the Procurement Act.

### **Convertible Contract**

A below threshold contract where, as a result of modifications, the value exceeds the relevant threshold.

### **Damages**

Damages are imposed if the court finds that a party breached a duty under contract or violated some right.

### **Disaggregation**

artificially subdividing contracts for the purposes of evading the above-threshold regime.

### **Dynamic Market**

A market made of members who meet the conditions for membership. Does not constitute a public contract.

### **Estimated Value**

Total estimated value, at the time, of a contract including all available options (ie modifications/extensions\_ including VAT.

### **Exclusions**

Excludable Supplier – where a discretionary exclusion ground applies, contracting authorities have the discretion on whether to exclude an excludable supplier from a procurement procedure or contract award.

Excluded Supplier - where a mandatory exclusion ground applies, contracting authorities must exclude the supplier from a procurement procedure or contract award (some exemptions apply)

## **Find a Tender Service**

The public portal for all High-value notices published in England, Scotland, Wales and Northern Ireland. It is used by public buyers to advertise contracts, and by suppliers to access these opportunities. Part of the Central Digital Platform.

## **Framework**

A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts. A contract with suppliers that provides for the award of future contracts is known as a “call-off contract”. The framework must set out certain information relating to the call-off contracts, such as the price payable under call-off contracts or the mechanism for determining. The call off is effectively the order of goods, services or works against the Framework.

An open framework is a scheme of frameworks that provides for the award of Successive frameworks on substantially the same terms.

## **Light Touch Contract**

A contract wholly or mainly for the supply of services of a kind specified in Schedule 1 of the Procurement Regulations 2024.

## **Liquidated damages**

Liquidated damages are a sum of money specified in some contracts that are to be paid by one party to another as compensation for intangible losses. For example, a contractor may owe the contracting authority a sum per day for every day past a project deadline where substantial completion is not achieved.

## **Material Decision**

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.

## **Monitoring Officer**

A designated senior officer who is responsible for matters relating to the conduct of councillors and officers and, to be responsible for the operation of the council's constitution.

## **Most Advantageous Tender (MAT)**

Most advantageous means the tender that satisfies requirements, and best satisfies the award criteria. The focus for awarding contracts does not have to be the lowest price or that price/cost must always be weighted higher than non-price factors. MAT allows for assessment of the lowest price only,



but contracts awarded based on MAT may also be determined based on a wide range of factors – this may include price and quality criteria in addition to wider social and environmental issues where that is decided to be relevant for the best solution.

### **National Procurement Policy Statement**

The Ministerial statement setting out the Government's strategic priorities in relation to procurement that a contracting authority must have regard to during their procurement activities.

### **Performance Bonds**

A performance bond is a financial guarantee to one party in a contract against the failure of the other party to meet its obligations. It is also referred to as a contract bond. A performance bond is usually provided by a bank or an insurance company to make sure a contractor completes designated projects.

### **Preliminary Market Engagement**

Engagement with suppliers before a tender notice is published.

### **Procurement Review Unit**

A new team established in the Cabinet Office to exercise procurement oversight.

### **Public Contract**

Any contract for the supply of goods, services and works to a contracting authority, or any framework contract, which has an estimated value above an applicable threshold

### **Remedies**

Remedies are court-ordered resolution or compensation to one party's breach of contract.

### **S151 Officer**

A designated Officer who is responsible for making the necessary arrangements for local financial and management controls, under S151 of the Local Government Act 1972.

### **Senior Officer**

An officer designated in the following positions – Managing Director, Director, Statutory Officer, Assistant Director

### **Set aside decision.**

If following legal challenge the court is satisfied that there has been a breach of an enforceable duty by the contracting authority, the pre-contractual remedies are: (a) An order setting aside the decision or action. (b) An order requiring the contracting authority to take any action.

## **SME's**

Suppliers that have fewer than 250 staff and have a turnover of an amount less than or equal to £44m or a balance sheet total of an amount less than or equal to £38m.

## **Social Value**

Social value in procurement is about making sure that what we buy creates an overall positive impact on people and communities. It can be divided into three main areas:

- social: this is about improving the wellbeing of individuals and communities, encouraging interconnectedness and mutual support among people.
- economic: this focuses on promoting economic policies and business practices that uplift society's wellbeing.
- environmental: this stresses the importance of sustainable processes that take care of both the social and physical environment, ensuring a viable future for everyone.

## **Standstill**

The standstill period is a defined period between the notice of the contract award decision and the award of the contract. The purpose of the standstill period is to allow unsuccessful tenderers to consider the feedback on their submissions; and give unsuccessful them an opportunity to ask for further information or call for a review of the decision.

## **State of Urgency**

State of urgency' is not a defined term in the Act and is at the discretion of the contracting authority. It should only be used in exceptional circumstances and the decision to reduce the minimum time period must be based on an objective need for urgency and where following the usual time scales would have a genuine adverse effect.

## **Supplier Information System**

A new addition to be included in the Central Digital Platform for suppliers to register and store their details so that they can be used for multiple bids and see all opportunities in one place.

## **Tender**

An invitation to bid for goods, services and works

## **Threshold**

Contracts with an estimated value of not less than the threshold amount for the type of contract is a public contract and subject to the main rules in the Procurement Act

### **Treaty State**

A state, territory or organisation of states or territories that is party to an international agreement specified in Schedule 9 of the Procurement Act, other than the United Kingdom

### **Treaty State Supplier**

A supplier that is entitled to the benefits of an international agreement specified in Schedule 9 of the Procurement Act.

### **Voluntary Community Social Enterprises**

A diverse range of organisations and entities that operate for the greater good of society. Within the VCSE sector, you'll find voluntary and community groups, social enterprises, charities, and nonprofit organisations, all driven by a shared commitment to creating positive social impact.

### **Works**

Generally, construction, mechanical and engineering and infrastructure related projects or programmes. Activities will be classified within a CPV code listed in Schedule 3 of the Procurement Regulations 2024.

Contract Value	Action	Transparency	Contract Requirement	Assess/Award
<b>Frameworks (any value)</b>	<p>Identify relevant framework</p> <p>Can direct award or use a competitive process.</p> <p>Conditions of participation can be set where a competitive process used</p>	<p>Notices required</p> <p>Requirement to publish on Contracts Register</p>	<p>Contractual requirements defined by Framework.</p> <p>Purchase Order must be raised, and sufficient funds must be approved</p>	<p>Conditions of participation used to assess legal/financial capacity and technical ability. Assessment and award must use MAT principles.</p>
<b>Up to £1,000 TBC (inclusive of VAT)</b>	<p>No advertising required.</p> <p>Authorising officer discretion.</p> <p>Not formal procurement</p>	<p>Notices not required.</p> <p>No requirement to publish on Contracts Register</p>	<p>Council's Terms and Conditions</p> <p>Purchase Order must be raised, and sufficient funds must be approved.</p>	<p>Authorising officer decision.</p>
<b>£1,000 TBC - £5,000 (inclusive of VAT)</b>	<p>No advertising required.</p> <p>At least one written quotation requested.</p>	<p>Notices not required.</p> <p>No requirement to publish on Contracts Register</p> <p>Request for quote must use <b>Request for Quotes (not advertised)</b> standard template</p> <p>A record of the successful quote to be retained by the client officer</p>	<p>Council's Terms and Conditions</p> <p>Purchase Order must be raised, and sufficient funds must be approved.</p>	<p>Authorising officer decision</p>
<b>£5,000 to £30,000 (inclusive of VAT)</b>	<p>No advertising required.</p>	<p>Notices not required.</p>	<p>Council's Terms and Conditions</p>	<p>Authorising officer decision based on quotations received.</p>

	A minimum of three written quotations requested.	Requirement to publish on Contracts Register  Request for quote must use <b><i>Request for Quotes (not advertised)</i></b> standard template  Successful quote to be recorded on INTEND	Purchase Order must be raised, and sufficient funds must be approved	Use MAT principles as a guide
<b>‘£30,000 – Threshold (inclusive of VAT)</b>  <b><i>Current Thresholds:</i></b>  <b><i>Goods/services</i></b> <b><i>£214,904 (inc VAT)</i></b>  <b><i>Works</i></b> <b><i>£5,372,609 (inc VAT)</i></b>	Preliminary market engagement (optional).  Advertising optional under £50,000. A minimum of three written quotations requested.  Advertising on INTEND required over £50,000.	Notices required when advertised  Requirement to publish on Contracts Register  Request for quote must use <b><i>Request for Quotes (not advertised)</i></b> standard template when not advertising (< £50k)  Request for quote must use <b><i>Request for Quotes (advertised)</i></b> standard template when advertising (> .£50k)  Successful quote/award details to be recorded on INTEND	Councils Standard Short Form Contract for <u>goods</u> and services  Appropriate standard form contract (ie JCT) for <u>works</u>  Legal to review all works contracts  Purchase Order must be raised, and sufficient funds must be approved	Supplier suitability cannot be assessed as a way of reducing bids.  Authorising officer decision based on bids received. Use MAT principles as a guide.
<b>Above Threshold Open Procedure</b>	Have regard to minimum timescales.  Preliminary market engagement (optional)	Notices required  Requirement to publish on Contracts Register	Contractual requirements to be agreed with Legal Services Manager	Conditions of participation used to assess legal/financial capacity and technical ability.  Assessment and award must use MAT principles.

	<p>Advertising required on INTEND</p> <p>Single stage procurement, no limit on number of bidders.</p> <p>Set conditions of participation (as required)</p> <p>Define award criteria</p>	<p>Invitations to Tender must use the <b>Invite to Tender</b> standard template when advertising</p> <p>Contract details including award to be recorded on INTEND</p>	<p>Purchase Order must be raised, and sufficient funds must be approved</p>	<p>Assessment summary data collated for Assessment Summary</p>
<b>Above Threshold Competitive Flexible Procedure</b>	<p>Have regard to minimum timescales.</p> <p>Preliminary market engagement (optional)</p> <p>Advertising required on INTEND.</p> <p>Multiple stages can be used.</p> <p>Preferred supplier stage/post tender negotiation permitted.</p> <p>Set conditions of participation (as required)</p> <p>Define award criteria</p>	<p>Notices required</p> <p>Requirement to publish on Contracts Register</p> <p>Invitations to Tender must use the <b>Invite to Tender</b> standard template when advertising</p> <p>Contract details including award to be recorded on INTEND</p>	<p>Contractual requirements to be agreed with Legal Services Manager</p> <p>Purchase Order must be raised, and sufficient funds must be approved</p>	<p>Conditions of participation used to assess legal/financial capacity and technical ability.</p> <p>Must be clarity and transparency about each stage in multiple stage procurement.</p> <p>Assessment and award must use MAT principles.</p> <p>Assessment summary data collated for Assessment Summary</p>