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Dear Councillor

WEST DEVON AUDIT & GOVERNANCE COMMITTEE - TUESDAY, 23RD JULY, 2024

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

Agenda No	Item
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3.	<u>Items Requiring Urgent Attention</u> (Pages 1 - 32)
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Contract Procedure Rules

Yours sincerely

Darryl White
Democratic Services Manager

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Report to: **Audit and Governance Committee**

Date: **23 July 2024**

Title: **Contract Procedure Rules**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

Author: **David Fairbairn** Role: **Head of Legal Services and Monitoring Officer**

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RECOMMENDATIONS:

That the Audit & Governance Committee RECOMMEND:

1. to Council to:

- (a) agree the draft Contract Procedure Rules as set out in Appendix B to the report; and**
- (b) subject to (a), amend the Constitution accordingly; and**

2. the Overview and Scrutiny Committee to set up a task and finish group to develop a sustainable procurement strategy to secure value for money and support local businesses.

1. Executive summary

- 1.1 In May 2024, the Head of Legal Services and Monitoring Officer reported to Council on changes that he was proposing should be made to the Council's Constitution (Min CM. 16/24 refers). The report explained that the Council would need to make further changes to the Constitution once the implementation date of the Procurement Act 2023 was confirmed. The Secretary of State has confirmed that the Act will come into force on 28 October 2024. On that date, the 2023 Act will repeal the Public Contracts Regulations 2015 which up to that date govern the award of contracts by the Council.
- 1.2 This report explains the changes introduced by the 2023 Act (see Appendix A) and requests the Committee to make appropriate recommendations to Council for the amendment of the Constitution by the adoption of revised Contract Procedure Rules (see Appendix B).

- 1.3 As an adjunct to the revision of the Contract Procedure Rules, the report also makes proposals for the development of a new sustainable procurement strategy to secure value for money and support local businesses

2. Background

- 2.1 Public Contracts Regulations 2015 and their predecessor regulations gave effect to EU procurement law. As a contracting authority, the Council must comply with the 2015 Regulations when it procures goods, services, and supplies. Since Brexit in January 2021, EU procurement law has no longer applied directly to the UK and the Government viewed this as an opportunity to reform UK's public procurement regulations to reduce red tape and to support business by simplifying public sector procurement, encouraging innovation, and improving transparency.
- 2.2 Proposals were initially set out in a green paper on transforming public procurement issued in December 2020 with the consultation on these proposals held open till 10 March 2021.
- 2.3 The number of responses received as part of the consultation delayed publication of the Government's response until December 2021. Although the Government first announced its intention for a Procurement Bill in the Queen's speech 2021, the Bill's progress through Parliament was slow and it only received Royal Assent on 23 October 2023.
- 2.4 Where there were four sets of regulations covering procurement (Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, the Concessions Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011) previously, the Procurement Act 2023 creates one set of rules. That said, the 2023 Act provides a framework with the detail being set out in regulations.
- 2.5 The Procurement Regulations 2024 set out the detailed requirements of notices to be given by contracting authorities, to conduct their public procurement in an open, transparent, and informative manner, as well as specifying where and how these should be published. This includes requirements to advertise contracts and to publish information about the outcomes of procurement processes and management of subsequent contracts on an online system which will be provided by the Cabinet Office. This will be found at www.gov.uk/find-tender. Other aspects covered by the Regulations impose requirements as to how contracting authorities should obtain specified information from suppliers and provide further detail as to how certain organisations and contracts are to be regulated.
- 2.6 There will be transitional arrangements in place depending on when the Council starts a procurement, so if started before the

implementation date, the 2015 Regulations will apply until the contract has terminated, otherwise the 2023 Act will regulate the procurement.

- 2.7 Appendix A explains the new procurement regime and highlights the changes from the current regime.

3. Revised Contract Procedure Rules

- 3.1 The Council's Contract Procedure Rules set out the framework within which the Council will procure contracts for goods, services, and works. They form part of the Constitution that the Council must have by law. There is a duty on the Council to ensure that its constitution is up-to-date.
- 3.2 To reflect the changes made by the 2023 Act, the Council must amend its Contract Procedure Rules. Appendix B sets out draft Contract Procedure Rules for the Committee to consider and recommend to Council for adoption.
- 3.3 As most of the provisions of the 2023 Act only apply to contracts that have an estimated value that exceeds specified thresholds, there is greater flexibility as to how the Council procures lower value contracts. Subject to any procurement strategy or related policies, this flexibility might include, for example, the ability to choose to award the contract without competition, to request quotes from targeted known specific suppliers only, or to restrict the award of the contract to local suppliers, or suppliers who are small-or medium sized enterprises, or voluntary, community or social enterprises. The draft Contract Procedure Rules have been drafted to reflect the additional flexibility.

4. Proposal and Next Steps

- 4.1 The Monitoring Officer is asking the Committee to recommend Council to agree the proposed Contract Procedure Rules and to amend the Constitution.
- 4.2 Training will be given to officers to ensure that they apply the new Rules when procuring goods, services or works.
- 4.3 The Council's Delivery Plan includes the development and implementation of a sustainable procurement strategy to secure value for money and support local businesses (Action PR3.3 refers). The final recommendation proposes that as part of its policy development work, the Overview and Scrutiny Committee is asked to set up a task and finish group to develop a strategy and to make appropriate recommendations.

5. Options available and consideration of risk:

5.1 The Council has a statutory duty to comply with the requirements of the 2023 Act. Were the Council to decide not to adopt the revised Contract Procedure Rules, the risk would be any contract entered into after 28 October 2024 would not comply with the 2023 Act. Consequently, the Council would be in breach of its statutory duty and any UK supplier could apply to the High Court for an order that the contract is set aside and/or seek damages. There would be associated costs and reputational damage arising from such a legal challenge.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the report at paragraphs 2.1-2.7 and 5.1
Financial implications to include reference to value for money.	Y	The specified thresholds referred to in paragraph 3.3 of the report are the sterling equivalent of the thresholds in the WTO Government Procurement Agreement. The UK is obliged to notify the WTO every two years of the sterling equivalent and the revised threshold takes effect from 1 January of every even year. The thresholds are presently £214,904 (supply of goods or services) and £5,372,609 (works).
Risk	Y	These are set out in the report at paragraph 5.1
Supporting Corporate Strategy	Y	Having up-to-date Contract Procedure Rules supports the Council Plan by setting out transparently how the Council will award contracts, and the procedures the Council will follow.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	

Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: Outline of the Procurement Act 2023

Appendix B: Draft Contract Procedure Rules.

Background Papers:

There are none.

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The Procurement Act 2023 – an outline.

New procurement objectives.

Section 12 of the Procurement Act 2023 introduces “Procurement Objectives”, replacing the EU Treaty principles of transparency, equal treatment, non-discrimination, and proportionality that applied under the PCR 2015. The Procurement Objectives are:

- (a) Delivering value for money;
- (b) Maximising public benefit;
- (c) Sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions;
- (d) Acting, and being seen to act, with integrity.
- (e) Treating all suppliers the same unless a difference between suppliers justifies different treatment.
- (f) Having regard to the fact that Small and Medium-sized Enterprises (SMEs) may face barriers to participation, after which they should “consider whether such barriers can be removed or reduced and “if the contracting authority considers that different treatment is justified in a particular case, [it] must take all reasonable steps to ensure [it does] not put a supplier at an unfair advantage.” This will include exercising the duty under section 18 to consider dividing the procurement into lots.

Scope and exemptions.

The full rigor of the 2023 Act will apply to all contracts with an estimated value of more than £214,904 (supply of goods or services) and £5,372,609 (works) unless the contract is not an exempted contract. Regulations will specify certain contracts, known as “Light touch contracts” which although still subject to the main requirements of the 2023 Act, will benefit from special rules excepting them from some of the requirements.

Exempted contracts are now based on the identity of the party contracting with the contracting authority, such as contracts between local authorities or a local authority company, or on the subject matter of the contract, such as contracts for the acquisition of land and buildings, certain legal services, certain financial services, employment contracts, and emergency services.

There is a separate regime for below-threshold contracts except concession contracts, utilities contracts or exempted contracts. Within the below-threshold regime, there is a further difference in the treatment of those contracts with an estimated value of less than £30,000 and more than £30,000. Below £30,000 there is no requirement to publish a below-threshold tender notice. Under the Public Contract Regulations 2015, the difference was made at £25,000.

As at present, if a contracting authority decides to competitively tender a regulated below-threshold contract it must not use a separate selection stage (now referred to as a suitability stage) to reduce the number of bidders invited to tender.

Procurement procedures.

Under the 2023 Act there are fewer procedures options to choose from, but greater flexibility. The procedures are:

- direct award;
- competitive tendering procedure (comprising either an open procedure or a competitive flexible procedure); or
- an award under an existing framework.

The competitive flexible procedure allows contracting authorities the discretion to design their procurement processes to suit their requirements. Although there is more flexibility about the procedure, there are minimum periods for the participation and tendering periods, previously known as the selection and the award stages.

Selection of tenderers

Under the Public Contract Regulations 2015, criteria are set out in a mandatory questionnaire that leaves the contracting authority with limited scope to ask its own questions to assess the economic and financial standing and technical and professional ability of the prospective tenderer. Section 22 of the 2023 Act refers to "Conditions of Participation" and gives a contracting authority a discretion to set the conditions, but these must be proportionate to the cost, nature, and complexity of the contract.

The 2023 Act introduces the concepts of "Excluded Suppliers" and "Excludable Suppliers". A contracting authority must exclude Excluded suppliers from the procurement, while the authority may exclude excludable suppliers. The mandatory grounds are set out in Schedule 6 and the discretionary grounds in Schedule 7. Where a contracting authority excludes a supplier, there is an obligation to notify the appropriate authority, who will investigate whether the supplier is indeed an excluded supplier (mandatory exclusions) or an excludable supplier (discretionary exclusions) and prepare a report for the Secretary of State.

Award criteria.

Contracting authorities must award a contract to the supplier that submits the "Most Advantageous Tender" rather than the "Most Advantageous Economic Tender." The Most Advantageous Tender is the tender that best satisfies the award criteria in accordance with the published assessment methodology and weightings. This will allow the possibility of awarding contracts that further general procurement policies the best. Linked to this, the 2023 Act removes the

prohibition in the Local Government Act 1988 on including “non-commercial considerations” in procurement where a contracting authority is complying with obligations in the 2023 Act.

The 2023 Act gives contracting authorities a new flexibility to refine award criteria and relative weightings during a procurement provided that:

- it is not an open procedure;
- the ITT document has not yet been issued; and
- there are no suppliers who have been excluded from the process who would have been able to progress had the refinement been in place at the time of their exclusion.

The procurement documents must have reserved the right to make this refinement, and making these changes triggers an obligation to republish the tender notice/documents. A refinement is not permitted if, had it been made earlier, it would have allowed one or more suppliers (that did not progress beyond an earlier round or selection process) to have done so.

Notice requirements.

The Act introduces different notices and new publication requirements. The Procurement Regulations 2024 provide the details. The notices include:

- **Planned procurement notice.** A planned procurement notice is not mandatory. It will operate to alert the market to a particular procurement coming up and to reduce the time limit for tenders to 10 days in “qualifying” circumstances.
- **Preliminary market engagement notice.** A preliminary market engagement notice is published to communicate to suppliers that the authority either (a) intends to carry out a market engagement exercise or (b) has carried out a market engagement exercise. Where preliminary market engagement has been used, it is mandatory to publish one ahead of publishing the tender notice (unless the authority can justify a decision not to publish one).
- **Tender notice.** A tender notice must be published when a contracting authority is inviting suppliers to take part in an open or competitive flexible procedure.
- **Below threshold tender notice.** A below threshold notice is a notice by a contracting authority that it intends to award a contract with a value between £30,000 and £213,477 (supply of goods or services) or £5,336,937 (works) following a competitive procedure.
- **Transparency notice.** To be published where a contracting authority is making a direct award in special cases or switching to direct award following a failed competitive tendering procedure.

- Contract award notice. This is different from a contract award notice under the PCR 2015. It is a notice given before awarding the contract to notify the market that the contracting authority intends to enter a contract. Its publication starts the standstill period of eight working days.
- Contract details notice. This is the equivalent of a contract award notice under the PCR 2015. The contracting authority must publish the notice within 30 days of the parties signing the contract.
- Contract performance notice. Before entering a public contract estimated over £5m contracting authorities (with some exceptions) must set and publish at least three KPIs.
- Contract change notice. A contract change notice is required for all contract amendments, except those that do not alter the scope of the contract and do not result in specific tolerances being exceeded.
- Payments compliance notice. Notice setting out a contracting authority's compliance with the term that any sum due under a public contract must be paid within 30 days.
- Information about any payment over £30k. Information must be published quarterly.
- Procurement termination notice. This is entirely new and is required where a procurement is abandoned.
- Contract termination notice. Another new obligation. A contracting authority must publish a Contract Termination Notice within 30 days of termination. The notice must give details of the reasons for termination, e.g., expiry, discharge, early termination by a party, contract set aside etc.

Performance and information requirements.

Contracting authorities must keep records of the rationale behind any material decisions they make when awarding public contracts. They must also keep records of any communication between themselves and the suppliers that is made in relation to the award, before the contract is entered into.

Where a public contract has an estimated value of more than £5m, the contracting authority must publish an assessment of the supplier's performance against key performance indicators at least once every 12 months during the lifetime of the contract.

Contract modifications.

Modifications to an existing contract are justified under the Act if the modification is:

- a "permitted" modification of a type listed in Schedule 8;

- not substantial (as defined in the 2023 Act); or
- a below-threshold modification.

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CONTRACT PROCEDURE RULES

Introduction to the Contract Procedure Rules

Procurement is ‘the process of acquiring works, supplies or services from third parties. The process spans the whole cycle from identification of needs, through to the end of a service contract or the end of the useful life of an asset. It involves options appraisal and the critical “make or buy” decision, which may result in the provision of services in-house in appropriate circumstances.”

Good procurement depends on ensuring that requirements are reliably determined, appropriate sourcing strategies are developed, and contracts are well-managed. Failure to procure in this way can result in additional costs and put the achievement of the Council’s strategic priorities at risk.

These Contract Procedure Rules explain the processes that the Council will apply when purchasing, licensing, leasing, contracting, commercial partnering or commissioning of works, supplies or services from third parties. They are intended to:

- (a) ensure that the Council secures the best value;
- (b) provide those involved in spending public money, with clear and transparent procedural requirements to complement existing professional skills, integrity and commitment and to protect officers (and the Council) from legal challenge;
- (c) ensure fairness to those seeking to contract with the Council;
- (d) prevent fraud and corruption or the suspicion of it; and
- (e) ensure the Council operates within the law.

The following are the Council’s rules for the letting of contracts for the supply of goods or materials or for the carrying out of works or services. They do not affect the validity of anything done under any earlier version of these rules.

CONTRACT PROCEDURE RULES

PART A – applies to all contracts.

PART B – applies to below Procurement Legislation Threshold contracts.

PART C – applies to above Procurement Legislation Threshold contracts.

PART D – applies to all contracts, where appropriate.

PART A – applies to all contracts

1. Interpretation

In these Contract Procedure Rules, references to:

- (a) “the eTS” means the Council’s electronic tendering system;
- (b) “Procurement Legislation” means the Procurement Act 2023 and any regulations made under that Act; and
- (c) the “Section 151 Officer” and the “Monitoring Officer” include any other Officer duly authorised by either of them to act under these Rules; and
- (d) “Central Digital Platform” “Contract Award Notice”, “Contract Details Notice,” “Excluded Supplier”, “Excludable Supplier” shall be as defined in the Procurement Legislation.
- (e) “Open Procedure” means a contract award procedure inviting Suppliers to submit their first or only tender without restricting the submission of tenders by reference to an assessment of a Supplier’s suitability to perform the contract including the Supplier’s legal and financial capacity or technical ability.

2. General

2.1 Requirement for compliance

- (a) Unless Contract Procedure Rule 2.2 applies every contract made by or on behalf of the Council, (including those where there is no cost to the Council, but which result in income being generated for the supplier or Supplier) must comply with these Contract Procedure Rules.
- (b) Every contract should also comply with the Financial Regulations, all relevant statutory provisions and any direction of the Council.

2.2 Exceptions

These Rules shall not apply to:

- (a) contracts of employment;
- (b) contracts for individual temporary agency staff;
- (c) treasury management;

- (d) the use of a solicitor, counsel, or any other external legal service where advice, assistance, representation, or legal services required to be provided by a person authorised under the Legal Services Act 2007, is required, and:
 - (i) the requirement for appointment is considered to be urgent by the Monitoring Officer or any other Officer authorised by the Monitoring Officer; or
 - (ii) where the appointment is not urgent, the contract value is estimated at the time of the initial instruction to be less than £49,999;
- (e) contracts for works, or the purchase of goods or services under an existing framework agreement if Contract Procedure Rule 3 is followed;
- (f) contracts for the sale, letting or purchase of land or buildings;
- (g) contracts where the works, or the purchase of goods or services are on behalf of a partnership of public sector bodies including the Council and the award of the contract is under the lead body's own rules;
- (h) contracts for the execution of mandatory works by statutory undertakers;
- (i) trading arrangements under which the Council provides, goods, services or works to a third party; and
- (j) a contract that any Senior Officer considers is necessary for the purposes of an emergency.

2.3 Variation or exemption of Contract Procedure Rules

- (a) No variation of or exemption from these Rules is allowed unless:
 - (i) the Council or the Executive resolves;
 - (ii) the law requires otherwise; or
 - (iii) the officer seeking the variation or exemption has completed the relevant exception record and it has been approved in advance of a contract being awarded.
- (b) No variation or exemption may be made which will result in a breach of the Procurement Legislation or threshold.
- (c) A variation or exemption may be granted on any one or more of the following grounds:

- (i) the nature of the market has been investigated and is considered to be such that a departure is justified because the Contract can only be performed by one supplier or best value as likely to be achieved by approaching one supplier; or
- (ii) the contract is required in circumstances of urgency that could not reasonably have been foreseen; or
- (iii) the Council has a contract with an organisation already engaged by the Council for similar and related works, goods or services and it is considered that there would be significant benefit to extend the existing contract to cover any additional requirement without exposing the Council to unacceptable risk; or
- (iv) where any Procurement Legislation or other legislation prevents a procurement process being followed; or
- (v) contracts for supplies, materials, services or works which are available only as proprietary or patented articles, services or works from one Supplier or supplier and for which a Senior Officer decides that there is no reasonable alternative available including contracts for repairs, or the supply of, parts to such articles or works; or
- (vi) the Council would incur or suffer increased costs or loss of income that would be significant compared to the overall Contract Value;

and in all cases, in the opinion of the body or person approving the exemption, it is appropriate.

2.4 Authority to procure

Any procurement carried out on behalf of the Council may only be undertaken with authority to carry out such task whether by way of a delegation in the Scheme of Delegation –Chapter 2 of the Constitution or otherwise.

2.5 Calculating the financial value of a Contract.

- (a) When calculating the value of a contract for the purposes of these Rules (other for concession contracts):
 - (i) values are the maximum total lifetime contract values not annual values;
 - (ii) values including recoverable VAT;

- (iii) values are to be aggregated – for example, if there is a recurring need on an annual basis for supplies; (d) if there are variables which result in the estimate being a range of figures rather than a single figure, then the highest figure in the range will be the value of the contract; and
 - (iv) the valuation shall include the value of any extensions to the period of the contract that may be allowed under the contract and any possible additional options including sub-Suppliers' costs.
- (b) The value of a concession contract is the maximum amount the supplier could expect to receive under or in connection with the contract including, where applicable, amounts already received. The amount a supplier could expect to receive includes the following:
- (i) amounts representing revenue (whether monetary or non-monetary) receivable due to the exploitation of the works or services to which the contract relates (whether from the Council or otherwise);
 - (ii) the value of any goods, services or works provided by the Council under the contract other than for payment;
 - (iii) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
 - (iv) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised;
 - (v) amounts representing premiums, fees, commissions, or interest that could be receivable under the contract;
 - (vi) amounts received on the sale of assets held by the supplier under the contract.
- (c) If it the value of the contract cannot be estimated in accordance with Rule 2.5(a) or (b) (for example because the duration of the contract is unknown), the estimated the value of the contract is to be treated as an amount of more than the Procurement Legislation threshold amount for the type of contract.

2.6 Contract Extensions

- (a) Any contract below Procurement Legislation thresholds may be extended in accordance with its contract terms.

- (b) All contracts above Procurement Legislation threshold can only be extended if the contract notice provided for the possibility of the contract being capable of being extended and the relevant statutory requirements prevailing at the time allow.

3. **Officer responsibilities**

3.1 Senior Officers must:

- (a) comply with these Contract Procedure Rules and must ensure that their officers comply with them too.
- (b) keep a written record of all approved exemption requests for his/her department. This record must be produced when required by the Monitoring Officer or audit.
- (c) arrange the safekeeping of original tender documents, exemptions, and Contracts in accordance with the Council's retention policy and ensure all Contract details are provided to the Section 151 Officer to record in the Contracts Register.

3.2 The Officer responsible for the procurement must:

- (a) comply with these Contract Procedure Rules and Procurement Legislation;
- (b) Identify and mitigate by the preparation of a formal assessment of conflicts of interest arising from among other things, the personal or financial interests of councillors or officers; a supplier or suppliers being in a position of advantage or privilege as regards information; the status of suppliers and the risk of collusion and sharing of information.
- (c) ensure that any Agents, Consultants, and contractual partners, conducting procurement activities on their behalf also comply;
- (d) take account of all necessary legal, financial, procurement and any technical advice;
- (e) have regard to statutory guidance issued by the Secretary of State under the Procurement Legislation or further guidance by the Procurement Officer;
- (f) without prejudice to Contract Procedure Rule 28 to keep such records as are necessary to explain material decisions in relation to the award of or entry into a contract;

- (g) to keep all records of communications with suppliers which are made prior to the contract award and are about the procurement or the award of the contract;
- (h) ensure security and confidentiality of documentation at all stages of the procurement activity, including Tender Evaluation Reports, working papers and minutes of meetings. The officer must ensure that he or she records in writing all minutes of meetings and decisions/actions taken.
- (i) proactively monitor and manage the lifecycle of a contract awarded under these Rules including the monitoring of performance and the publication of any required notices.

4. **Steps before starting a procurement**

4.1 Before starting to procure goods, services or works, the Senior Officer or the Officer responsible for the procurement must:

- (a) consider options for delivery of the required goods, services or works including whether the goods, services or works to be supplied could reasonably be supplied under more than one contract and whether such contracts could appropriately be awarded by reference to lots;
- (b) identify the size, scope, term, and specification of the goods, services, or works required
- (c) check whether:
 - (i) the Council already has an available and appropriate contract in place in the Contracts Register, or an appropriate national, regional, or other collaborative contract is available for use;
 - (ii) there is appropriate Council authority (permission) to procure and sufficient budgetary provision has been formally approved for the anticipated Contract expenditure;
 - (iii) any employee, either of the Council or of a service provider, may be affected by any transfer arrangement, then any Transfer of Undertaking (Protection of Employment) ("TUPE") issues and costs are considered and appropriate advice is obtained; and
- (d) should, having given a Preliminary Market Engagement Notice (if required by the Procurement Legislation) conduct preliminary market consultations to obtain information and advice for the purposes of developing the Council's requirements and approach

to the procurement; identifying likely contractual terms; and identifying potential Suppliers and informing them of the Council's plans and requirements.

- 4.2 Where the Senior Officer conducts preliminary market consultations as part of a tender procedure, the Senior Officer must publish a Preliminary Market Engagement Notice before publishing a tender notice or say in the Tender Notice why they did not;

5. **Framework agreements**

5.1 **To be used where appropriate**

Public sector-led frameworks agreements and contracts let by other public sector bodies for the purchase of goods and services may offer Best Value to the Council. Subject to Rule 5.2, Framework Agreements may be used where the Council's requirements can be met, it is practicable to do so and there is no existing corporate contract for the same or similar goods, works, and services which would be breached if a framework agreement was used.

5.2 **Pre-conditions**

Before entering into an existing framework agreement, the relevant Senior Officer must be satisfied that:

- (a) the Council is within the description of the contracting bodies who can use the framework agreement;
- (b) the framework agreement has been advertised and complies with Procurement Legislation; and
- (c) where it is intended to award a contract below the Procurement Legislation Threshold following a call-off under a framework agreement, the framework agreement allows for a direct award.

5.3 **Subsequent purchases**

Unless the terms of the framework agreement say differently and/or the framework agreement does not contain clear call-off contract criteria, once the framework agreement is operating, all subsequent purchases under the call-off contract shall, either:

- (a) not require further competition or,
- (b) if there are 2 or more suppliers of those goods or services quotations shall be invited from all those suppliers on the price payable for the goods or services.

PART B – applies to contracts with a Contract Value of less than the Procurement Legislation Threshold

6. No framework agreement – contracts with a value up to £30,000

- 6.1 Where the Senior Officer estimates at the beginning of the procurement the contract value up to £30,000, the Senior Officer should seek to obtain best value, which for the purpose of this Contract Procedure Rule means using an existing corporate contract or seeking one or more quotes.
- 6.2 If the Senior Officer decides to advertise the procurement rather than use existing corporate contract or seek one or more quotes, the Senior Officer must publish a Below-Threshold Tender Notice on the Central Digital Platform.
- 6.3 If the expenditure has been approved in estimates and any necessary financial or other approvals have been obtained, the Senior Officer may proceed with the contract.

7. No framework agreement – contracts with a value between £30,000 and Procurement Legislation Thresholds

7.1 Financial thresholds

Where the Senior Officer estimates at the beginning of the procurement that the contract value is between £30,000 and the relevant Procurement Legislation Threshold.

7.2 Methods to be used

Where practicable, three written quotations shall be sought wherever possible, which should include at least one from a local Supplier based in the Council's area. This should be done through the eTS, but may be by letter, e-mail, or some other mechanism by which the price can be evidenced before a purchase decision is taken.

7.3 Form of request for quotations

When requesting quotations the Senior Officer must specify:

- (a) the goods, works or service required;
- (b) the award criteria;
- (c) any performance indicators; and
- (d) any relevant terms or conditions or special requirements.

7.4 **Acceptance of quotations - Most advantageous quotation**

A quotation may not be accepted unless it:

- (a) is within the approved budget or the Section 151 Officer agrees;
- (b) meets the Council's requirements set out in the request for quotations;
- (d) is the most advantageous quotation having regard to any award criteria and the weightings applied to them; and
- (e) it is not a quotation qualified by reservations or statements made by the Supplier limiting any liability that the Supplier would be subject to if that Supplier is awarded the contract.

PART C – applies to contracts with a Contract Value above the Procurement Legislation Threshold

8.1 **Financial thresholds**

Above the Procurement Legislation Thresholds

8.2 **Methods to be used**

- (a) Where the procurement is a Covered Procurement that is not exempted under the Procurement Legislation, the Senior Officer shall follow a flexible competitive tendering procedure under the Procurement Legislation.
- (b) The procedure adopted shall comply with the Procurement Legislation and these Contract Procedure Rules, but the choice and design shall be proportionate judged by reference to the nature and complexity of the procurement, and the value of the contract to be awarded.

8.3 **Conditions of Participation**

- (a) The Senior Officer will determine the conditions of participation in a competitive flexible procedure that are necessary to determine a Supplier's eligibility, financial standing, and technical capacity. The conditions of participation shall be supplied to all Suppliers requesting to participate in the procurement.
- (b) The Senior Officer shall treat an Excluded Supplier as ineligible and shall not select any Supplier who is an Excluded Supplier or who becomes an Excluded Supplier subsequently.

- (c) The Senior Officer shall only agree to the selection of a Supplier once they are objectively satisfied that the Supplier is not an Excluded Supplier and are satisfied about the Supplier's:
 - (i) eligibility;
 - (ii) suitability to pursue a professional activity;
 - (iii) economic and financial standing; and
 - (iv) technical or professional ability.

8.4 Form of invitation to tender and submission of tenders

The Invitation to Tender shall be prepared by the Senior Officer and shall:

- (a) describe the scope of the goods, works and/or services to be procured including any relevant outputs necessary for monitoring performance;
- (b) give reasons to justify any decision not to accept sub-division of the contract into lots;
- (c) describe the procedure that is to be followed including the various stages, whether the number of Suppliers will be reduced and if so by what means, whether there will be dialogue with Suppliers to refine proposals and whether it is intended that there should be post-tender negotiations;
- (d) require tenderers to answer questions about their suitability, capability, legal status, and financial standing;
- (e) invite tenderers to identify information they consider to be confidential, commercially sensitive and/or exempt from disclosure in response to a relevant statutory request made to the Council;
- (f) include the criteria and the weightings that will be the basis for the evaluation of tenders and if appropriate, whether the criteria or weights will be refined at any stage in the tender process;
- (g) state the form of contract and/or terms of the contract including any required by these Contract Procedure Rules and state that the Council will not accept any alteration or amendment of those terms and conditions of contract;
- (h) state that the Council does not accept any qualification or addition to the invitation to tender other than when requested;

- (i) set out an adequate timetable for the submission and consideration of tenders; and
- (j) require all tenders to be submitted on a form of tender prepared by the Senior Officer which shall include where appropriate:
 - (i) a certificate against collusion;
 - (ii) a statement that tenders should be kept open for a specified period after the date of tender opening;
 - (iii) a statement that the Council will not be bound to accept any tender; and
 - (iv) a statement that any tender or contract may be inspected by any regulator.

8.5 Receipt

- (a) The Senior Officer will arrange for the opening of tenders and release for evaluation as soon as possible after the date and time specified in the Invitation to Tender. Any tender received after the date and time specified for receipt will be recorded as being received late and will not be considered.
- (b) Tenders submitted by fax or e-mail will not be accepted.

8.6 Custody of tenders received

Tenders shall remain unopened in the eTS until the time set for their opening.

8.7 Opening and registration of tenders

- (a) All tenders received by the date and time set for receipt of tenders and which meet the requirements of Contract Procedure Rule 8.4(i) will be opened at the same time by the relevant Senior Officer or their nominee after the time set for their receipt.
- (b) The names of the tenderers and the amounts will be recorded in the eTS.

8.8. Evaluation of tenders

- (a) Before evaluating tenders, the relevant Senior Officer must check that the tenders comply with any instructions to tenderers, pricing, schedule and any other explicit requirements (e.g. submission of method statements) and unless provided for in the invitation to tender that the tender is not a qualified tender.

- (b) The criteria and weightings described in the Invitation to Tender must be used in scoring any tenders.

8.9 Alterations to tenders

- (a) Errors identified before closing date If an error is identified in the specification or other tender documentation before the closing date for the return of tenders, all tenderers are to be told about the error promptly and allowed to adjust their tenders.
- (b) Errors identified after closing date If an error is identified in the specification or other tender documentation after the closing date for the return of tenders, all tenderers are to be told about the error and given the chance to either withdraw or amended their tender.
- (c) Errors or discrepancies in successful tenders Where examination of tenders shows errors or discrepancies which would affect the tender figure in an otherwise successful tender the tenderer shall be told of the errors and discrepancies and given the chance of confirming or withdrawing his offer, or in the case of arithmetical errors, of correcting them. If the tenderer withdraws, the next tender in competitive order is to be examined and dealt with in the same way.

8.10 Post-tender negotiations

- (a) If post-tender negotiations were identified in the tender documentation as being part of the flexible competitive procedure to be adopted by the Council, then such negotiations must only be undertaken in accordance with the tender documentation. Full and proper records shall be kept of any post-tender negotiations.
- (b) Unless the Section 151 Officer and the Monitoring Officer otherwise agree, any post-tender negotiations must be conducted by at least two Officers.
- (c) Where any further information or post-tender negotiation results in a fundamental change to the specification or contract terms the contract shall not be awarded but shall be re-tendered.

8.11 Notices

No tender that is for a contract above any relevant Procurement Legislation threshold shall be accepted unless the Monitoring Officer is satisfied that the notices of the intention to award the contract have been given to unsuccessful tenderers (and if necessary, to Suppliers not invited to tender) and the period for them to challenge the award has ended.

PART D – applies to all contracts, where appropriate**9. Promotion of equalities**

To comply with the Council's duty under the Equality Act 2010 to promote equality of treatment, tenderers for contracts above any relevant Procurement Legislation thresholds shall be required to explain what measures they would take to actively promote equality of opportunity.

10. Public Services (Social Value) Act 2012

To comply with the Council's duties, in preparing tenders for any contract above any relevant Procurement Legislation thresholds the Senior Officer must consider how to incorporate relevant social value considerations into the procurement process.

11. Local Government (Contracts) Act 1997

No tender relating to a contract to which the Local Government (Contracts) Act 1997 Sections 2-9 apply shall be accepted without consideration by the Monitoring Officer.

12. Letters of intent

A letter of intent providing the basis for a future agreement should only be used by a Senior Officer following the taking of advice from the and Monitoring Officer.

13. Contracts to be in writing**13.1 Form**

- (a) All contracts for goods, services and works shall be in writing or in approved electronic format.
- (b) Every contract having a Contract Value of less than £30,000 shall be by Purchase Order incorporating the Council's standard terms and conditions unless a formal agreement is entered into.
- (c) Every contract having a Contract Value of £30,000 or more shall be in form agreed with the Monitoring Officer.

13.2 Content

Every contract having a value of £30,000 or more shall, in addition to any other relevant matters, specify:

- (a) the goods, materials, works, services, or other things to be furnished supplied had or done;
- (b) the price to be paid with a statement of discount or other deductions;
- (c) a condition that the Supplier shall subscribe to the standards of ethical conduct expected by the public from those working in the public sector;
- (d) unless it is for the one-off purchase of goods and/or materials, the date when the contract will terminate and the terms on which the contract may be terminated early; and
- (e) where applicable the time or times within which the contract is to be performed.

13.3 Signing of contracts

- (a) Other than contracts in the form of an official order every contract less than £30,000 in value not required or intended to be sealed, shall be signed on behalf of the Council by the relevant Head of Service (or other officer authorised by them in accordance with the Scheme of Delegation).
- (b) Other than contracts in the form of an official order every contract between £30,000 and £100,000 in value not required or intended to be sealed, shall be signed on behalf of the Council by the relevant Chief Officer (or other officer authorised by them in accordance with the Scheme of Delegation).
- (c) Every contract over £100,000 in value shall be signed or where required or intended to be made under seal shall be sealed on behalf of the Council by the Monitoring Officer (or other officer authorised by them in accordance with the Scheme of Delegation)

14. Safeguards for due performance

14.1 Failure to Deliver

- (a) Every contract for the supply of goods, services, works and/or materials to which these rules apply should, unless the relevant Senior Officer considers it inappropriate, include a clause protecting the Council against the Supplier's failure to deliver. The clause should include the right for the Council to:
 - (i) purchase other goods, services, works or materials to put right the effects of the Supplier's failure; and

- (ii) recover from the Supplier any excess cost of purchasing other goods, services, works or materials.
- (b) In every contract for the supply of goods, services, works and/or materials, a clause will, unless the relevant Senior Officer considers it inappropriate, be included to the effect that the goods, services, works and/or materials will only be deemed to have been delivered to the Council if they have been delivered to the location specified by the Council and signed for.

14.2 Liquidated Damages for contracts exceeding £100,000

The Contract must, unless the relevant Senior Officer considers it inappropriate, require the payment of liquidated damages by the Supplier in the event of delay by the Supplier. The amount of the liquidated damages to be specified will be the Council's genuine pre-estimate of the losses to be paid by the Supplier in the case the terms of the contract are not duly performed.

14.3 Performance Bonds for contracts exceeding £500,000

Where a contract exceeds £500,000 the Supplier will be required to give a performance bond or other form of security acceptable to the relevant Senior Officer and the Section 151 Officer, unless both consider it is unnecessary.

14.4. Assignment or sub-letting

A clause will, where appropriate, be inserted in every contract for the execution of work, for supplies, and/or services to which these rules apply prohibiting the assigning or sub-letting of the contract without the previous consent of the relevant Senior Officer.

15. Specifications and standards

All contracts to which these rules apply where a specification issued by the British Standards Institution or a European Standard is current at the date of the tender and is relevant shall require as a minimum that goods and materials used in their execution shall be in accordance with the specification.

16. Prevention of bribery clause

Every contract to which these rules apply will, where practicable, include a clause allowing the Council to cancel the contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier or any person employed by him or acting on his behalf has committed any offence under the Bribery Act 2010 or under the Local Government Act 1972 Section 117.

17. **Nominated sub-Suppliers**

Where a sub-Supplier or supplier is to be nominated by the Council to a main Supplier, the relevant Senior Officer will, wherever practical, comply with these Rules as though the sub-contract were a contract with the Council.

18. **Publication of contract awards**

18.1 Details of every contract award over £30,000 including those covered by an exemption shall be published on the Council's Contracts Register.

18.2 In addition, unless there is a relevant exception in the Procurement Legislation, where the contract:

- (a) follows a competitive tendering procedure, Contract Award and Contract Details Notices shall be published on the Central Digital Platform.
- (b) is over any relevant Procurement Legislation threshold, and the award follows a competitive tendering procedure, Contract Award and Contract Details Notices shall be published on the Central Digital Platform and any report required by a third party shall be prepared in accordance with the relevant statutory requirements prevailing at the time.

Note: These requirements are in addition to any requirement under the Transparency Code for Local Government to publish details of expenditure above a specified threshold.

19. **Retention of tenders and contracts**

Unsuccessful tenders, accepted tenders, and contracts and tender evaluation results shall be kept in accordance with the Council's information asset register.

20. **Review of financial limits**

The financial limits set out in these Contract Procedure Rules shall be reviewed periodically by the Council.

Note to Officers: The principal requirements of these Contracts Procedure Rules are summarised in the Appendix. The Appendix is not part of the Contract Procedure Rules, but is guidance.

APPENDIX - The table is not part of these Contract Procedure Rules.

Note for officers: The following table summarises the type of procurement process; the minimum number of quotes or tender that should be sought or invited where practicable; any publicity and contractual requirements. Contract values are inclusive of VAT and for joint procurements means the total value of the contract, not just the Council's share.

Contract Value	Minimum requirements	Below Threshold Notice	Tender Notice	Assessment summary	Contract Award Notice	Contract Details Notice	Acceptance	Minimum order/contract requirements
Up to £30,000	Call-Off from an existing Framework Agreement let by the Council or other third party; or 1 or more quotes.	No (unless tenders are to invited other than from particular or pre-selected suppliers).	No	No	No	No	Senior Officer	Official Order
£30,000 to Procurement Legislation Threshold	Call-Off from an existing Framework Agreement let by the Council or other third party; or 3 written quotes (where practicable) using eTS.	Yes (if tenders are to be invited other than from particular or pre-selected suppliers)	No	No	No	Yes		Official Order unless a formal agreement is entered into
Above Procurement Legislation Threshold	Call-Off from an existing Framework Agreement let by the Council or other third	No	Yes	Yes before publication of contract award notice (unless call-off)	Yes	Yes within 30 days of signing of contract	As for up to Procurement Legislation Threshold but prior approval	Formal agreement under seal

Contract Value	Minimum requirements	Below Threshold Notice	Tender Notice	Assessment summary	Contract Award Notice	Contract Details Notice	Acceptance	Minimum order/contract requirements
	party; or Open tendering procedure or competitive flexible procedure					(unless call-off)	may be required from the Executive if the contract value is £500,000 or more	

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